
*ISLAND COASTAL ECONOMIC TRUST
INDEPENDENT LEGISLATIVE REVIEW OF THE
NORTH ISLAND-COAST DEVELOPMENT INITIATIVE
TRUST ACT 2006*

REPORT OF THE 2016 LEGISLATIVE REVIEW COMMITTEE

***Judith Sayers
Peter van Dongen
Marilyn Hutchinson***

March 30, 2016

Prepared for the Committee by Dale Wall

Acknowledgements

Committee members would like to thank Line Robert, Denice Regnier and Board Chair Phil Kent for their assistance with this project.

Table of Contents

| | |
|--|----|
| Executive Summary..... | 4 |
| Introduction | 5 |
| Part 1 - Winding-up the Trust in the Context of No New Funding..... | 6 |
| Part 2 - Continuing ICET in the Context of New Funding | 7 |
| Part 3 - Lessons Learned | 10 |
| Conclusion..... | 11 |
| Appendix A – Committee Member Biographies | 12 |
| Appendix B - Summary of process for creation of committee | 13 |
| Appendix C - Terms of Reference for Legislative Review Committee | 16 |
| Appendix D – Text of the Act | 19 |
| Appendix E - 2011 Report (Without Appendices) | 30 |

Executive Summary

In 2006, the Government of British Columbia passed the *North Island-Coast Development Initiative Trust Act* (the Act) creating the \$50 million Island Coastal Economic Trust (ICET).

Under the Act, ICET is required to conduct a review of the Act every five years. The first legislative review was conducted in 2011. It is attached as Appendix E.

The 2011 committee concluded that the legislative framework created for ICET had worked very well. In particular, they noted that the Act was to be commended for its flexibility, permissiveness and for its requirements for transparency and accountability. The 2016 committee is in concurrence with this overall conclusion.

This second review is conducted in a context where the original \$50 million endowment to the Trust has been reduced to \$4.8 million, a point where, without additional funding, the Trust will likely need to be wound up within the next few years.

As a result, the committee is of the view that this review may serve three potential purposes.

1. To address the potential that no new funding is provided for ICET, it is prudent to review the wind-up provisions contained in the Act and ensure the Trust has appropriate authority to wind-up operations. The first part of this report is focused on that issue.
2. To address the potential that new funding is provided for ICET by the provincial government, the committee notes that if new funding is approved, section 17 of the Act will need to be amended to increase the cap on provincial contributions.

In addition, the committee recommends that a further amendment be made to allow those Regional District directors appointed to a Regional District Board by Treaty First Nations, to serve on both Regional Advisory Committees and the ICET Board. The need for this amendment is brought about by the enactment of the Treaty between the Maa-Nulth peoples and the Governments of Canada and British Columbia.

At a broader level the committee proposes that First Nations be provided with a clear community based route to Board membership. The design of such provisions will need to be developed in consultation and with the consent of First Nations.

3. To address the potential that no new funding will lead not only to the wind-up of ICET but also to questions regarding the governance of future economic development initiatives, the committee believes it is useful to document the legislative lessons which have been learned by the Trust initiative.

In the committee's view ICET has been a bold, innovative and generally successful approach to regional economic development. Regardless of whether it continues, it is important to understand what lessons have been learned to date so that these may guide either those who are charged with refining the legislative authority of a renewed ICET or those who might wish to revisit this approach to regional economic development in the future.

Introduction

In 2006, the Government of British Columbia passed the *North Island-Coast Development Initiative Trust Act* (the Act) creating the \$50 million Island Coastal Economic Trust (ICET).

The purpose of the ICET (based on section 20 of the Act) is to support investment within the North Island Coast region in the following sectors:

1. forestry;
2. transportation;
3. tourism;
4. mining;
5. Olympic opportunities;
6. small business;
7. economic development;
8. energy; and
9. agriculture.

Under the Act, ICET is required to conduct a review of the Act every five years. The first legislative review was conducted in 2011. It is attached as Appendix E.

The legislative provisions governing this committee's review of the Act are set out below.

Review of this Act

26 (1) Subject to section 10 (3), on or before the fifth anniversary of the coming into force of this section, and on or before every fifth anniversary after that, the directors must, if the North Island-Coast Development Initiative Trust has not by that date been dissolved and disestablished under section 23, appoint a committee of qualified individuals to review this Act and evaluate how it is functioning.

(2) The review committee may consult with business, labour, education providers, government and any other person or organization it considers appropriate.

(3) If a review committee is appointed, it must publish a report of its findings in a manner that can reasonably be expected to bring the report to the attention of the public.

This second review was conducted by an independent committee consisting of Judith Sayers, Marilyn Hutchinson and Peter van Dongen. Brief biographical information on each of the committee members is provided in Appendix A.

The 2011 committee concluded that the legislative framework created for ICET had worked very well. In particular, they noted that the Act was to be commended for its flexibility, permissiveness and for its requirements for transparency and accountability. The 2016 committee is in concurrence with this overall conclusion.

This review was conducted in a context where the original \$50 million endowment to ICET has been expended to projects and therefore reduced to about \$4.8 million, a point where, without additional funding, the Trust will likely need to be wound up within the next few years.

As a result, the committee is of the view that this review may serve three potential purposes.

1. To address the potential that there be no new funding approved for ICET, it is prudent to examine the wind-up provisions within the Act in order to ensure the Trust has appropriate authority to wind-up operations. The first part of this report is focused on that issue.
2. To address the potential that new funding for ICET is approved by the provincial government, the committee reviewed a number of specific changes to the Act also recommended by the 2011 committee. It determined that the only one of those changes which required immediate attention was the need to raise the section 17 legislated cap on contributions, to match any new contribution.

In addition, the committee recommends two further amendments be made to provide for full participation by First Nations.

The first of these changes would allow those Regional District directors appointed to a Regional District Board by Treaty First Nations, to serve on both Regional Advisory Committees and the ICET Board. The need for this amendment is brought about by the enactment of the Treaty between the Maa-Nulth peoples and the Governments of Canada and British Columbia.

The second change would integrate First Nations governance more effectively into the governance structure of ICET, as created by the Act.

3. To address the potential that no new funding will lead not only to the wind-up of ICET but also to questions regarding the governance of future economic development initiatives, the committee believes it is useful to document the legislative lessons which have been learned by the Trust initiative.

In its view ICET has been a bold, innovative and generally successful approach to regional economic development. Regardless of whether it continues, it is important to understand what lessons have been learned to date so that these may guide either those who are charged with refining the legislative authority of a renewed ICET or those who might wish to revisit this approach to regional economic development in the future.

Part 1 - Winding-up the Trust in the Context of No New Funding

The legislative provisions dealing with the winding up of the Trust is as follows:

Winding up

23 (1) Promptly after the Regional Account has been reduced to a nil balance, the director's must

(a) in accordance with the direction of the regional advisory committees, distribute the remaining assets of the North Island-Coast Development Initiative Trust, if any,

(i) firstly in satisfaction of any outstanding liabilities of the North Island-Coast Development Initiative Trust, and

(ii) after that, to the municipalities and regional districts in the North Island-Coast area, or to any of them, in the proportions or amounts the regional advisory committees may direct,

- (b) close the account, and
 - (c) publish notice of the closing of the account, and the consequent dissolution of the North Island-Coast Development Initiative Trust, in a manner that can reasonably be expected to bring those matters to the attention of the public.
- (2) On the closing of the Regional Account,
- (a) the North Island-Coast Development Initiative Trust is dissolved and disestablished,
 - (b) the appointment of each member of the board of directors of the North Island-Coast Development Initiative Trust is rescinded, and
 - (c) the regional advisory committees are dissolved and disestablished.

Given that the current amount remaining in the Trust account has now been reduced by expenditure from the original \$50 million to \$4.8 million, the wind-up provisions will likely need to be acted on within the next five years, unless additional provincial funding is received.

The report of the 2011 committee examined the legislative provisions concerning wind-up and concluded that they would benefit from changes that both provided greater clarity and gave the Trust greater discretion with respect to the operation of the wind-up.

To date the provincial government has chosen not to act on this recommendation.

This committee has reviewed the report of the 2011 committee. It understands from that report that this is a narrow question of statutory interpretation and that ultimately ICET will need to work with the legislation as written.

The committee considered the approach being taken by ICET to wind-up operations under the current legislation. It is clear to the committee that the ICET is engaged in careful and detailed financial planning which will lead to the organization being wound up in an organized fashion as the fund is diminished.

The committee was also interested in the question of whether some Trust projects in process would need to be assigned to successor organizations to ensure project completion. After review of approved investments and discussion with ICET staff, it would appear that few if any Trust projects will require on-going management. In the small number of cases where such action may be required it is clear that ICET has identified the projects and is currently considering its options.

