



CHANGES THAT ENABLE ONTARIO CO-OPERATIVES TO OPERATE IN A 21ST CENTURY ECONOMY

The co-operative sector in Ontario is made up of more than 1,300 incorporated co-operative businesses which operate 1,900 locations in 400 communities and add \$5.9 billion annually to the Ontario economy. Ontario co-operatives generate more than \$1.3 billion in taxes to support government services. They create 57,000 jobs, rely on the work of 49,000 volunteers and contribute \$3.3 billion to household income.

The co-op sector includes **financial co-operatives** (credit unions, caisse populaires, and insurance companies) and **non-financial co-operatives** (which operate in sectors of the economy including childcare, housing, food, arts, transportation, social, agriculture, health, immigration, communication, brewing, media and culture)¹.

LEGISLATION

Co-operatives are incorporated provincially. Each province has its own co-operative Act and Regulations. There is also a federal Cooperatives Act (about 85 co-operatives are incorporated federally). In Ontario:

- Non-financial co-operatives are incorporated under the Co-operative Corporations Act, created in 1974.
- Credit unions/caisse populaires are incorporated under the Credit Union and Caisses Populaires Act, 1994.
- Co-operatives are also regulated under industry and sector-specific legislation (e.g. funeral or energy).

THIS DOCUMENT WILL DISCUSS RECOMMENDATIONS THAT IMPACT ONLY THE NON-FINANCIAL CO-OPERATIVES SECTOR.

RECOMMENDATIONS

The joint Co-operative Government Relations Committee (representing the province's co-operatives through the Conseil de la coopération de l'Ontario and the Ontario Co-operative Association) is recommending that the Government make the following three changes to regulation/oversight of Ontario's non-financial co-operatives:

- 1) **CO-OPERATIVE OVERSIGHT BELONGS AT MEDEI.** Oversight of non-financial co-operatives should shift from the Financial Services Commission of Ontario (FSCO, an agency of the Ministry of Finance), to the Ministry of Economic Development Employment and Infrastructure (MEDEI), so that all business types are housed within one Ministry.
 - a. FSCO is a financial services policy regulator. Non-financial co-operatives require **oversight** and would benefit from a home within government alongside other types of business. Co-operatives are already regulated by the unique legislation, trade associations and peer-groups specific to the industries they operate in (e.g. housing, energy, taxi, funeral, farming, social services, accounting, etc.).
 - b. A move to MEDEI would not require substantial investment. The oversight required by non-financial co-operatives would be similar to other business enterprises such as corporations or sole-proprietors.
 - c. MEDEI currently houses a Social Enterprise Branch, which could be easily expanded into a "Co-operatives and Social Enterprise Branch".
 - d. Approval of the capital and security transactions of non-financial co-operatives should remain within the Ministry of Finance. Legislative review could take place through MEDEI and/or MoF.

¹ Mutuels operate similarly to co-ops, but are not considered co-operatives and are not incorporated under co-operative legislation. Neither mutuels nor financial co-operatives are included in the recommendations contained in this document.

- 2) **UTILIZE SERVICEONTARIO FOR CO-OP INCORPORATIONS.** Currently co-op incorporation involves sending letters by postal mail to/from FSCO and paying by cheque. This is a completely manual process, which often takes weeks. Business incorporations and payments through ServiceOntario are online and take minutes.
- a. Utilizing ServiceOntario will save money through increased efficiencies, streamlined processes and by removing the future burden to FSCO of automating the process.
 - b. This will result in all non-financial corporations being registered consistently within the same Government branch. (The online system may require minor modifications to address co-operative requirements.)
- 3) **IMPLEMENT SECTOR-RECOMMENDED CHANGES TO CO-OP LEGISLATION.** Three important changes to co-operative legislation have been approved by the co-op sector. Position papers on these recommendations have been sent to the Government. Furthermore, a full review of the 41-year old Co-operative Corporations Act (CCA) should be undertaken within five years.
- **Amend Section 144 (1), the “50% Rule”, also known as the “Business With Members Rule”.**
 - a. Section 1.1 of the CCA already clearly defines a “co-operative” and carrying on business “on a co-operative basis”. Section 144(1) adds to this definition by requiring co-operatives to conduct at least 50 percent of their business with members.
 - b. 50 percent is totally arbitrary and does not reflect co-operative principles or the requirements of individual co-operatives. This restriction does not appear in any federal or provincial co-operative legislation other than in Ontario and Quebec.
 - c. Exemptions from Section 144(1) currently exist for approximately half of the province’s co-operatives, including not-for-profit housing co-operatives, worker co-ops, co-operatives that do business with marketing boards and renewable energy co-operatives.
 - d. The sector recommends Section 144(1) be revised to allow co-ops to choose their own percentage.
 - **Amend Sections 11.1 & 11.2 of Regulation 178: Offering Statement Exemptions.**
 - a. Co-operatives raise capital for development and operations by offering securities to members and to others. These securities are not traded on the open market. Ontario co-operatives raise capital and provide a high level of investor disclosure and protection through an “Offering Statement”.
 - b. When an exemption from issuing an Offering Statement is available, a co-op can sell securities with less burden. The thresholds that trigger an exemption from the filing of an Offering Statement with FSCO were last changed in 1995, and have lost about 50% of their value. (There is no provision for inflationary increases or review of the CCA.) Beyond inflation erosion, the current limits are inadequate for co-operatives to efficiently raise capital in a 21st century marketplace. Even if a co-op is exempt from offering statement requirements, it is still obligated to provide full disclosure!
 - c. The sector recommends a five-fold increase in exemption limits so that: (a) A member purchases securities for a total price of not more than \$5,000 per year and \$50,000 in total.
(b) All securities issued to members are not more than \$1,000,000 of issued securities.
 - d. The sector further recommends that the number of prescribed security holders before an Offering Statement is required should be increased to 50 from the current 35.
 - **Simplify the Criteria for Audit Exemptions (CCA s. 123(2) and Regulation 178 s. 13.1)**
 - a. Current exemptions from financial audits require an examination of each co-operative’s capital, assets, or gross revenue or sales, and number of members. This is not consistent with other Ontario legislation and co-operative legislation federally and in other provinces.
 - b. The sector recommends removing all financial and member thresholds. Co-operatives which have issued securities would be required to annually appoint an auditor. The members of a co-operative which has never issued securities may exempt the co-op from appointing an auditor through an annual special resolution.

This is a summary document of legislative recommendations made by the Ontario co-operative sector. For more information:
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