ADR Institute of Alberta

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Alberta Law Reform Institute
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Dear Colleagues

Proposed ALRI reforms to Alberta's non-profit law, notably the Societies Act

In February 2015 the Alberta Law Reform Institute (ALRI) released Report for Discussion #26 *Non-Profit Corporations* along with an accompanying Discussion Paper, detailing proposed law reforms to non-profit law in Alberta. The ALRI initiated and later extended its consultation period with non-profit groups, and met with ADRIA representatives on September 17th, 2015. ADRIA appreciated the opportunity to offer feedback and collaborate on this important initiative, and offered a number of perspectives on the issue of the ALRI's proposed reforms. Specifically, ADRIA was in a position to comment on the proposed reforms from five (5) perspectives:

1. As a non-profit organization itself, impacted by any reforms to Alberta's Societies Act;
2. As a source of information regarding the nature, barriers to resolution, and underlying causes of disputes referred to ADRIA from the non-profit sector.
3. As an advocate and service provider for effective and accessible ADR options to resolve disputes arising within the non-profit sector;
4. As a resource to Service Alberta and Alberta Culture in their ongoing educational efforts to minimize the potential for conflict, and to see disputes resolved effectively within the non-profit sector; and
5. As a resource to the ALRI, Alberta Legislators and Government Ministries in their efforts to reform non-profit law, regulations and protocols, specifically as they pertain to dispute resolution.

Following due consideration, ADRIA's Board of Directors has formally endorsed the ALRI's efforts to recommend reforms to Alberta's non-profit law, noting that many aspects of the existing Societies Act would benefit from added clarity, especially in terms of Director, Officer and Member roles, responsibilities and rights. ADRIA believes that such clarity would serve to reduce the overall amount of disruptive, costly and often unresolved conflict experienced within Alberta's non-profit sector. It would additionally reduce the burden on Alberta's Court system.

ADRIA further endorses the ALRI's assertions that Alberta's non-profit sector would benefit from legislation that (A) provides proven tools to assist organizations, especially in regard to internal dispute resolution, (B) is sufficiently flexible to accommodate both the diversity of this sector and their evolving circumstances over time, and (C) favours internal remedies over external remedies (notably negotiation, mediation and arbitration, vice litigation and Court).

ADRIA endorses the ALRI's proposal that ADR processes, notably negotiation, mediation and arbitration, be entrenched in the Act as mandatory default dispute resolution mechanisms (with some added provisions, including an allocation of costs), unless another dispute resolution process is prescribed and detailed within an organization's bylaws.

ADRIA further suggests that when a non-profit organization adopts bylaws that detail its dispute resolution process, the Act require that these meet the basic requirements of natural justice, administrative law and procedural fairness, and should further address the allocation of costs.

ADRIA suggests that the ALRI proposals, and any resultant legislation or regulations, use clear and understandable language to highlight and recognize the importance of effective dispute resolution mechanisms, and resist grouping these measures under the generic heading of "Corporate Remedies". The majority of Alberta's non-profit Societies are relatively small and unsophisticated organizations which, when faced with conflict situations are seeking effective and easily understood dispute resolution options.

ADRIA recommends that the ARLI's proposals, and any resultant legislation or regulations, clearly define a progression of mandatory ADR processes, from negotiation to mediation to binding arbitration, for adoption as the default dispute resolution mechanism within the Act. Progressive steps in an ADR process, however, should not be made available to any party as a means to stall the dispute resolution process. In other words, it should be clearly stated in the legislation that none of the progressive steps are intended to serve as a pre-condition, and that any party can move directly to binding arbitration if a party prefers, especially if one of the parties fails to co-operate or fully participate in the negotiation or mediation processes.

Finally, ADRIA suggests that the ARLI's proposals, and any resultant legislation, regulations, training or guidelines specifically identify Alberta's community mediation organizations, legal and ADR professional associations as resources that can be called upon to assist non-profit organizations in preventing, mitigating and/or resolving disputes. Similarly, in the interest of further protecting the non-profit sector, the importance of engaging properly trained ADR professionals that hold recognized credentials and designations should be emphasised.

ADRIA looks forward to the release of the ALRI's final recommendations, and remains available for further consultation if required. Looking to the future, ADRIA hopes to be a collaborative partner at such time that reforms to our existing legislation are being considered by the government.

Yours in ADR,

Stan Galbraith
President
ADR Institute of Alberta

cc Minister of Justice, Minister of Service Alberta, Minister of Culture & Tourism