



Policy Elements for New Societies Legislation

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The Government of Yukon is working to modernize the current societies legislation in order to better serve the needs of today's societies and the public. Last fall, from October 14 to December 14, 2017, more than 90 people provided their feedback by attending open houses and focus groups in Whitehorse, through conference calls with Watson Lake and Dawson City and by providing written submissions.

In their feedback, they provided examples of where they had difficulty with the legislation and suggestions for how to improve it. Some stakeholders agreed in principle that Yukon's legislative framework should be modeled on British Columbia's Societies Act, which is the most up-to-date in Canada. One stakeholder suggested that we mirror the Canada Not-for-Profit Corporations Act. All of this input is being considered as new societies legislation is being developed.

We invite you to review the proposed key changes and provide feedback from May 1 to June 30, 2018. Please do this by providing your written comments no later than June 30 by email to corporateaffairs@gov.yk.ca or by mail to Corporate Affairs, P.O. Box 2703 C6, Whitehorse, YT Y1A 2C6.

A - CREATION AND LIQUIDATION OF SOCIETIES			
Issue No. 1	Problem Description	Recommendation	Rationale
Structure and governance options	<p>The current “one size fits all” model is inflexible and applies to all types of societies.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Bylaw schedules should be provided to suit different categories of societies. • Many processes are inefficient and need to be easier to follow. • The legislation needs an introduction and basic rules to clearly identify its purpose and intended outcome. 	<p>Provide more flexible rules for each type of society so that they can create bylaws that meet their specific needs.</p>	<p>For example, this could allow societies to adopt proxy voting and create different classes of membership.</p>

Issue No. 2	Problem Description	Recommendation	Rationale
<p>Need to match regulatory oversight with scope of society activity.</p>	<p>The current “one size fits all” model applies to all societies – whether it is a social club with few assets and little income, or a large, non-profit corporation that provides significant goods and/or services to stakeholders. (The current Act takes note that the level of fiscal reporting required from societies depends on their assets and income.)</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • The financial review process is complicated and expensive. • Reviews and audits are necessary, because they protect societies, especially the larger ones. • Suggested allowing financial statements to include the Canada Revenue Agency’s T2010 form, “Election to Deduct Resource Expenses upon Acquisition of Resource Property by a Corporation,” for submission. • Financial and legal reporting requirements are too much “red tape.” They said the requests for information on forms is a burden, repetitive and rigid. • Societies’ levels of allowable revenue for categorizing societies, for reporting purposes, should be increased. 	<p>Create the option to set up various types of society structures.</p> <p>Provide regulations that support the functions of each category of society.</p>	<p>For example, member-funded societies would have different standards from those that collect large sums of money or that despite being non-profit, function in the same way as large corporations providing goods or services to a significant stakeholder group.</p>

Issue No. 3	Problem Description	Recommendation	Rationale
<p>Number of people required to incorporate a society</p>	<p>Currently, five people are required to create a society. For some societies, this may be too difficult.</p>	<p>Depending on the type of society, lower the minimum number of persons needed to incorporate a society from five to three.</p>	<p>For a small, member-funded society, fewer may be sufficient. This issue is related to issue 2, above. (Creation and management of a society should always require at least three directors to ensure transparency).</p>
Issue No. 4	Problem Description	Recommendation	Rationale
<p>Limit to contents of constitution</p>	<p>Societies currently often insert provisions into their constitutions that belong in other documents, such as bylaws or an operations manual.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Common terms and roles need to be defined more clearly. 	<p>Ensure that the new legislation identifies what is to be included in a society's constitution.</p>	<p>This would ensure that societies' constitutions contain only the required information.</p>
Issue No. 5	Problem Description	Recommendation	Rationale
<p>Bylaw clarity</p>	<p>The bylaw requirements in the Act aren't consistent with the standard form bylaws set out in the regulations.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Common terms and roles need to be defined more clearly. 	<p>Set modern bylaw requirements in the Act and include matching standard form bylaws in the regulations.</p>	<p>The bylaw provisions in the Act and regulations are outdated and don't always align with each other. Provisions set out in a modern act and regulations, such as those in British Columbia, will make passing and changing bylaws more simple and straightforward.</p>