Part 2 - Continuing ICET in the Context of New Funding

If ICET does receive a new infusion of capital from the provincial government, there are several legislative issues that need attention.

1. Section 17 Cap on Provincial Contribution

As noted in the 2011 legislative review, the section 17 cap on provincial contributions will need to be lifted if there is to be a new infusion of funds.

2. First Nations Representation

There are two parts to this discussion.

The first concerns a narrow, but important question of how to ensure that Regional District Board members who are appointed to the Regional District Board by Treaty First Nations are eligible to serve on the ICET Board.

The second proposes a structured process for appointing First Nations representatives to the ICET Board in a way that has legitimacy within First Nations communities.

Treaty First Nations

The treaty with Maa-Nulth Nations came into effect on April 1, 2011.

The treaty provides for the representation of the Maa-Nulth Nations on applicable Regional District Boards.

Regional District Board membership would normally carry with it the capacity to serve on the Regional Advisory Committees under the Act, and to be appointed to the ICET Board. However, under the Treaty, Maa-Nulth representatives are appointed to the Regional Board and the legislation limits Regional Advisory Committee participation to elected members of Regional Boards.

The committee is of the view that Treaty First Nation representatives on Regional Boards should have the ability to serve on Regional Advisory Committees and on the ICET Board as would any other member of a Regional District Board.

It recommends that section 3(a) of the act be amended to include Regional District Board members appointed by a Treaty First Nation.

It also recommends that section 3 (b) be amended to provide Treaty First Nation representatives an opportunity equivalent to that granted to communities of less than 500 persons.

Based on these recommendations the applicable sections of the Act could be amended in the following way:

Composition of regional advisory committees

3 A regional advisory committee, whether under section 2 (3) (b) or otherwise, may from time to time determine the size of, and the manner of appointing members to, the regional advisory committee and the role of, and the manner of appointing, the chair of the regional advisory committee, but in doing so the members of the regional advisory committee must

(a) ensure that the only persons who are eligible to become members of the regional advisory committee are

(i) elected officials of municipalities or regional districts that are, in whole or in part, within the region,

(ii) members of a Municipal Council or Regional District Board appointed to the Council or Board under the terms of a Treaty between a First Nation and the Governments of Canada and British Columbia; or

- (iii) Members of the Legislative Assembly who have been elected, in whole or in part, by electors from the region,
- (b) provide an opportunity for municipalities, regional districts or Treaty First Nations within the region that have populations of less than 500 to be represented on the regional advisory committee,
- (c) establish the terms of office for members of the regional advisory committee, and
- (d) ensure that if a member of the regional advisory committee ceases to meet the qualifications for membership set out under paragraph (a), that individual immediately ceases to be a member of the regional advisory committee.

First Nations Representation

The current model created in the Act is heavily weighted toward local government representation. First Nations representation is provided through the provincial appointment process, where it is one of several considerations.

The committee was interested in investigating approaches to governance that provided First Nations, local governments and the provincial government a route towards representation on the ICET Board that was grounded in the decision making processes of each of these three parties.

This requires changes to the Act that provide First Nations with a clear community based route to ICET Board membership. The design of this process will need consultation with and the consent of First Nations.

The committee submits that such a change is required because regionally based decision making bodies such as ICET receive their legitimacy from the fact that they are grounded in a strong community based foundation. This foundation needs to include all communities within the region. Given that First Nations governance is distinctly different from that provided under the B.C. local government system, the foundation of appointments needs to be enhanced through the addition of an appropriate appointment process for First Nations communities. This process would need to provide a means by which First Nations governments could select First Nations leaders to participate fully in decision making.

In the case of the Trust this could mean the creation of something similar to a First Nations Regional Advisory Committee. This would provide First Nations with a vehicle through which to appoint members to the Board. The Board would then represent three interests – provincial interests through the provincial representatives, local government interests through the local government representatives and First Nations interest through the First Nations representatives. Each would have been appointed through a process that has legitimacy in their respective communities. This would both make the Board more representative of all communities in the region and allow provincial representative to more clearly play their role as representatives of the provincial interest.

3. Project Categories

The 2011 review recommended that the list of eligible project categories be amended to delete Olympic Opportunities since this related to pre 2010 Olympic investments. While reasonable, the committee determined that there is no need to attach priority to this change as it does not restrict actions by ICET.

Part 3 - Lessons Learned

The committee was interested in the question of what lessons could be learned from the ICET experience.

In effect the committee asked themselves; if this was to be done again, how would the experience gained from the ICET model be put to good use?

Since the Act essentially creates a governance structure for a trust fund focused on regional economic development it is not surprising that the key questions should be about governance.

In this regard the committee considered a number of alternative governance approaches that could be applied to regional economic development.

Role of Local Governments

It is fair to say that there are four conceptual approaches that can be taken to the governance of regional economic development.

While none is perfect, if these models are considered against just three criteria – regional scale, long-term economic impact and accountability, the key strengths and weaknesses of each model become clear.

The four models are as follows:

1. Provincial government

This model would include any approach, including Crown corporations, where the province was the ultimate decision maker.

This provincial-only model achieves accountability because ultimately, provincially elected officials are accountable for decisions. In terms of scale, decisions will tend to be oriented towards provincial economic priorities more so than local and regional priorities. The long-term economic impact will be given weight but it can be fairly expected that this will be done in the context of shorter term political and policy considerations.

2. Regionally Based Business Oriented Board

This model would include any approach where non-elected experts in economic development were provided with decision making authority, unique and arms length from government and located outside of the government reporting entity.

This business model can be designed to be regionally based and is capable of making good decisions on regional priorities. It would also be insulated – to a point - from short-term political influences and should – at least in theory - be biased towards decisions that can be justified based on sound long-term business principles. However, it will be challenged on the accountability side as there is no tie back to either provincially or locally elected officials. This challenge is illustrated by the experience with the governance models for B.C. Ferries and TransLink, both of which represent variants of this model.

3. Trust or similar Model – Regional but Local Government Based

This model would be similar to the current Trust model, but could include improved approaches to First Nations representation.

The committee is of the view that the Trust model does a good job of balancing local, regional and provincial interests. It builds its legitimacy on the foundation of community based selection processes. While it may be prone to the criticism that it creates a bias towards local political priorities as opposed to business based decision making, ICET has tried to address this challenge through the use of consensus building processes that engaged a broad range of First Nations, stakeholders and voices of business in the regional economy.

4. Local Government/First Nations

This model would use existing Local Government and First Nations bodies.

This local government model provides for decisions to be made by local government officials at a local government scale. As such decisions would be oriented to more of a local level than a regional level and may result in competition between neighbouring jurisdictions.

Conclusion

This very basic analysis illustrates how different governance models for regional economic development address questions of provincial/regional/local scale, accountability and the trade-off between long-term economy-building and shorter-term political priorities.

No model fully addresses all three criteria.

However, the regional trust model comes closest to a structure that provides a unique regionally based approach that is both accountable and capable of balancing long and short term perspectives.

The committee is of the view ICET and the other regional Trusts represent a bold, innovative and generally successful approach to regional economic development.

Appendix A – Committee Member Biographies

Marilyn Hutchinson

Marilyn Hutchinson was a member of the 2011 review committee and is pleased to be invited to participate on this 2016 committee. She has been involved in economic development for 20 years, participating on provincial and national committees in support of rural and regional capacity development. She is currently Director of Sustainability & Growth for Grieg Seafood BC Ltd., a salmon farming company with operations at north Vancouver Island and the Sunshine Coast.

Kekinusuqs, Dr. Judith Sayers

Kekinusuqs, Dr. Judith Sayers is a Strategic Adviser to First Nations and Corporations, providing advice on many issues including relationship building and negotiating equitable agreements. She is an adjunct professor with the School of Business at the University of Victoria. Judith has been the Visiting National Aboriginal Economic Development Chair and an Assistant Professor at the Faculty of Business and Law at the University of Victoria.

Judith served fourteen years as Chief of the Hupacasath First Nation. As Chief of her First Nation, she focused on capacity building and sustainable development. Judith was instrumental in several sustainable development projects and put in place mechanisms to help protect the territory.

Peter van Dongen

A strong advocate for regional economic development, Peter has more than 15 years of experience in marketing, communications, and business consulting. Peter is the Regional Marketing Manager for MNP, a national accounting and business consulting firm with five offices across Vancouver Island. Before joining MNP, he worked extensively in the agriculture industry, operating his own agricultural communications firm and also contracting as the project development facilitator for the Islands Agri-Food Initiative. Peter co-chaired the 2010 State of the Island Economic Summit and recently helped to spearhead the first-ever State of the Island Economic Report in partnership with the Vancouver Island Economic Alliance. He is also a founding director of the Islands Agriculture Show.

