From: Paul Conway
Sent: September-16-15 4:27 PM
To: 'Alasdair MacKinnon'; 'Barrie Marshall'; Chuck Smith; 'Dolores Herman'; Don Goodfellow; Jeff Jessamine; 'Joanne Munro'; Michael Hokanson; 'Michelle Simpson'; Stan Galbraith; Wendy Hassen
Cc: Tammy Borowiecki; Truus Souman
Subject: Draft discussion paper for ALRI

My thanks to Wendy & Michelle for providing written comments, and for Barrie who participated in the teleconference discussion.

DRAFT basis of a discussion paper to be prepared and finalized for the ARLI - circulated to the Board of Directors for early feedback:

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

Background: The ALRI released Report for Discussion #26 *Non-Profit Corporations* in February 2015 along with an accompanying Discussion Paper, detailing proposed law reforms to non-profit law in Alberta. The ALRI has extended its consultation period with non-profit groups until November 1st, 2015, and will meet with ADRIA representation on Thursday, September 17th at 3pm. ADRIA offers a number of perspectives on the issue of the ALRI's proposed reforms:

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 see disputes resolved effectively within the non-profit sector; and
5. As a resource to the ALRI and Legislators in their efforts to reform non-profit law, specifically as it pertains to dispute resolution.

As a <u>strawman</u> for discussion, the ADRIA Board of Directors may wish to consider the following measures in its formal feedback to the ALRI:

1. ADRIA endorses efforts by the ALRI to suggest 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, and that such clarity would serve to reduce the overall amount of conflict experienced within Alberta's non-profit sector.
2. 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.
3. ADRIA endorses the ALRI's proposal that ADR processes, notably 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.

4. 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.
5. ADRIA suggests that the ALRI proposals, and ideally any resultant legislation, more clearly recognize the importance of effective dispute resolution mechanisms by not grouping these measures under the generic heading of "Corporate Remedies", and instead using terminology more commonly understood.
6. ADRIA recommends that the ARLI's proposals, and ultimately any resultant legislation, more 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.
7. ADRIA suggests that the ARLI's proposals, and ultimately any resultant legislation, specifically identify community mediation resources and the ADR Institute of Alberta within the Act as resources that can be called upon to assist non-profit organizations in preventing, mitigating and/or resolving disputes.

With regard to #6, Board members will recall that our ADRIA bylaws were recently amended to read as follows:

Any dispute subject to Subsection 1 and 2 will be resolved by:
a. Direct negotiation between the parties, with or without assistance and/or facilitation. If resolution is not achieved, then by:
b. Mediation pursuant to the National Mediation Rules of ADRIC, or to mediation practices agreed upon by the parties. The language of the mediation will be English. If resolution is not achieved, then by:
c. Arbitration pursuant to the National Arbitration Rules of ADRIC, or to arbitration practices agreed upon by the parties. The language of the arbitration will be English, and the decision will bind all parties.

Additional discussion:

It has been suggested that a reformed Act could provide for mandatory referrals to ADRIA for ADR services and selection processes. This is not likely to be supported by the GOA or ARLI, unless ADR/Mediation becomes a regulated profession. Mandatory referrals to ADRIA would also raise the complex issue our organizational costs and/or the fees charged by individual ADR practitioners (unless regulated and administered by roster). ADRIA already receives dozens of referrals every year, which we suspect is only the tip of the iceberg. Unless there is a fee-for-service provision, noting that many non-profits have very limited resources, ADRIA is not resourced to select and appoint practitioners for every non-profit facing a conflict situation. It is for precisely this reason that Service Alberta currently provides no enforcement resources in regard to the existing Societies Act, and instead refers such calls to ADRIA and community mediation resources. The current Societies Act does not require bylaws to include any provisions for dispute resolution, nor does it prescribe a default dispute resolution mechanism. Instead the Act includes a suggestion that internal disputes be resolved through arbitration. The Service Alberta/Corporate Registry website expands on these points, with the added suggestion of mediation:

How can our society handle internal disputes?

- Societies must be prepared to resolve their own internal disputes.

- Corporate Registry does not supervise the conduct of societies, nor does it provide a counseling service on matters other than forms and the documents filed with them.
- To ensure that internal disputes are handled fairly, Corporate Registry recommends adoption of a bylaw that outlines an mediation or arbitration procedure.

At this week's meetings and in the days ahead, ADRIA will:

- assess the ARLI's position or perspectives regarding ADR;
- determine the ARLI's timelines and process requirements for this report;
- solicit additional ADRIA Board feedback;
- complete an ADRIA discussion paper, and submit to the ARLI in early October; and
- monitor this file over time, especially if and when the GOA commences a review of the Act.

Feedback appreciated, before or after the ARLI consultation. This item is on the Board agenda for Saturday.

Paul Conway | ***Executive Director***

ADR Institute of Alberta (ADRIA)
The Professional Association for Mediators, Arbitrators & ADR Practitioners in Alberta.
Over 500 members and still growing!

Alberta Conflict Resolution Day
October 15th, 2015

LET'S TALK ADR

www.conflictresolutionday.ca

Room CE 223A - Ralph King Athletic Centre
Concordia University of Edmonton
Corner of 112th Ave & 73rd Street

Mailing address:
7128 Ada Boulevard, Edmonton AB T5B 4E4
ph. (780) 433-4881 or 1-800-232-7214 ext. 111
fax. (780) 433-9024 Visit: www.adralberta.com

ADRIA has engaged a dedicated team of part-time staff, so calls and e-mails are usually returned within 2 business days. Calls & visits are best accomodated weekdays from 10am-2pm.