Issue No. 6	Problem Description	Recommendation	Rationale
Naming issues	An extra-territorial society's name may not meet Yukon's naming rules. Restrictions in the current societies legislation don't allow for societies with not-for-profit objectives to apply for a business name (under the <i>Partnership and Business Names Act</i>). The legislation for use of a pseudonym requires clarification.	Clarify naming rules and provide flexibility for an assumed name or pseudonym.	The naming rules should be clear. They should give extra-territorial societies workable options if their name in their originating jurisdiction can't be used in Yukon.
Issue No. 7	Problem Description	Recommendation	Rationale
Burdensome rules for extraterritorial (ET) societies (These are societies created in other jurisdictions that wish to also operate in Yukon.)	<p>The current Act creates rules that may duplicate or add to the home jurisdiction's requirements for reports and reporting periods. This creates unnecessary burdens for extraterritorial societies.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Suggestions that ET societies not have to follow the same rules as societies created in Yukon. • Providing bylaws separate from their umbrella organization (that may be incorporated in another jurisdiction) is an unrealistic expectation. • There are no set forms for forming or maintaining a branch society in Yukon. 	Require that certain very basic information be filed and give the Registrar discretion regarding the need for further documentation.	Societies may come from up to 13 other jurisdictions (including Canada), where the legislation may change from time to time. It is difficult to create legislation that will cover all situations. It makes more sense for the Registrar to review each matter on a case-by-case basis and then have discretion to require additional information when necessary.
Issue No. 8	Problem Description	Recommendation	Rationale
Amalgamation	The current legislation does not say how two or more existing societies might amalgamate or join together.	Set out a clear process by which two or more societies may amalgamate.	Two or more societies may wish to amalgamate without having to dissolve and reincorporate. Setting out a formal process in the Act would allow this to happen more efficiently.

Issue No. 9	Problem Description	Recommendation	Rationale
<p>Arrangements including, but not limited to, amalgamations</p>	<p>The current legislation does not allow societies to easily make major changes to their governing structure, amalgamate with another society, or settle legal disputes, etc. when they need to settle complex matters.</p>	<p>Set out that these types of major changes can be made if approved by the membership and approved by the court when necessary.</p>	<p>There may be complex and/or contentious circumstances where organizations can't sort things out themselves, or where people feel that they are being pressured to decide in a certain manner. In these instances, court approval could allow for a major change in how the society is governed.</p> <p>When making large changes, stakeholders are best served when they know that they have the authority to make them. This would provide a process for such changes.</p>
Issue No. 10	Problem Description	Recommendation	Rationale
<p>Dissolution and voluntary winding up</p>	<p>The current Act differentiates between different types of dissolution. It vaguely suggests different processes for each situation, but isn't specific. It provides for the appointment of a liquidator at the Registrar's discretion to wind up the affairs of the society. However, it doesn't say what should be done to make sure all debts are cleared and when to appoint a liquidator.</p> <p><u>2017 Consultation Feedback</u></p> <p>The Act doesn't have a clear process for liquidating assets, dealing with outstanding debts, or addressing other general issues that arise.</p>	<p>Set out specific rules for ways that a society can cease to exist, such as voluntary or court-ordered dissolving and liquidation of assets.</p> <p>Also, set out clear directions for how a dissolved society can be restored to active status.</p>	<p>There are various ways a society may cease to exist (ranging from court-ordered to voluntary) and distribute its assets.</p> <p>By addressing the most common scenarios, a degree of certainty may be brought to the process.</p>

