

**Response to the *Societies Act* White Paper
from British Columbia Nongovernmental Organizations**

October 15, 2014

By email to: fcsp@gov.bc.ca

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Dear Sirs/Mesdames

Re: *Societies Act* White Paper (the “Paper”)

We, the organizations listed at the end of this letter, believe that a vibrant civil society – comprised of community groups, faith-based groups, health organizations, environmental organizations and other societies – can only benefit us all. While transparency and accountability are desirable, over-regulation of societies, and particularly small and grassroots organizations, can be very harmful, intimidating and a waste of both public and private resources.

For this reason, we are writing to express our shared concern about one proposal in the draft legislation contained in the Paper: s.99 of the draft *Societies Act* (the “Act”):

Complaints by public

99 (1) A person whom the court considers to be an appropriate person to make an application under this section may apply to the court for an order under this section on the grounds that a society

- (a) is conducting its activities or internal affairs with intent to defraud a person or to otherwise act unlawfully. or*
- (b) is carrying on activities that are detrimental to the public interest.*

(2) On an application under this section, the court, with a view to remedying or bringing to an end the matters complained of, may make any order it considers appropriate, including an order referred to in section 98 (3).

(3) Section 98 (4) applies for the purposes of this section.

Nothing in the Paper defines “public interest”, nor is there any guidance with respect to the criteria for a potential litigant to be a considered “an appropriate person”. As s.99(1)(a) makes reference to fraud, and other provisions provide remedies for oppressive conduct, it appears that s.99(1)(b) is intended to encompass litigation in respect of behaviour which is otherwise neither fraudulent, oppressive, or otherwise illegal.

Intimidation, wasted resources and court time

A great many – probably the majority – of British Columbia’s societies are run by volunteers, on very limited budgets, without experience with the law or the resources to hire lawyers. Even larger and more sophisticated societies do not generally have funds set aside to hire lawyers or justify their view of the “public interest” in court. We believe that court actions filed under s. 99 have the potential to intimidate many societies, and to divert resources away from the valuable work being carried out by societies.

The commentary says that “The risk that the provision could be used improperly (e.g. for minor matters or to pursue personal grievances) is limited because the court effectively controls the process.” We agree that improperly brought actions are unlikely to be successful, but even unsuccessful litigation imposes costs on the court system and other litigants. Our courts are already overburdened, and the time and public resources needed to address frivolous or vexatious applications are considerable.

Small societies, even if not required to defend such an action, may well experience a chilling effect due to threats of actions brought under s.99. Few societies have the resources to take on litigation of any sort. Volunteer directors may be deterred from serving, or a society may be deterred from carrying out legitimate activities, due to threats of litigation by disgruntled individuals.

Special role of non-profits

The Paper's commentary notes that s.99 is "unique in corporate law, and reflects the special role of non-profit corporations in society" and a "general expectation that societies will act in the public interest." In our submission, societies have many and varied roles, and it is wrong to assume that they will all act towards one universally held view of what is in the public interest, or even that all societies will act for the general public. As the Paper itself acknowledges, numerous societies exist to serve only their members. There is no reason to permit a member of the public, with no connection to a society, to attempt to interfere with its activities on ill-defined "public interest" grounds.

The commentary further suggests that s.99 is required "since so many [societies] are supported by public funding or monies solicited by the public". The Paper provides no information on how many of British Columbia's 27,000 societies receive such funds, but we note that those that do are already subject to extensive supervision of their activities. All registered charities are required to act according to their charitable purposes and are subject to monitoring by the Canada Revenue Agency ("CRA"). Societies which are in receipt of public funding, whether or not they are charities, are subject to extensive reporting and other restrictions as a condition of funding. Public funders dealing with those societies are best positioned to balance competing considerations and impose conditions to protect the public interest, as they are funding societies in accordance with public priorities determined by democratically elected policy makers.

In conclusion

To give a member of the public the option to seek a court order is therefore to invite litigation which is unnecessary (as the public interest is already protected) and likely counterproductive (diverting the funds given by public funders and donors from programs to legal defence). We ask that you remove s.99 from the draft Bill. The concerns s.99 is intended to address are already adequately dealt with by other laws and by the oversight of funders and CRA.

British Columbians benefit from a diversity of societies, representing different points of views and offering a range of programs. Controversy will arise in decisions made by societies, as they do for other corporations, and in the vast majority of cases this is a normal part of the democratic process. In our view, s.99 represents a threat to the ability of societies to act in furtherance of their purposes.

Supporting Organizations:

1. Abortion Rights Coalition of Canada
2. Association of Fundraising Professionals, Vancouver Chapter
3. Atira Women's Resource Society
4. Battered Women's Support Services
5. BC Alliance for Arts and Culture
6. BC Centre for Elder Advocacy and Support
7. BC Civil Liberties Association
8. BC Council of the Canadian Federation of University Women
9. BC Freedom of Information and Privacy Association
10. BC Public Interest Advocacy Centre
11. Board Voice
12. British Columbia Environmental Network
13. Canadian Centre for Policy Alternatives, BC Office
14. Canadian Federation of Students-British Columbia
15. Canadian Parks and Wilderness Society - BC Chapter
16. Community Legal Assistance Society
17. Creekside Commons Community Services Society
18. Crimson Coast Dance Society
19. Dogwood Initiative
20. DreamRider Theatre Society
21. Ecojustice Canada
22. ForestEthics Advocacy
23. ForestEthics Solutions
24. FORPA Forest Protection Allies
25. Fraser Riverkeeper
26. Garden City Conservation Society
27. Garry Oak Ecosystems Recovery Team Society
28. Georgia Strait Alliance
29. Greenpeace Canada
30. Graduate Student Society at Simon Fraser University
31. IntegrityBC
32. Lawyers Rights Watch Canada

33. Made in BC - Dance on Tour
34. Mid Vancouver Island Habitat Enhancement Society
35. Nanaimo Cedar Farmers Institute
36. On the Ground Society for Documentary Photography
37. People's Law School
38. Pivot Legal Society
39. Prince George Community Partners Addressing Homelessness
40. Qmunity
41. Qualicum Beach Streamkeepers Society
42. REACH Centre Association
43. Revelstoke Arts Council's
44. Sierra Club BC
45. Simon Fraser Public Interest Research Group
46. University Women's Club of Vancouver
47. Vancouver Rape Relief and Women's Shelter
48. Watershed Sentinel Educational Society
49. West Coast Environmental Law Association
50. West Coast LEAF
51. West End Seniors' Network
52. Wilderness Committee
53. Wildsight
54. Wildsight Kimberley/Cranbrook
55. WISH Drop-In Centre Society
56. World Community Development Education Society