Dale Wall (Consultant Engaged by ICET)

Dale Wall was a member of the British Columbia Public Service for 28 years, prior to his retirement in November, 2010. During his time with B.C Public Service Dale served from as Deputy Minister of Community and Rural Development from 2008-2010 and as Assistant Deputy Minister, Local Government and Inspector of Municipalities from 2000 to 2008. Prior to these appointments he worked at a number of positions in the Ministry of Municipal Affairs, Cabinet Office and the Ministry of Finance. Since his retirement Dale has been engaged in several projects including serving as an adjunct Member of the Expert Panel on Business Taxation, working with the UBCM Select Committee on the preparation of the UBCM policy paper, *Strong Fiscal Futures* and serving as provincial negotiator for the 2015 Peace River Agreement. He also instructs a course in Regional and Urban Economics at the University of Victoria.

Appendix B - Summary of process for creation of committee

Requirement for independent legislative review

The Island Coastal Economic Trust (ICET) is required under Section 26 of the North Island-Coast Development Initiative Trust Act (the Act) to undertake a legislative review no later than February 27, 2011, five years after the establishment of ICET.

Under the Act, ICET must appoint a committee of “qualified individuals” to review the Act and evaluate how it is functioning (the Legislative Review Committee). The Legislative Review Committee (LRC) may consult with business, labour, education providers, government and any other person or organization it considers appropriate and must publish a report of its findings in a manner that can reasonably be expected to bring the report to the attention of the public.

Creation of the 2016 ICET Legislative Review Steering Committee

The Board of Directors of the Trust will appoint an ad hoc committee, the Legislative Review Steering Committee (Steering Committee), comprised of three Board Members, to oversee the legislative review process. The Steering Committee’s mandate will end once the final Legislative Review Report is published.

Terms of Reference of the 2016 ICET Legislative Review Steering Committee

The responsibilities of the Steering Committee will include (but are not limited to):

- Approval of the process for the legislative review;
- Recruitment of qualified candidates for the Legislative Review Committee;
- Recommendation to the Board of Directors of three candidates for appointment
- Oversight of the Legislative Review Committee and process to ensure compliance with the Act and that the process and draft report meets the standards set out in the *Governance and Disclosure Guidelines for Governing Boards of British Columbia Public Sector Organizations*, and *Review of the Governance Framework for Canada’s Crown Corporations—Meeting the Expectations of Canadians*;
- Ensuring that the LRC members’ names and biographies, Terms of Reference and Final Report are published and available for public review;
- Reporting to the Board of Directors on the process;

The process

The 2016 ICET Legislative Review Steering Committee (the Steering Committee), comprised of three Board members, will oversee the 2016 ICET Legislative Review Process. The Legislative Review Committee and the consultant engaged will report directly to the CEO who will ensure liaison with the Steering Committee.

A committee of three or four “qualified individuals” will be recruited and appointed by the Steering Committee to direct the legislative review. These individuals will be selected based on their professional qualifications and capability to understand and review legislation, as well as their track record of working effectively, collaboratively and efficiently in a team or committee setting.

It is expected that the LRC will carry out appropriate consultations to ensure a balanced view of any issues related to the legislation.

The LRC will be supported by an independent consultant hired to assist them to carry out the required consultations and to draft the final recommendations as per the Committee’s direction.

The 2016 ICET Legislative Review Committee selection and appointment process

The Act requires that the Trust appoint a committee of “qualified individuals” to review the Act and evaluate how it is functioning. The definition of “qualified individuals” in the legislation is as follows:

“qualified individual” means an individual who is *not*

- a) an elected official of a municipality or regional district,
- b) a Member of the Legislative Assembly,
- c) an employee of the government
- d) a member of the board of directors of the North Island-Coast Development Initiative Trust,
- e) a member of a regional advisory committee, or
- f) a person who is
 - i) the spouse, parent or child of any individual referred to in paragraph d) or e)
 - ii) any other relative residing with that individual

In appointing the Committee the Directors of the Trust are guided by the guidelines set out in the following documents:

- a) the *Governance and Disclosure Guidelines for Governing Boards of British Columbia Public Sector Organizations* published by the British Columbia Board Resourcing and Development Office;
- b) The *Review of the Governance Framework for Canada’s Crown Corporations—Meeting the Expectations of Canadians* published by the Treasury Board of Canada Secretariat.

Those best practices guidelines suggest that the committee be comprised of individuals with combined professional competencies and personal attributes to do the job assigned to them. They must be independent of ICET and have no material interest in ICET’s functions. Their appointment must be competency based, transparent and professional. The composition of the committee, their biographies and their names must be published, as must the process for appointing them and any remuneration. The Terms of Reference must also be published, as must the LRC’s termination date, the purpose of the committee, and their working procedures.

Criteria for selection of LRC members

The following criteria for the recruitment and appointment of candidates to the LRC were considered:

- Legal training or experience working with legislation;
- Knowledge of, or experience working with, organizations governed by legislation;
- Knowledge of the ICET mandate area and economic development initiatives within the area;
- Arms'-length from ICET staff, Board and funded projects;
- Strong professional reputation and credibility of the candidate;
- Ability to work as a team, at arms' length and independently of ICET or any other influence, and
- Ability to direct process, analyze information and make credible, independent recommendations.

The Steering Committee will appoint three candidates to form part of the LRC, after confirming that the process and qualifications of the candidates comply with the legislation, the *Governance and Disclosure Guidelines for Governing Boards of British Columbia Public Sector Organizations*, the *Review of the Governance Framework for Canada's Crown Corporations—Meeting the Expectations of Canadians* as well as the additional criteria set by the Trust. The appointments will then be ratified at the next meeting of the Board of Directors of ICET.

Legislative Review Committee

The role of the LRC will be to approve and/or modify the terms of reference for the legislative review process, steer the process and ensure that the necessary research and consultations are undertaken to meet the requirements of the legislation. They will be expected to provide strategic direction and guidance to the consultant hired to assist them with the process. Finally, the LRC will be required to analyze the results of the research and consultations and make recommendations regarding the legislation.

LRC members receive, for meeting attendance, a pro-rated *per diem* expense reimbursement of up to \$150.00, in addition to the reimbursement of eligible travel expenses or other expenses not covered by the *per diem*.

On publication of their Final Report, the LRC will be terminated.

Publication of the Report

In addition to the publication of this Summary of the Process, LRC member biographies and the LRC Terms of Reference, the Trust is committed to publishing the final report and recommendations as presented by the LRC. These documents have been made available for public viewing on the ICET website.

Appendix C - Terms of Reference for Legislative Review Committee

A. Purpose and role of committee

The ICET was established in 2005 pursuant to the *North Island-Coast Development Initiative Trust Act* (the “Act”), with the purpose of investing in the North Island-Coast Area (as defined in the Act) in the areas of forestry, transportation, tourism, mining, Olympic opportunities, small business, economic development, energy, and agriculture. The primary objective of the ICET is to be a catalyst to build a diverse and sustainable Island coastal economy.

Pursuant to section 26 of the Act, on or before the fifth anniversary of the establishment of the ICET a committee must be appointed by the Board of ICET to review the Act and evaluate how it is functioning.

The review committee may consult with business, labour, education providers, government and any other person or organization it considers appropriate. It must publish a report of its findings in a manner that can reasonably be expected to bring the report to the attention of the public.

B. Scope of review

Objectives of review:

The primary objective of the review is compliance with section 26 of the North Island Coast Development Initiative Act (the Act).

Consideration of previous legislative reviews of Development Initiative Trusts:

In 2011, in compliance with Section 26 of the Act, ICET published its first mandated five year Legislative Review. At that time the two other Regional Development Initiative Trusts also published their first Legislative Reviews. The recommended changes to the ICET Act were communicated to the Province of BC and to the general public. At this point in time there have been no changes to the ICET Act or to the other two Trust Acts. The Legislative Review process will consider the consultations and recommendations made in ICET’s first legislative review to determine whether they are still relevant. The process should also review the recommendations made in the two other Trust Legislative Reviews to determine whether they may be relevant to ICET.

Consultation:

The review committee will identify appropriate individuals and organizations with which to consult on the functioning of the Act in order to supplement the previous consultations and recommendations made in 2011. The key criteria for selection of those individuals and organizations will be knowledge and understanding of ICET, its work and its objectives, and/or experience of working with the Act and ICET over the last five years.