Issue No. 11	Problem Description	Recommendation	Rationale
<p>Dealing with surplus funds when societies dissolve</p>	<p>The current legislation has some options for distributing surplus funds once societies dissolve. But, it doesn't provide non-charitable societies with clear authority when it is not specifically addressed in the bylaws.</p>	<p>Set out specific rules for how a society's assets can be distributed when it ceases to exist. One or more of the following would need to be done once all debts are paid:</p> <ul style="list-style-type: none"> • Receive proper payment for the assets; • Ensure that asset distribution benefits the society's purposes; • Meet the terms of any relevant provisions in the society's bylaws; or, distribute assets in compliance with societies legislation and other relevant legislation. 	<p>There are many circumstances under which a society dissolves (voluntary or involuntary), what assets it may hold and who may have a claim on those assets. For this reason, new legislation should have detailed rules to identify how claims against assets should be ranked and how they should be distributed.</p>

Issue No. 12	Problem Description	Recommendation	Rationale
Disposal of assets where society has not dissolved	There is nothing in the current legislation about how to deal with situations where the illegally planned disposal of assets is contemplated.	State clearly that if a concerned party is aware of such a plan, they may apply to court to stop it.	Societies often own or control considerable assets. Where an interested party is aware of a plan to illegally dispose of those assets, it is correct to ask a court to make an order to ensure compliance with the law.
B - DIRECTORS' MATTERS			
Issue No. 13	Problem Description	Recommendation	Rationale
Qualifications of directors, e.g. competency, bankruptcy, convictions	The current legislation does not set out minimum qualifications for directors.	Set out that there is a minimum age for directors and that this is the age of majority, forbid undischarged bankruptcies, and ban persons convicted of certain relevant offences from being directors.	Societies are generally responsible for operating enterprises that benefit the community. Directors may control significant assets and must be legally accountable for the decisions they make in managing the society and its assets. Directors should have reached the legal age of majority so they can be responsible for legal actions. Directors should not have been convicted of violating laws relating to financial management.

Issue No. 14	Problem Description	Recommendation	Rationale
Minimum number of resident directors	The current legislation does not set a minimum number of directors, or require that any directors live in Yukon.	Set three as the minimum number of directors. Require that at least one of them normally lives in Yukon.	Setting three as the minimum number of directors reduces the likelihood that the society will be used for something other than its legal purpose. It is appropriate to require at least one director live in Yukon, since the focus of any society in Yukon will be activities in Yukon.
Issue No. 15	Problem Description	Recommendation	Rationale
Conflict of interest	The current Act doesn't address conflict of interest. Only the provision about director remuneration in prescribed bylaws attempts to address this.	Set out specific conflict of interest guidelines for directors, officers and managers. For example, except in extraordinary circumstances, it would not be appropriate for a director to also be the executive manager, supervised and paid by the directors.	Directors and senior managers may be in situations where their decisions could benefit them personally. Legislated guidelines would help avoid these conflicts.
Issue No. 16	Problem Description	Recommendation	Rationale
Clarity re: duties of directors	There is nothing in the legislation about directors' honesty and diligence.	Specify that directors must perform their duties to minimum standards of honesty, ethics and behaviour.	Potential and incoming directors will be made aware of the quality of behaviour required of them.
Issue No. 17	Problem Description	Recommendation	Rationale
Application of legislation to a person who is not a director but functions as a director	If a person who is not a director, for whatever reason (e.g. whose election is later found to be invalid), functions as a director, there are currently no parameters for such a person's activities.	Set out that, in this circumstance, the person has the obligations and protections that would normally apply to a valid director.	Even though the person may not be a valid director, it is appropriate that they have to follow the same rules that apply to a valid director in these circumstances, for the benefit of the society and community.

C - ROLE OF THE REGISTRAR			
Issue No. 18	Problem Description	Recommendation	Rationale
Complaints and disputes	<p>Under the current Act, the Registrar can be required to consider complaints, order investigations and issue orders based on an alleged breach of the legislation in an attempt to settle a dispute.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Concerns about potential legal costs. • Current dispute resolution process is inefficient and unclear. • Recommended that there be a way to ensure societies follow the law, including human rights law. • Suggested we create a societies navigator or ombudsman position. 	<p>State clearly in the legislation that potential infractions of the Act and regulations will be reviewed first by the Registrar. Disputes on interpretation and application of the bylaws will be outside the Registrar's authority and will need to be dealt with via other methods, including, the courts when necessary.</p>	<p>The Registrar represents the Government of Yukon as one of the stakeholders in societies regulation.</p>

