



Advisory Panel, Mandate Review of Financial Service Regulators
C/o Ministry of Finance
Financial Institutions Policy Branch & Income Security & Pension Policy Division
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To The Advisory Panel,

Thank you for taking the time to meet with representatives of Ontario's co-operative sector on July 14th. We trust that the discussion and our answers to your questions reinforced our position that non-financial co-operatives should be overseen by the Ministry of Economic Development Employment and Infrastructure (MEDEI) rather than regulated by FSCO. Below are some of the key points brought out during our meeting with you.

FSCO IS A FINANCIAL SERVICES REGULATOR. The Financial Services Commission of Ontario is renowned as a "thought leader in regulatory policy"¹, but not in community or co-operative development policy. Its legislative mandate is "to provide regulatory services that protect the public interest and enhance public confidence in the sectors it regulates". FSCO is a regulator of primarily financial businesses and does not provide oversight or support. This influences its role and relationship with the co-operative sector, a relatively small part of its current mandate, and focuses on only a narrow aspect of the co-operative business enterprise model. Removing co-operatives from FSCO's portfolio would not require a change to the Agency's mandate.

THE MANDATE OF MEDEI IS CONDUCIVE TO CO-OPERATIVE DEVELOPMENT. A supportive "home" within the Ontario government - not just a regulator or enforcement agency - is required to remove barriers to co-operatives' expansion or creation and fully integrate the co-operative business enterprise model into government programs, policies and strategies. This can best be achieved by moving responsibilities for co-operatives out of FSCO and including this as part of the mandate of the Ministry of Economic Development, Infrastructure and Employment.

MEDEI is well positioned within government and the public to facilitate an understanding of the contributions made by co-operatives to communities and the economy, however currently co-operatives do not fall within its mandate. It already has programs, communication channels and on-the-ground resources to support other business models and this would be a natural extension.

¹ https://www.fSCO.gov.on.ca/en/about/annual_reports/Pages/2015-sop-final.aspx . Preamble to FSCO Strategic Plan.

Through MEDEI, co-operatives would take their place among other types of businesses in the province and have a higher level of visibility, awareness and understanding. Co-operatives need to be placed within a setting that provides “a range of programs, services and tools to help businesses innovate ... including business support ... strategic investment” (i.e. the current Mandate of MEDEI). Being within a Ministry with responsibility for community and economic development would also provide parity with government/co-op sector operations in other jurisdictions including the federal government, which has placed co-operative oversight within Industry Canada.

CO-OPS EXIST TO SUPPORT COMMUNITIES AND COMMODITIES. Consistent with the operating practices of the *Ontario Business Corporation Act*, it should be co-op **legislation** that requires oversight, not the co-operative business enterprise **model**. Like other businesses, co-operatives are already regulated by virtue of the various industries and sectors in which they operate (predominantly those related to commodities, social services and community-development). Co-operatives require equal access to government and its programs and services. Compliance with other legislation would continue to be the responsibility of the trade associations, agencies, departments or Ministries which oversee those industries and sectors.

CONSUMER PROTECTION FOR THE RAISING OF CAPITAL SHOULD REMAIN WITH FSCO. Both financial and non-financial co-operatives raise capital through Offering Statements rather than prospectuses. This unique form of raising capital acknowledges the close relationship of co-ops and credit unions to their members and their community – and it recognizes the relatively small amounts of capital raised. The standards of ‘full true and plain disclosure of all material facts’ are the same for co-ops as for shareholder corporations, however co-operative Offering Statements are generally in the amount of hundreds of thousands of dollars, not tens of millions.

The Ontario co-operative sector has presented its requests for an increase in the exemption limits and conditions before an Offering Statement is required to the Ministry of Finance and FSCO. When approved, these regulatory changes will maintain consumer and member protection while decreasing the administrative burden on FSCO, ultimately lowering costs.