Recommendations:

The review committee will make recommendations for changes to the Act that appear to the committee to be necessary or desirable to support or improve the effective functioning of the Act and of ICET.

Publication of review report:

The review committee will, in consultation with ICET staff and the Legislative Review Steering Committee, determine an appropriate method of publication of its report in a manner that can reasonably be expected to bring the report to the attention of the public.

C. Matters to be addressed in review

Without limiting the scope of its review and the evaluation of the functioning of the Act, the review committee will address the following matters:

Governance:

1. *Board:* The composition of the Board of ICET, term of office, and proceedings (clauses 6—10);
2. *RACs:* The composition of regional advisory committees (RACs), term of office, and proceedings (clauses 2—4); regional divisions and structures (clauses 1—2); and role (clause 21).

Core purposes:

Scope and validity of strategic areas for investment (clause 20).

Finance and administration:

Limit on total allocation to ICET (clause 17); requirement to pay interest and donations into Regional Account (clauses 18—19, 22); operational spending (clause 13); appointment and authorities of staff (clauses 11—12); winding up provisions (clause 23); review requirements (clause 26).

Public accountability:

Strategic planning process (clause 14); annual reports (clause 15); audit requirements (clause 16).

General:

Flexibility and transparency of the Act; aspects of the Act that have supported or been barriers to the objectives of the ICET; aspects of the Act that have supported or been barriers to the operational efficiency and capacity of ICET to meet its primary objective to be a catalyst to build a diverse and sustainable Island coastal economy.

Responses obtained in the consultation process that are not pertinent to the legislative review, but which may be useful in the context of organizational improvement, will be provided separately to ICET.

D. Process: duties and procedures

Procedures:

ICET will:

- Provide administrative support for the review committee, including preparation and distribution in advance of agendas for meetings, arranging locations for meetings, distribution and maintenance of decision records, publication of the final report and other reasonable administrative support as required;
- Provide a report template based on the previous Legislative Review Process;
- Provide a Terms of Reference template based on the previous Legislative Review Process;

- Ensure that the consultant has the necessary materials and documentation to support the committee;
- Liaise with the provincial government as required.

The consultant engaged by ICET to assist the committee with the review process will:

- Report to the Legislative Review Committee and to the ICET Legislative Review Steering Committee regarding all Review Committee questions and decisions;
- Report to the CEO regarding all administrative, financial, process and project progress matters.
- Record decisions of the committee;
- Provide information as required to the committee;
- Conduct the consultation process on behalf of the committee;
- Present the results of the process to the committee for review;
- Prepare a draft report and recommendations for the committee's review;
- Prepare the final report for committee approval prior to submission to ICET.

The Legislative Review Committee will:

- Operate on the basis of consensus. For the purposes of this committee, consensus is defined as no member opposes a final decision of the committee.
- Report to the Legislative Steering Committee
- Provide strategic direction and guidance for the consultant regarding the consultation process and the reporting content and format.
- Review draft reports.
- Attend a minimum of two and maximum of three meetings.
- Modify these terms of reference from time to time as considered necessary or desirable to meet the objectives of the legislative review.
- Use reasonable efforts to present a final report to ICET for publication no later than March 11th, 2016.

North Island-Coast Development Initiative Trust Act

Part 1 -- Interpretation

Definitions

1 In this Act:

"**Central South Island region**" has the meaning prescribed by regulation;

"**North Island-Coast area**" means that area of British Columbia comprising the Central South Island region and the North Island-Sunshine Coast region;

"**North Island-Coast Development Initiative Trust**" means the North Island-Coast Development Initiative Trust established under section 5 (1);

"**North Island-Coast one-time development allocation**" means any money paid by the government to the North Island-Coast Development Initiative Trust;

"**North Island-Sunshine Coast region**" has the meaning prescribed by regulation;

"**qualified individual**" means an individual who is not

- (a) an elected official of a municipality or a regional district,
- (b) a Member of the Legislative Assembly,
- (c) an employee of the government,
- (d) a member of the board of directors of the North Island-Coast Development Initiative Trust,
- (e) a member of a regional advisory committee, or
- (f) a person who is
 - (i) the spouse, parent or child of any individual referred to in paragraph (d) or (e), or
 - (ii) any other relative residing with that individual;

"**region**" means the Central South Island region or the North Island-Sunshine Coast region;

"**Regional Account**" means the account established under section 7 (2) (a);

"**regional advisory committee**" means a regional advisory committee established under this Act.

Part 2 -- North Island-Coast Development Initiative Trust

Division 1 -- Regional Advisory Committees

Establishment of regional advisory committees

2 (1) There is established, for each region, a regional advisory committee comprising the following:

(a) the mayors of each of the municipalities that

(i) is within the region, and

(ii) on the coming into force of this Act, has a population greater than 500;

(b) the chairs of each regional district that is, in whole or in part, within the region;

(c) the Members of the Legislative Assembly who have been elected, in whole or in part, by electors from the region.

(2) The term of membership on a regional advisory committee for each individual referred to in subsection (1) expires on the earlier of

(a) the date that is 6 months after the coming into force of this Act, and

(b) the date on which he or she ceases to hold the position referred to in subsection (1).

(3) Within 6 months after the coming into force of this Act, each of the regional advisory committees must

(a) appoint 4 directors of the North Island-Coast Development Initiative Trust in accordance with sections 6 (2) (a) and 8 (1), and

(b) subject to section 3,

(i) determine the size of, and the manner of appointing members to, the regional advisory committee, and

(ii) determine the role of, and the manner of appointing, the chair of the regional advisory committee.

(4) On the coming into force of this Act, the following persons are the first chairs of the regional advisory committees:

(a) for the regional advisory committee for the Central South Island region, the mayor of North Cowichan;

(b) for the regional advisory committee for the North Island-Sunshine Coast region, the mayor of Courtenay.

(5) The first chair of a regional advisory committee must call and chair the meeting or meetings necessary to allow that regional advisory committee to perform its obligations under subsection (3).

Composition of regional advisory committees

3 A regional advisory committee, whether under section 2 (3) (b) or otherwise, may from time to time determine the size of, and the manner of appointing members to, the regional advisory committee and the role of, and the manner of appointing, the chair of the regional advisory committee, but in doing so the members of the regional advisory committee must

(a) ensure that the only persons who are eligible to become members of the regional advisory committee are

(i) elected officials of municipalities or regional districts that are, in whole or in part, within the region, or

(ii) Members of the Legislative Assembly who have been elected, in whole or in part, by electors from the region,

(b) provide an opportunity for municipalities or regional districts within the region that have populations of less than 500 to be represented on the regional advisory committee,

(c) establish the terms of office for members of the regional advisory committee, and

(d) ensure that if a member of the regional advisory committee ceases to meet the qualifications for membership set out under paragraph (a), that individual immediately ceases to be a member of the regional advisory committee.

Procedures

4 The members of a regional advisory committee must appoint one of their number as chair and may, subject to section 3, otherwise establish their own procedures.

Division 2 -- Establishment and Structure of the North Island-Coast Development Initiative Trust

North Island-Coast Development Initiative Trust established

5 (1) There is established a corporation known as the North Island-Coast Development Initiative Trust consisting of the directors referred to in section 6.

(2) The North Island-Coast Development Initiative Trust has the powers and capacity of an individual of full capacity.

(3) The North Island-Coast Development Initiative Trust is not an agent of the government.

Directors of the North Island-Coast Development Initiative Trust

6 (1) Directors of the North Island-Coast Development Initiative Trust must be appointed in accordance with this Division.

(2) Subject to section 7 and to subsection (8) of this section, the board of directors of the North Island-Coast Development Initiative Trust is to consist of 13 individuals of whom

(a) 8 are to be appointed by the regional advisory committees, with each of the 2 regional advisory committees appointing 4 of their number as directors, and

(b) 5 are to be appointed by the Lieutenant Governor in Council.

(3) Subject to section 7 (3), the term of office of a director of the North Island-Coast Development Initiative Trust is,

(a) if the director is appointed under subsection (2) (a) of this section, 2 years from the expiry of the term of the retiring director that he or she replaces, and

(b) if the director is appointed under subsection (2) (b) of this section, 3 years from the expiry of the term of the retiring director whom he or she replaces.

(4) Nothing in this Act prevents

(a) a regional advisory committee from removing and replacing, in accordance with any procedures it has established for that purpose, any individual the regional advisory committee has appointed as a director of the North Island-Coast Development Initiative Trust, and

(b) the Lieutenant Governor in Council from removing and replacing any individual the Lieutenant Governor in Council has appointed as a director of the North Island-Coast Development Initiative Trust.