Issue No. 19	Problem Description	Recommendation	Rationale
<p>Compliance of filed documents with legislation</p>	<p>Existing legislation, along with common law requirements, requires a long and detailed review of submitted documents, particularly new and amended bylaws. These approvals can sometimes take months.</p> <p>Also, difficulties with documents often lead to societies seeking advice from the Registrar that constitutes legal advice. The Registrar and staff do not have the authority and are not qualified to provide legal advice.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • While some wanted the current system of document review by the Registrar to continue (bylaws, for example), others favour eliminating these reviews. 	<p>Remove the requirement that the Registrar review filed documents.</p> <p>Reduce the Registrar's role to confirming that a society has filed all of the required documents within required timelines.</p>	<p>This will reduce the time it takes for societies to create and file their documents. It ensures that when they need legal advice, societies are getting it from the most appropriate and qualified source (their own legal counsel).</p>
Issue No. 20	Problem Description	Recommendation	Rationale
<p>Dispute resolution</p>	<p>Society stakeholders frequently turn to registry staff to settle disputes. There are six or more potential types of stakeholders for each society. Government staff are almost always in a conflict of interest situation and not able to settle disputes.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Bylaws should include a basic mechanism for internal conflict resolution. 	<p>Clarify that the government does not have a dispute resolution role.</p> <p>Make clear that, if all other dispute resolution attempts fail, stakeholders may apply to court to settle disputes.</p>	<p>Given that the government is a significant stakeholder in societies matters, it is inappropriate, in many, if not most, cases, for it to try to resolve disputes between other stakeholders. The courts are an objective dispute resolution option. The Registrar's office, as part of the Government of Yukon, is not in a position to do this.</p>

D - OPERATIONAL			
Issue No. 21	Problem Description	Recommendation	Rationale
Electronic communications	<p>The current legislation only allows for use of paper forms.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Many processes are inefficient and need to be simplified. • Would welcome online filing for forms and reports. 	<p>Include provisions in the legislation that allow electronic communication such as fax and email.</p>	<p>As use of paper correspondence decreases, this change will allow societies to make use of digital and electronic forms of communication.</p>
Issue No. 22	Problem Description	Recommendation	Rationale
Access to records	<p>The current legislation allows each society to decide when and how its records may be viewed.</p>	<p>Clarify that certain documents are public, such as constitutions, bylaws and director information. For other information, such as membership lists and contact information, specify when and how those records may be accessed, and by whom, including, if needed, by application to the court.</p>	<p>Certain societies may limit access to records. By placing access rules in legislation, this option is removed and accountability is improved.</p>
Issue No. 23	Problem Description	Recommendation	Rationale
Reliance on paper documents for the Registry	<p>For the most part, the various steps to create, govern, operate and regulate societies use paper documentation.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Suggested that providing online forms, allowing for digital signatures, and a public database would make it easier to provide the required information. • Frustrated by the duplicate requests for information on forms. 	<p>Convert documentation processes for all societies matters to digital/ electronic (with an appropriate transition period).</p>	<p>Hard-copy documents are problematic with respect to:</p> <ul style="list-style-type: none"> • creation • filing and storage • recovery • amendment <p>Operation of a modern and efficient registry requires that it be digital/electronic only. Transition can be accomplished by implementing the change over time.</p>