OFFERING STATEMENTS ARE FINANCIAL TRANSACTIONS. FSCO currently has a high degree of expertise and well-understood policies to handle the unique nature of reviewing and receipting co-operative and credit union Offering Statements. It is very likely that the mandate of any new review/receipting body would overwhelm the relatively small number and size of co-op and credit union offering statements. Unlike corporations, the review and receipting of Offering Statements is not governed solely by statute. So while the “expertise” to understand and review Offering Statements may initially remain if this activity were moved away from FSCO, eventually a corporately-minded review/receipting agency would cause significant barriers for Ontario-based co-operatives and their members who wish to raise local community capital. This is where FSCO’s expertise in developing regulatory policy is a logical fit for co-operatives. Because the raising of capital from co-op members is a financial service, we continue to recommend that scrutiny and receipting of Offering Statements be protected and remain within the mandate of FSCO.

ALL BUSINESSES SHOULD INCORPORATE THROUGH SERVICEONTARIO. There are cost savings and efficiencies for the government if all corporations in Ontario incorporate through the ServiceOntario portal. We recommend that co-operative incorporations and the routine submission of administrative documents such as Form 1 (Initial Return / Notice of Change by an Ontario Corporation) become the responsibility of ServiceOntario (operated by the Ministry of Government and Consumer Services,

MGCS), like other forms of business enterprise in Ontario. This would provide timely and cost-effective access to 21st century technology for registering co-operatives and submitting information. Co-ops are still being incorporated using 1980's methods, most of which are paper-based. It takes 10-21 days to incorporate a co-operative; while most other businesses can incorporate online through MGCS and be registered in minutes. This would reduce at least one barrier to new co-op incorporation. Any requirements unique to co-operatives under the *Co-operative Corporations Act* could be built in to the registration system.

CO-OPERATIVE LEGISLATION REQUIRES TIMELY UPDATES. To operate in Ontario's 21st century economy, the Ontario co-operative sector requires immediate changes to key sections of the *Co-operative Corporations Act* and the Regulations. We have presented the Ministry of Finance and FSCO with sector-supported position papers on: Elimination of the 50% Rule (doing business with members), increases in exemption limits and conditions before an Offering Statement is required, and changes to the exemption conditions before an external Audit is required. These changes, at a minimum, could be facilitated during the transfer of co-operative responsibility from one Ministry to another.

REPLICABLE BEST PRACTICES FOR CO-OPS EXIST IN CANADA. Within five years, whichever agency, commission, department or Ministry that has responsibility for co-operatives should ensure that the 41-year old *Co-operative Corporations Act* and its Regulations be completely reviewed and revised, and that fiscal advantages – already proven in other Canadian provinces -- such as community economic development investment funds (CEDIFs), RRSP eligibility and small business/co-op & community development investment funds or capitalization activities be implemented. The Industry Canada model and Canada's provincial partnership agreements are best practices that should be included in the mandate of any Ontario agency that has responsibility for co-ops. They are easily replicable in Ontario and leverage the resources of the Ontario co-operative sector.

IN SUMMARY

Co-operatives (individually and through sector federations and associations such as the Ontario Co-operative Association and the Conseil de la coopération de l'Ontario) provide cost-effective, local services in a wide variety of social and economic sectors including finance (banking and insurance), transportation, social services, local food, renewable energy, resource management, telecommunications, retail services, manufacturing and child care.

In our position papers and our discussions with this Expert Panel, the Ontario co-operative sector has proposed three key recommendations that will allow co-operatives to thrive within Ontario, deepen our relationship with government, all while maintaining acceptable levels of government oversight and regulation:

1. Place the oversight of co-operatives within the Ministry of Economic Development, Employment and Infrastructure;
2. Modernize the framework for co-operative incorporation by including co-operatives in ServiceOntario, and facilitating sector-approved changes to the *Co-operative Corporations Act* and the Regulations;
3. Protect co-operative's unique securities regulations by having the review and receipting of Offering Statements remain within FSCO.

These recommendations are consistent with your mandate, and we respectfully submit them to you for consideration.

Co-operatively yours,

The Joint Ontario Co-operative Sector Government Relations Committee, comprised of representatives from the Ontario Co-operative Association and the Conseil de la coopération de l'Ontario.

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