(5) If a director is removed and replaced under subsection (4),

(a) the regional advisory committee or the Lieutenant Governor in Council, as the case may be, must promptly notify the directors of the North Island-Coast Development Initiative Trust of the replacement appointment, and

(b) the term of office of the replacement director is the remainder of the term of the director he or she replaces.

(6) A director of the North Island-Coast Development Initiative Trust is removed as, and ceases to be, a director of the North Island-Coast Development Initiative Trust on the passing of a resolution to that effect by all of the remaining directors.

(7) An act or proceeding of the directors of the North Island-Coast Development Initiative Trust is not invalid merely because fewer than the number of directors required by subsection (2) are in office or in attendance.

(8) An individual who is a Member of the Legislative Assembly must not be appointed as a director of the North Island-Coast Development Initiative Trust.

First directors of the North Island-Coast Development Initiative Trust

7 (1) On the coming into force of this Act, the first directors of the North Island-Coast Development Initiative Trust are

(a) from the regions, the following persons:

(i) from the Central South Island region, the mayors of Nanaimo, Parksville, Ladysmith and Lake Cowichan;

(ii) from the North Island-Sunshine Coast region, the mayors of Campbell River, Port Alberni, Port McNeill and Gibsons, and

(b) 5 individuals appointed as directors by the Lieutenant Governor in Council.

(2) The first directors of the North Island-Coast Development Initiative Trust

(a) must establish a Regional Account,

(b) must receive the North Island-Coast one-time development allocation and deposit it into the Regional Account,

(c) subject to section 22, may invest any or all of the North Island-Coast one-time development allocation and any other money in the Regional Account, and

(d) subject to paragraphs (b) and (c) of this subsection and to section 20 (2), must not make any use of the North Island-Coast one-time development allocation.

(3) The term of office of the first directors of the North Island-Coast Development Initiative Trust expires 6 months after the date of the coming into force of this Act.

Subsequent directors

8 (1) On or before the expiry of the term of any directors it appoints under section 6 (2) (a) and on or before the expiry of the term of the directors from its region referred to in section 7 (1) (a), a regional advisory committee must appoint 4 of their number as directors to replace the retiring directors, and must promptly notify the directors of the North Island-Coast Development Initiative Trust of those replacement appointments.

(2) On or before the expiry of the term of directors appointed under section 6 (2) (b) or 7 (1) (b), the Lieutenant Governor in Council must appoint 5 individuals to replace those directors, and must promptly notify the directors of the North Island-Coast Development Initiative Trust of those appointments.

Vacancies among the directors

9 (1) A director of the North Island-Coast Development Initiative Trust ceases to hold office when

- (a) the director's term of office expires,
- (b) the director ceases to be a member of the regional advisory committee by which he or she was appointed, or
- (c) the director dies, resigns or is removed from office.

(2) If one of the directors of the North Island-Coast Development Initiative Trust ceases to hold office, a replacement for that director must be appointed in the same manner as that director was appointed.

(3) A replacement director appointed under subsection (2) holds office until the end of the term of the director he or she replaces.

Proceedings of directors

10 (1) The directors of the North Island-Coast Development Initiative Trust

- (a) must appoint one of their number as chair, and
- (b) may, subject to this Division, otherwise establish their own procedures.

(2) Subject to section 22, the directors of the North Island-Coast Development Initiative Trust may invest any or all of the North Island-Coast one-time development allocation.

(3) In appointing a chief executive officer and a chief financial officer under section 11 (1) and a review committee under section 26 (1), the directors are to be guided by the guidelines set out in the following as amended or replaced from time to time:

- (a) the *Governance and Disclosure Guidelines for Governing Boards of British Columbia Public Sector Organizations* published by the British Columbia Board Resourcing and Development Office;
- (b) the *Review of the Governance Framework for Canada's Crown Corporations -- Meeting the Expectations of Canadians* published by the Treasury Board of Canada Secretariat.

Appointment of chief executive officer and chief financial officer

11 (1) Subject to section 10 (3), the directors must appoint a qualified individual as the chief executive officer of the North Island-Coast Development Initiative Trust, and the same or a different qualified individual as the chief financial officer of the North Island-Coast Development Initiative Trust, to carry out

- (a) the functions and duties of the chief executive officer and chief financial officer, respectively, under this Act, and

(b) the functions and duties that the directors specify.

(2) The directors may set the remuneration of the chief executive officer and chief financial officer.

Officers and employees

12 (1) The chief executive officer, to the extent authorized by the directors, may do one or more of the following:

(a) enter into contracts on behalf of the North Island-Coast Development Initiative Trust to carry out any of its purposes;

(b) appoint other officers and employees considered necessary to carry out the operations of the North Island-Coast Development Initiative Trust;

(c) define the duties and set the remuneration of the individuals appointed under paragraph (b);

(d) provide a system of organization to establish responsibility and promote efficiency.

(2) The *Public Service Act*, the *Public Service Benefit Plan Act*, the *Public Sector Pension Plans Act* and the *Public Service Labour Relations Act* do not apply to the North Island-Coast Development Initiative Trust, the chief executive officer, the chief financial officer or a director, officer or employee of the North Island-Coast Development Initiative Trust.

Operating expenses and remuneration

13 (1) The directors may use money from the Regional Account to satisfy those expenses that are reasonably and necessarily incurred in order to allow the directors and officers to perform their obligations under this Act.

(2) A director of the North Island-Coast Development Initiative Trust must not accept remuneration from that corporation other than for reasonable travelling and out of pocket expenses necessarily incurred by the director in discharging his or her duties.

Part 3 -- Public Accountability

Strategic plans

14 (1) For the purposes of public accountability, the directors must prepare strategic plans in accordance with this section.

(2) The directors must

(a) each year establish a 3 year strategic plan for the North Island-Coast Development Initiative Trust including goals for each year of the strategic plan relating to the fulfillment of the purposes identified in section 20 in relation to the Regional Account,

(b) provide a copy of each strategic plan prepared under this section to each of the regional advisory committees, and

(c) publish each strategic plan prepared under this section in a manner that can reasonably be expected to bring the plan to the attention of the public.

(3) The directors must prepare

(a) the first strategic plan required under subsection (1) on or before the earlier of

(i) the date on which the North Island-Coast Development Initiative Trust makes any of the payments contemplated by section 20, and

(ii) the first anniversary of the coming into force of this section, and

(b) after that, a strategic plan before the first day of each fiscal year of the North Island-Coast Development Initiative Trust.

Annual reports

15 (1) Within 4 months after the end of each fiscal year of the North Island-Coast Development Initiative Trust, the directors must

(a) prepare an annual report that complies with subsection (2) (a), and

(b) prepare, in accordance with generally accepted accounting principles, financial statements for the North Island-Coast Development Initiative Trust for that fiscal year and have those financial statements audited in accordance with section 16.

(2) The directors must,

(a) in each annual report referred to in subsection (1) of this section,

(i) report on the goals set by the directors for the preceding fiscal year under section 14 (2), indicate how, if at all, those goals have been met and detail how those achievements met the intent of the purposes identified in section 20 in relation to the Regional Account,

(ii) compare actual results for the preceding fiscal year with the expected results identified in the strategic plan for that fiscal year, and

(iii) include the audited financial statements referred to in subsection (1) (b),

(b) provide a copy of that annual report to each of the regional advisory committees, and

(c) publish each annual report in a manner that can reasonably be expected to bring the annual report to the attention of the public.

Audit

16 (1) The North Island-Coast Development Initiative Trust must, on or before the end of each fiscal year, appoint, as auditor for the North Island-Coast Development Initiative Trust, an individual who is authorized to be an auditor of a company under section 205 of the *Business Corporations Act* to audit the accounts, transactions and financial statements of the North Island-Coast Development Initiative Trust for the following fiscal year.

(2) The accounts, transactions and financial statements of the North Island-Coast Development Initiative Trust must, at least once in every year, be audited and reported on by the auditor and the costs of the audit must be paid by the North Island-Coast Development Initiative Trust.

(3) An oral or written statement or report made under this Act by the auditor or a former auditor of the North Island-Coast Development Initiative Trust has qualified privilege.

Part 4 -- Allocations

Limit on the North Island-Coast one-time development allocation

17 Despite any other enactment, if the government makes North Island-Coast one-time development allocation payments to the North Island-Coast Development Initiative Trust, the total of those payments must not exceed \$50 million.

Management of Regional Account

18 (1) The North Island-Coast Development Initiative Trust must manage the Regional Account.

(2) If any donation is made to the North Island-Coast Development Initiative Trust, the directors of the North Island-Coast Development Initiative Trust must deposit that money into the Regional Account.