Issue No. 24	Problem Description	Recommendation	Rationale
Electronic attendance at meetings, voting and sending electronic notices etc.	The current legislation only allows in-person voting and participation at meetings.	Allow members to participate in meetings by telephone or other electronic/digital methods, provided that this is set out in their bylaws.	With the increasingly frequent use of digital communication methods, it makes sense to enable members to participate in meetings electronically.
Issue No. 25	Problem Description	Recommendation	Rationale
Proxy voting	The current legislation provides no guidelines for proxy voting. (Proxy voting means that a member who can't cast their vote for logistical reasons may designate another member to cast their vote for them).	Include that bylaws may allow proxy voting and set out rules as to when it is allowed.	As voting is a fundamental function in societies, having basic guidelines in the statute ensures that proxy voting is established correctly in bylaws.
Issue No. 26	Problem Description	Recommendation	Rationale
Investments	There is no provision in the current legislation allowing a society to invest.	While it may not be common for societies to have investments, there may be situations when a society may be an investor. Allow for a society to make investments that a prudent investor would make with their own money, unless the bylaws forbid investing or specify specific criteria for managing investments.	If, for example, a society receives funds for a specific project that is delayed, then the ability to place those funds in a low-risk investment until they are required would be a benefit to the society.

E - PRIVACY			
Issue No. 27	Problem Description	Recommendation	Rationale
Need to update privacy provisions	The current societies legislation allows public access only to certain information in the public registry.	Exempt the public registry data from <i>Access to Information and Protection of Privacy Act</i> (ATIPP) requirements.	In almost all of Canada, data in the public registry is exempt from ATIPP equivalent legislation. According to access to information principles, since societies benefit from special treatment by the government, the public should have access to all information in this registry. Almost always, they are eligible to access public funding and should provide open financial disclosure.
F- LIABILITY			
Issue No. 28	Problem Description	Recommendation	Rationale
Volunteer liability	The current law limits liability of members of societies in their role as ordinary members. There is no protection for those who are also active volunteers pursuing the goals of a society.	Enable societies to provide liability protection (protection from being successfully sued) for members who are also volunteers.	Volunteers may be liable while carrying out volunteer duties in good faith. Without some sort of protection, a volunteer could be sued. Without protection from liability, people will be less likely to become society members and to volunteer.
Issue No. 29	Problem Description	Recommendation	Rationale
Validity of obligations where society is not validly registered (by its own fault)	It is not clear in the current Act and regulations if a society that hasn't met its incorporation or registration obligations is still legally obliged to other parties.	Ensure that anyone dealing with a society can assume, without further inquiry, that the society is legally able to make commitments.	People who sign agreements and enter into contracts with societies should not have to conduct extensive research to ensure that the society is properly registered and is in compliance with the appropriate legislation.

Issue No. 30	Problem Description	Recommendation	Rationale
Validity of contract where conflict of interest is not disclosed	In the event that a society has signed a contract that may illegally benefit a director, to automatically cancel it could damage the society and/or an innocent third party.	State that, if the problem is not dealt with through negotiation, mediation or arbitration, the parties may turn to the courts for a ruling as to whether the contract should proceed, and who should benefit from the contract.	Where a director has not disclosed a conflict of interest, there still may be a benefit to the society and/or the innocent third party to complete the contract. The consequences of the undisclosed conflict may be dealt with between the director and the society, without involving the third party.
Issue No. 31	Problem Description	Recommendation	Rationale
Directors' liability where legislation is breached	The current legislation does not identify whether directors are liable if they approve an illegal transaction.	Make the directors personally liable for such a breach of the law.	If a person agrees to act as a director, this would ensure that they have committed to meet certain responsibilities, and are legally obligated to act in a responsible and lawful manner.
Issue No. 32	Problem Description	Recommendation	Rationale
Directors' good faith protection	There is no protection in the legislation for directors who make decisions based on information they reasonably believed was true, but was incorrect.	Provide that directors who make decisions in good faith are not liable for the negative consequences of those decisions.	If a director makes a decision in good faith, based on documents or expert opinions that turn out to not be true and have harmful consequences, then the director would not suffer personal consequences from that decision.