Interest and other income on invested money

19 The interest or other income earned in relation to the Regional Account must be paid into that account.

Purpose of Regional Account

20 (1) The purpose of the Regional Account is to support investment in the following in the North Island-Coast area:

- (a) forestry;
- (b) transportation;
- (c) tourism;
- (d) mining;

(e) Olympic opportunities;

(f) small business;

(g) economic development;

(h) energy;

(i) agriculture.

(2) Without limiting section 18 (1), money may be paid out of the Regional Account for any of the purposes referred to in subsection (1) or section 13, including, without limitation, any payments required under sections 11 (2) and 12 (1) (c).

Regional advisory committees may advise on projects

21 (1) Each regional advisory committee may identify, for the directors of the North Island-Coast Development Initiative Trust, projects that the regional advisory committee considers are appropriate for application of the money in the Regional Account.

(2) The directors of the North Island-Coast Development Initiative Trust may reject any recommendation made to them by a regional advisory committee under subsection (1).

Investments

22 The North Island-Coast Development Initiative Trust must invest the North Island-Coast one-time development allocation, and any other money in the Regional Account, only as permitted under the provisions of the *Trustee Act* respecting the investment of trust property by a trustee.

Part 5 -- General

Winding up

23 (1) Promptly after the Regional Account has been reduced to a nil balance, the directors must

(a) in accordance with the direction of the regional advisory committees, distribute the remaining assets of the North Island-Coast Development Initiative Trust, if any,

(i) firstly in satisfaction of any outstanding liabilities of the North Island-Coast Development Initiative Trust, and

(ii) after that, to the municipalities and regional districts in the North Island-Coast area, or to any of them, in the proportions or amounts the regional advisory committees may direct,

(b) close the account, and

(c) publish notice of the closing of the account, and the consequent dissolution of the North Island-Coast Development Initiative Trust, in a manner that can reasonably be expected to bring those matters to the attention of the public.

(2) On the closing of the Regional Account,

(a) the North Island-Coast Development Initiative Trust is dissolved and disestablished,

(b) the appointment of each member of the board of directors of the North Island-Coast Development Initiative Trust is rescinded, and

(c) the regional advisory committees are dissolved and disestablished.

Offence Act

24 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

25 The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

Review of this Act

26 (1) Subject to section 10 (3), on or before the fifth anniversary of the coming into force of this section, and on or before every fifth anniversary after that, the directors must, if the North Island-Coast Development Initiative Trust has not by that date been dissolved and disestablished under section 23, appoint a committee of qualified individuals to review this Act and evaluate how it is functioning.

(2) The review committee may consult with business, labour, education providers, government and any other person or organization it considers appropriate.

(3) If a review committee is appointed, it must publish a report of its findings in a manner that can reasonably be expected to bring the report to the attention of the public.

Commencement

27 This Act comes into force by regulation of the Lieutenant Governor in Council.

ISLAND COASTAL ECONOMIC TRUST

INDEPENDENT LEGISLATIVE REVIEW OF THE NORTH ISLAND-COAST DEVELOPMENT INITIATIVE TRUST ACT 2006

REPORT OF THE LEGISLATIVE REVIEW COMMITTEE

**Hon. Anthony C. Abbott; Dr. Robin Dodson;
Marilyn Hutchinson; Keith Wilson**

March 10 2011

Prepared for the Committee by Katherine Gordon

TABLE OF CONTENTS

| | |
|--|----------|
| A. Executive Summary | 3 |
| i. Background | |
| ii. Conclusions | |
| iii. Recommendations | |
| B. Introduction | 6 |
| i. Requirement for legislative review | |
| ii. Background to the Act | |
| iii. ICET outcomes to date | |
| C. Analysis and Recommendations | 8 |
| i. General comments on legislation | |
| ii. ICET model | |
| iii. Cap on provincial contribution | |
| iv. Strategic Areas for Investment | |
| v. Regional Scope | |
| vi. Governance | |
| vii. First Nations representation | |
| viii. Winding up | |
| ix. Recommendations | |
| Appendices: | |
| 1. Legislative Review Committee: Context | 16 |
| 2. Appointment of review committee | 18 |
| 3. Names and bios of members | 23 |
| 4. Terms of reference for committee | 26 |
| 5. Topics covered in review | 29 |
| 6. List of consultees | 30 |
| 7. Summary of consultation results | 31 |
| 8. Text of the Act | 36 |

A. EXECUTIVE SUMMARY

i. Background

The \$50 million Island Coastal Economic Trust (ICET) was established in 2006 pursuant to the *North Island-Coast Development Initiative Trust Act* (the "Act"). On or before its fifth anniversary, the ICET was required under the Act to appoint an independent committee to review the Act and evaluate how it is functioning.

The committee was empowered under the Act to undertake appropriate consultations as part of the process. Based on criteria that included knowledge and understanding of ICET, its work and its objectives, and/or experience of working with the Act and ICET, the committee consulted fourteen individuals with the relevant knowledge, understanding and experience.

The Board of ICET has advised the committee that during 2011 it also expects to complete a comprehensive performance review of the organization. Persons consulted in this legislative review process will also be asked to participate in the comprehensive performance review process, as will a broader range of consultees including ICET funding recipients and organizations which have worked in close partnership with ICET and those funding recipients.

Those consultations may result in the provision of additional information and/or recommendations with respect to the Act and matters within the scope of this review. Any such information and recommendations will also be made public. The findings in this report will also be considered in the context of the comprehensive review.

ii. Conclusions

The results of the consultations were very consistent in their scope. While respondents raised a small number of potential improvements to the Act, they applauded the Act for its flexibility, permissiveness, and requirements for transparency and accountability.

The ICET model created in the legislation has worked very well. It is seen by local governments as an excellent and very cost-effective delegation model for disbursement by them of provincial dollars to support regional economic development. Fund moneys go to regional priorities, with minimal operational expenditure. Respondents also supported the arms' length nature of the Act, giving the ICET Board maximum flexibility to allocate funds without provincial government intervention.

The ICET model consists of regional advisory committees (RACs) comprised of local government representatives and local MLAs, functioning as reviewers of projects and advisors to the Board. This legislated model has worked very effectively in practice, according to the majority of respondents.

It has also provided an unprecedented forum, considered of very high value, for collaboration, networking and information/ideas exchange among local politicians and municipal staff from different communities across the region.

This relationship-building extends to other organizations and funding partners with which ICET has worked over the last five years. Respondents raised serious concerns that this substantial non-fiscal side-benefit of the Act would be lost in the event that the ICET ceases to exist. There is no other forum in existence that provides this sort of opportunity for substantive regional financial collaboration and relationship-building at a local government level.

The committee's view is that overall the functioning of the Act is sound. Nothing in the Act has significantly impeded the effective operation of the ICET to date. Its broad scope has empowered the ICET to follow its chosen policy and operational direction, with positive results. The flexibility of the Act is demonstrated by the fact that the two other provincially-funded sister Trusts created along with the ICET, under virtually identical legislation, have chosen completely different models for disbursement of their funds.

iii. Recommendations

Section 17: Cap on provincial contribution

The single most important concern raised by all respondents relates to the cap on provincial funding of the ICET contained in section 17 of the Act. Section 17 limits the amount of the provincial contribution to the \$50 million provided to the ICET on its creation. Now in its fifth year of operation, the fund is dwindling¹. All respondents believe the ICET model has proven its merits, the Act has worked well, and that the ICET should continue its existence with additional provincial funding to support its work.

It is outside the scope of the mandate of the committee to recommend that the provincial government increase its contribution to the ICET fund. However, if the government wishes to extend the life of the ICET by investing further capital, the non-fiscal benefits of the model (in addition to cost-efficiencies and economic benefits) should be taken into consideration. If ICET is to receive additional provincial funding, it is also clear that section 17 requires amendment or deletion to permit that to occur (and other consequential amendments may need consideration if any parameters or conditions are placed on renewed funding).

In that event, the committee also makes the following recommendations for potential amendments to the Act. The committee considers these recommendations could be equally applicable to all three trusts under their respective legislation, and are not unique to the ICET.

- ***First Nations representation:*** Make First Nations representation on the Board, through the provincial appointees, an explicit requirement in section 8; and review options for meaningful inclusion of First Nations representation on the RACs so as to enhance the operations and effectiveness of those bodies.

- ***Strategic areas for investment:*** Delete section 20(1) (e) "Olympic Opportunities."

¹ As at the date of this report, \$8,807,570 of the fund remained unallocated. \$22,713,457 of allocated funds have not been distributed, and distribution remains subject to satisfaction of outstanding conditions.

- **Winding up:** Amend section 23(1) to provide the Board with the flexibility to decide when winding up should commence, how remaining resources should be allocated, and how the process should be implemented.