Issue No. 33	Problem Description	Recommendation	Rationale
<p>Indemnity and insurance</p>	<p>The current legislation does not allow for a society to indemnify or insure directors and senior managers.</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Suggested that the Yukon government purchase liability insurance in bulk for societies, as is done by Nova Scotia. 	<p>Allow societies to financially protect (indemnify) and insure directors and senior managers when they are acting in good faith.</p>	<p>Directors and senior managers may make good faith decisions that result in lawsuits against the society and against them as individuals.</p> <p>The proposed change would allow the society to financially protect (indemnify) them as individuals, and, if needed, provide insurance for protection.</p> <p>In circumstances where a society chooses to allocate its resources to do so, this can be done by the purchase of what is commonly known as “Directors and Officers Liability Insurance.”</p> <p>In some circumstances, funding organizations may require that such insurance be in place; however, it is not within the scope of this legislation to compel such purchases.</p>

G – FINANCE AND EMPLOYMENT

Issue No. 34	Problem Description	Recommendation	Rationale
<p>Remuneration and financial statements</p>	<p>Societies have a wide variety of scopes of activity and often limited funding. Managing money and payment to stakeholders creates difficult challenges in the areas of decision making and documentation.</p>	<p>In the legislation, identify what is required for payment and documentation in financial statements.</p>	<p>This would ensure that necessary requirements would have to be laid out in the bylaws. These would include, but not be limited to, revenues and the sources of revenue as well as all disbursements and expenses.</p>

Issue No. 35	Problem Description	Recommendation	Rationale
Nature and amount of financial assistance	There may be concerns about whether it is legal for a society to provide financial assistance to a person or group.	Require that financial statements identify the nature and amount of assistance provided by the society.	This would help ensure that such assistance is transparent and reviewable.
Issue No. 36	Problem Description	Recommendation	Rationale
Restriction of employment and contracts for directors	The rules about payment to directors in the existing legislation are incomplete.	Clearly identify that directors are not allowed to benefit from employment by, or contracts with, the society.	As societies are to be limited to not-for-profit activities, it is not appropriate for directors to receive compensation other than token payment for being a director and repayment of out-of-pocket expenses.
Issue No. 37	Problem Description	Recommendation	Rationale
Manager provisions	The current legislation provides no guidelines about who can be hired to help administer a society.	Establish rules under which societies can employ managers to assist in their administration.	A society, particularly one with significant activities and/or assets, may require the skill set of a full-time manager. Directors may not be familiar with hiring for such a position. Clear rules in legislation would help.
Issue No. 38	Problem Description	Recommendation	Rationale
Manager disclosure	An individual who is able and qualified to be a manager may already have potential conflicts of interest with the society.	Require that the (potential) manager must make it known if there is a potential or existing conflict of interest.	While a conflict of interest may not stop the hiring of a manager, the conflict of interest must be revealed so directors can decide how to deal with it.

H – OTHER STRUCTURES			
Issue No. 39	Problem Description	Recommendation	Rationale
Social Enterprises	<p>Some organizations view their business activities as social enterprises that assist society while providing profit for the business owner(s).</p> <p><u>2017 Consultation Feedback</u></p> <ul style="list-style-type: none"> • Suggested that social enterprises should be allowed in Yukon. 	<p>Consider developing a legislative framework for social enterprises by making changes to the relevant legislation, the <i>Business Corporations Act</i> and regulations.</p>	<p>Definitions of “social enterprise” vary. They range from a strictly non-profit enterprise that benefits society, like that of a society under the existing <i>Societies Act</i>, to the vague notion that a business that sells personal flotation devices for profit benefits society.</p> <p>The framework for supporting an enterprise that falls outside of the existing or future <i>Societies Act</i> requires a decision that is more appropriately made on a case-by-case basis.</p> <p>Additional legislation would need to be developed to regulate this type of hybrid enterprise.</p>
Issue No. 40	Problem Description	Recommendation	Rationale
Non-profit cooperatives	<p>One or more groups who identify themselves as non-profit cooperatives would like to access similar funding to that which the Yukon government provides to societies (which are, by definition, non-profit).</p>	<p>Consider developing a legislative framework for non-profit entities other than societies by making changes to the relevant legislation, the <i>Cooperative Associations Act</i> and regulations.</p>	<p>Societies are structured differently than cooperative associations. They are governed and operate very differently as well.</p> <p>Additional work to amend the <i>Cooperative Associations Act</i> and regulations would be needed to provide the necessary framework to regulate these organizations.</p>