B. INTRODUCTION

i. Requirement for legislative review

The \$50 million Island Coastal Economic Trust (ICET) was established in 2006 pursuant to the *North Island-Coast Development Initiative Trust Act* (the “Act”). Pursuant to section 26 of the Act, on or before the 5th anniversary of the establishment of the ICET (February 27, 2011), a committee had to be appointed to review the Act and evaluate how it is functioning. The text of the Act is set out in **Appendix 8** on page 36.

The context for the creation of the committee; the scope of the review; the biographies of the committee members, and the terms of reference for the committee are all set out in the appendices to this report.

The committee was empowered under the Act to undertake consultations as part of the process. Based on criteria that included knowledge and understanding of ICET, its work and its objectives, and/or experience of working with the Act and ICET, the committee consulted fourteen individuals with the relevant knowledge, understanding and experience. The list of consulted individuals is set out in **Appendix 6** on page 30. A detailed summary of the consultation results is set out in **Appendix 7** on page 31.

Based on the results of consultation and its own review of the Act, as well as a review of ICET annual reports and strategic plans, the committee has evaluated the extent to which the Act has functioned to enhance or impede the successful implementation of the ICET’s primary objective to be a catalyst to build a diverse and sustainable Island Coastal Economy. The committee’s full analysis and recommendations are set out in **Section C** on page 7.

ii. Background to the Act

The background information set out below is intended to provide additional context to the consultation results, as well as the analysis and recommendations.

Provincial objectives

When the draft legislation was introduced into the Provincial Legislature, the government outlined a number of its objectives for the ICET². Those objectives included:

- Supporting strategic investments in regional priorities to increase economic growth and create more jobs.
- Providing as broad a scope as possible to the range of activities that fall within the strategic areas for economic development set out in the Act.
- Giving communities control over the Trust fund to pursue their regional priorities for regional benefit.
- Supporting regional collaboration between communities for mutual advantage.

² Hansard, October 18 and 19 2005: <http://www.leg.bc.ca/hansard/38th1st/h51018a.htm#840>, <http://www.leg.bc.ca/hansard/38th1st/h51019p.htm#934>.

- Achieving a multiplier effect from the original \$50 million through leveraging matching capital from other sources.

The government also stated that it wished to afford the ICET complete freedom to determine how trust moneys should be allocated, without government direction or interference, and to set its own operational and funding policies.

Act permissive, not prescriptive

The Act was therefore drafted broadly and with minimal prescription as to how ICET moneys are to be spent. Section 20 of the Act simply describes the purpose of the ICET as being to support investment in the North Island-Coast Area (communities north of the Malahat on Vancouver Island, and on the Sunshine Coast) in the areas of forestry, transportation, tourism, mining, Olympic opportunities, small business, economic development, energy, and agriculture.

iii. ICET outcomes to date

In its 2010—2012 Strategic Plan, the ICET states that its intent is to provide communities, non-profit societies, First Nations, and other organizations with the funding and mechanisms to support strategic investments in the regional economy of the north Island and Sunshine Coast. The ICET uses its funds to leverage partnerships and other investments with local governments and authorities, non-profit societies and other organizations.

The 2009—2010 ICET Annual Report states that 71 projects totaling close to \$42 million of ICET funding have been approved (more than 200 project applications in total have been reviewed). The leverage of the ICET investment on approved projects has been 1:4.55 (ICET's investment leverage target is 1:3). It is estimated that 1,865 jobs have been created through ICET-funded projects.

Tourism has been the largest sector for investment to date, with more than \$20 million allocated. General economic development initiatives have received \$12.45 million. Agriculture, forestry and transportation have received between \$1.24 million and \$3.4 million each. Relatively small investments (under a million dollars each) have been made in the energy, small business and Olympic opportunities sectors. No allocations have been made for mining-related projects.

C. ANALYSIS AND RECOMMENDATIONS

i. General comments on legislation

Respondents in the consultation process were canvassed for their views on all aspects of the Act. The results were very consistent in their scope. Respondents applauded the Act for its flexibility, permissiveness, and requirements for transparency and accountability. The administrative or “boilerplate” components of the Act received little, if any comment as they have caused no concerns for respondents.

The committee’s view is that overall the functioning of the Act is sound, and that nothing in the Act has posed a significant barrier to the effective functioning of the ICET to date. Its broad scope has empowered the ICET to follow its chosen policy and operational direction, with positive results. The flexibility of the Act is demonstrated by the fact that the two other provincially-funded sister trusts created along with the ICET, under virtually identical legislation, have chosen completely different models for disbursement of their funds. The administrative provisions of the Act are standard for an organization of this nature and the committee had no concerns in this respect, with the sole exception of the winding up or “sunset” provisions in section 23.

The following sections of the report discuss the key issues raised and commented upon by respondents, and set out the committee’s analysis of those issues.

ii. Trust model

The ICET model created in the Act has worked very well. It is seen by local governments as an excellent and very cost-effective delegation model for disbursement by them of provincial dollars to support regional economic development, with all money going to regional priorities and minimal operational expenditure. Respondents also supported the arms’ length nature of the Act, giving the ICET Board maximum flexibility to allocate funds without provincial government intervention.

The ICET model consists of regional advisory committees (RACs) comprised of local government representatives and local MLAs, functioning as reviewers of projects and advisors to the Board. This legislated model has worked very effectively in practice, according to the majority of respondents.

It has also provided an unprecedented forum, considered of very high value, for collaboration, networking and information/ideas exchange among local politicians and municipal staff from different communities across the region.

This relationship-building extends to other organizations and funding partners with which ICET has worked over the last five years. Respondents raised serious concerns that this substantial non-fiscal side-benefit of the Act would be lost in the event that the ICET ceases to exist. There is no other forum in existence that provides this sort of opportunity for substantive regional financial collaboration and relationship-building at a local government level.

iii. Cap on provincial contribution

The single most important concern raised by all respondents relates to the cap on provincial funding of the ICET contained in section 17 of the legislation. Section 17 limits the amount of the provincial contribution to the \$50 million provided to the ICET on its creation. Now in its fifth year of operation, the fund is dwindling. As at the date of this report, \$8,807,570 of the fund remained unallocated. \$22,713,457 of allocated funds have not been distributed, and distribution remains subject to satisfaction of outstanding conditions.

All respondents believe the ICET model has proven its merits, the legislation that supports it has worked very well, and that the ICET should continue its existence with ongoing provincial funding to support its work. However, the uncertainty around the constraints on the provincial contribution to the fund impacts strategic planning significantly. It is difficult for the ICET to know whether to plan for a “sunset” strategy or for continuance of the same model.

It is outside the scope of the mandate of the committee to recommend that the provincial government increase its contribution to the ICET fund. However, if the government does consider whether to extend the life of the ICET by investing further capital, the non-fiscal benefits of the model (in addition to cost-efficiencies and economic benefits) should be taken into consideration.

If ICET is to receive additional provincial funding, it is also clear that section 17 requires amendment or deletion to permit that to occur (and other consequential amendments may need consideration if any parameters or conditions are placed on renewed funding).

iv. Strategic areas for investment

The list of strategic areas for investment of the ICET fund in section 20 of the Act is broad enough to accommodate all potential projects falling within ICET’s criteria. One respondent felt that a separate category for fisheries and small business would be helpful, but the majority were comfortable that those sectors could be dealt with (and indeed, have been) under the existing categories for investment. Section 20(1) (g) “Economic Development” is a broad category that can cover a very wide range of potential projects.

Project investment in some sectors has been minimal (with no mining projects undertaken at all). That is in part due to ICET policy not to fund for-profit ventures, and in part due to the low level of activity in those sectors in the region. The Olympics category is now redundant (and was not a major category for investment by ICET).

The committee is of the view that no change is required to section 20, as it is (a) very broad in scope and (b) a permissive list. ICET is under no obligation to invest in all categories specified. However, if an amendment to the Act is undertaken, the Olympic opportunities category in section 20(1) (e) should be deleted.

v. Regional scope

Although it was clearly a provincial goal that the ICET investment would be regional in scope (see Section B, Background to the Act) nothing in the Act prescribes this as a requirement. Nonetheless, ICET has adopted the following criterion as one of its three key investment goals: “Preference will be given to partnerships and leveraged investments that achieve the projected economic and diversification impacts for the broader region, with a bias for projects which have a broad regional impact while recognizing that local benefits of projects are also valuable.” The importance of regional collaboration and regional strategic thinking is a cornerstone of its strategic plan.

Several respondents considered that for the sake of clarity, this is one area in which, at least in the earliest days of the Trust’s existence, it would have been helpful if the Act had been more prescriptive. Considerable time was expended in the start-up phase of the ICET in the development of its regional model, including extensive discussions on its merits, and to establish policy and criteria supporting that model. This may have been a faster and more efficient process if regional scope had been a clear requirement of the Act. However, in its fifth year of operations and with regional scope a well-established policy of the ICET which it has consistently implemented, this concern appears to be largely one of the past.

Moreover, the ICET has advised that it considers it vital that ICET also be able to respond to the needs of smaller, more isolated communities whose projects do not necessarily meet regional criteria. Such communities can find it extremely difficult to raise matching funding for projects, and the additional barrier of requiring their projects to meet regional criteria can mean that those communities are unable to benefit from ICET project funding.

Like its two sister Trusts, ICET values the flexibility it has under the legislation’s current permissive structure to approve new initiatives and develop programs that assist with, for example, local marketing, downtown revitalization, and other similar local initiatives that make a great difference to the economic viability of small and remote communities.

The committee is sympathetic to that view. Given the continued slow pace of economic recovery, particularly in rural coastal communities, if the Province does consider extending the life of the ICET and making a further financial contribution, then it will be more important than ever that such communities have the opportunity to apply successfully to the ICET. Ensuring that the legislation continues to allow the ICET Board some flexibility regarding a project’s regional or local scope (which the committee believes it does) will support continuing economic diversification efforts.

The committee is of the view that the legislation as drafted supports both provincial and ICET goals in this respect and therefore requires no change.

vi. Governance

(a) Board of Directors

Effective model: With the exception of the issue of First Nations representation outlined below, the Board model appears to function very well. Nothing in the Act significantly impedes effective Board operations. The composition of the Board, with equal geographic representation of elected officials from the two regions and a smaller number of non-elected provincial appointees, limits

parochialism, encourages collaboration and results in a high level of sound, balanced decision-making.

Board remuneration: Board members exhibit a high level of commitment and dedicate considerable time to ICET business. The Act explicitly prohibits Board members from receiving remuneration. Respondents were divided on this issue. Some respondents felt that recognition of this high level of time commitment with a reasonable level of remuneration for meetings should be considered. Others were satisfied that Board members, whether elected or provincial appointees, did not need to receive more than reimbursement for expenses. All respondents agreed that the issue of remuneration has not had a negative impact on Board function to date.

The issue of remuneration of directors of public service agencies is one of broader provincial policy and is not confined to the ICET. Complex considerations are involved in determining the nature of the organization, the appropriate balance of compensation for time and expertise contributed to the organization, minimization of operational spending, and public accountability issues. Any decision made with respect to ICET would have an impact on other similar organizations. Given these complexities, the fact that the issue has not impeded Board function to date and that the respondents were divided on this issue, the committee declines to make a recommendation on remuneration of directors.

(b) RACs

Functioning of RACs: The RACs, as reviewers of projects and advisors to the Board, have functioned reasonably effectively. The elected representatives have an intimate understanding of local issues and are highly motivated to participate in project review and analysis. Respondents report that RAC members understand their advisory role and are comfortable with it, as they elect the majority of the Board. The RAC model, which requires collaboration for effective decision-making, has worked very well in minimizing parochialism and supporting the interests of the entire region, without undue concerns arising over accessing funding in particular for individual constituencies or regions.

Geographic boundaries: Dividing the RACs into two geographic regions has helped focus each RAC on the different regional issues they face and on projects in its own region. There is nothing in the Act preventing cross-boundary collaboration on a project or consideration of cross-boundary benefits. The majority of respondents were comfortable with the geographic boundaries as specified in the Act.

Composition: The general consensus is that the composition of the RACs is fundamentally sound. Including MLAs on the RACs adds a broader regional viewpoint and the RACs have become a good forum for two-way communication between local and provincial government. The ability after the first six months for the RACs themselves to determine their membership (subject to being qualified individuals as defined in the Act) has been helpful in terms of the independent operation of the RACs. The only concern of any significance is the lack of First Nations representation (see below).

Risks associated with termination of ICET model: The legislated ICET model has provided an unprecedented forum for collaboration, networking and information/ideas exchange among local politicians and municipal staff from different communities across the region that is considered of very high value.

Respondents did raise concerns that this substantial non-fiscal side benefit of the Act would be lost in the event that the ICET ceases to exist. There is no other forum with such a broad reach that provides this sort of opportunity for substantive regional financial collaboration at a local government level.

vii. First Nations representation

While there is no explicit reference to First Nations' representation in the legislation, when the Act was introduced the government confirmed that First Nations are eligible to apply to the Fund on the same basis as other communities, and its intention to make sure First Nations are well represented in ICET decision-making through provincial government appointments to the Trust Board.

However, leaders of First Nations communities are not eligible to sit on the RACs (with the exception of Sechelt Nation, which has local government status for the purposes of the Act). The government's expectation is that First Nations will be represented by their local MLAs, who do sit on the RACs.

Several respondents viewed the lack of greater First Nations representation at RAC level and the failure to commit to First Nations' Board representation in the Act as a shortcoming of the legislation. First Nations bring a different perspective on economic and community development and may have different issues and concerns which MLAs and their local government representatives do not fully appreciate. Those respondents were supportive of consideration of other options for First Nations' participation and of formal recognition of representation in the legislation.

At the same time, some respondents were concerned that including all First Nations communities in the region on the RACs would make the RACs too large and unwieldy.

The committee considers that this issue is worthy of review by the provincial government, with a view to making First Nations representation on the Board (through provincial appointees) an explicit requirement of section 8 of the Act, and developing options for meaningful inclusion of First Nations representation on the RACs so as to enhance the operations and effectiveness of those bodies.

viii. Winding up

Section 23 provides for the winding up of the ICET after its funds have been reduced to zero, and provides direction on the responsibilities of the Board with respect to the steps that must be taken to accomplish this.

A minority of respondents felt that some more detailed guidance in the legislation and support for the logistics of winding up the ICET *before* its funds are fully expended (an exit strategy) would have been helpful. Most felt that the winding up process is a matter that is a Board responsibility and one that the Board is able to and should manage independently. The committee concurs with that view. All three trusts are likely to establish very different winding up plans, and flexibility and permissiveness in this regard are therefore very important.

While the ICET has no immediate plans to wind up its operations, it advises that following preliminary cost calculations for winding down operations, \$5 million has been set aside in a separate account to ensure that there will be more than enough funding available to administer the process when and if it is required. Any surplus will be invested in ICET programs and activities. The current requirements of the Act have been taken into account in the planning process to date.

In reviewing section 23, the committee has concluded that subsection (1) is not only potentially confusing, but it appears to take the decision on winding up out of the hands of the Board. This rests on a narrow point of interpretation, but it is one that the committee considers would benefit from consideration by the Province.

Taken literally, section 23(1) could be interpreted as meaning that winding up the ICET would take place after the resources required to accomplish it are exhausted. This leaves the Board with no flexibility to make the decision earlier and plan accordingly. It also takes the decisions out of the hands of the Board on distribution of remaining assets and funds.

While a “sunset” clause to disestablish the statutory bodies (the Board and the RACs) is required as set out in section 23(2), the prescriptive requirements of section 23(1) are out of step with the goal of permissiveness and flexibility in the legislation in supporting Board decisions.

The committee is therefore of the view that consideration should be given to amending section 23(1) to provide the Board with the flexibility to decide when winding up should commence, how remaining resources should be allocated, and how the process should be implemented.

ix. RECOMMENDATIONS

Section 17: Cap on provincial contribution

It is outside the scope of the mandate of the committee to recommend that the provincial government increase its contribution to the ICET fund. However, if the government does consider whether to extend the life of the ICET by investing further capital, the non-fiscal benefits of the model (in addition to cost-efficiencies and economic benefits) should be taken into consideration. If ICET is to receive additional provincial funding, it is also clear that section 17 requires amendment or deletion to permit that to occur (and other consequential amendments may need consideration if any parameters or conditions are placed on renewed funding).

In that event, the committee also makes the recommendations set out below for potential amendments to the Act. The committee considers these recommendations could be equally applicable to all three trusts under their respective legislation, and are not unique to the ICET.

- **First Nations representation:** Make First Nations representation on the Board, through provincial appointees, an explicit requirement in section 8, and review options for meaningful inclusion of First Nations representation on the RACs so as to enhance the operations and effectiveness of those bodies.
- **Strategic areas for investment:** Delete section 20(1) (e) “Olympic Opportunities.”
- **Winding up:** Amend section 23(1) to provide the Board with the flexibility to decide when winding up should commence, how remaining resources should be allocated, and how the process should be implemented.