



The FSCO Statement of Priorities 2015: Co-operative Sector Response

Submitted to:

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Submitted by:

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Dear Mr. Mills,

The Ontario Co-operative Sector Government Relations Committee (the “Committee”) thanks the Government for the opportunity to comment on the 2015 draft Statement of Priorities for the Financial Services Commission of Ontario (FSCO). We welcome the opportunity to provide comments and recommendations.

The Ontario Co-operative Sector Government Relations Committee is a joint venture between the Ontario Co-operative Association (On Co-op) and the Conseil de la coopération de l'Ontario (CCO). The Committee, comprised of representatives from CCO, On Co-op, and the co-operative sector, represents all of the affiliated co-operatives, credit unions and caisses populaires in the province of Ontario – approximately 1,300 incorporated organizations in 400 communities. To learn more about On Co-op and CCO, please refer to Appendix 2.

**“To provide regulatory services that protect the public interest
and enhance public confidence in the regulated sectors.”**

– FSCO mandate

BACKGROUND

FSCO is the Regulator for co-operatives within the Ontario government. Co-operatives are unique within FSCO as they are the only non-financial entities regulated by the Agency (excluding credit unions and caisses populaires.)¹

From 2005 until 2010, every FSCO Statement of Priority (SoP) included at least one action item related to co-operative legislative reform. Beginning in 2011 and up to and including 2015, co-operatives have not been mentioned in any SoP other than to identify that the sector is regulated by FSCO.

Co-operatives must remain as one of the priorities of FSCO and the Ontario government. No other Agency, Department, Office or Ministry has the obligation to regulate the Ontario co-operative sector; nor to ensure that co-operative businesses can evolve in an environment that enables them to develop, grow and thrive. (This is unlike the rest of Canada where, with the exception of BC, Ontario and PEI, jurisdictions have a department or office within a government ministry to support some level of co-op development, in addition to a Regulator.)

As the sole government entity with co-operative responsibility, FSCO has an important role to play in ensuring that co-operatives can evolve in an environment that enables them to develop, grow and thrive. Sustainable co-ops provide strong economic and social benefit to communities and relieve some of the burden on the Province to provide programs and services. Such an environment can be realized in Ontario by the Province working with the co-operative community and updating the regulatory environment to allow co-operatives to compete in a 21st century economy.

A commentary on why co-operatives are an important and essential part of Ontario’s economy is provided in Appendix 1 attached hereto.

SUMMARY OF RECOMMENDATIONS

It is the recommendation of the joint Ontario Co-operative Government Relations Committee that the 2015 FSCO Statement of Priorities be amended to include the following:

1. Proceed with updates to the *Co-operative Corporations Act* and Regulations
2. Provide online registration and incorporation of co-operatives
3. Facilitate equitable capitalization and tax treatment for co-operatives
4. Facilitate expanded co-operative resources

¹ In this document, “co-operatives” includes only non-financial co-operatives incorporated under Ontario’s *Co-operative Corporations Act* unless otherwise stated.

RECOMMENDATION 1: PROCEED WITH UPDATES TO THE CO-OPERATIVE CORPORATIONS ACT AND ITS REGULATIONS

The Ontario co-operative sector is hampered by decades-old legislation that is becoming out of step with co-op legislation in other provinces, and, notably, corporate and non-profit legislation in Ontario.

Ontario's *Co-operative Corporations Act* ("the Act") is 41 years old and has only had minor updates in that time, most recently in 2009. The Act by virtue of its age provides barriers to growth and sustainability for emerging and existing co-operatives which operate in the 21st century, not the early 1970's. A recurring issue is that co-op legislation does not mandate inflation indexes. With no updates made to the dollar-value limits and thresholds for at least 25 years, inflation has eroded their original intent by more than 40%.²

The Superintendent is required to undertake reviews of the Insurance Act, the Mortgage Brokerages, Lenders and Administrators Act, and the Credit Unions and Caisses Populaires Act every five years. However, no such review requirement exists for the *Co-operative Corporations Act*. Co-operative legislative and regulatory frameworks require periodic re-evaluation for our business model to remain effective, relevant and competitive!

While a full-review of the Act is preferred, the Committee, supported by the Ontario Co-operative Association and the Conseil de la coopération de l'Ontario, is recommending - at a minimum- the following changes to the Act and Regulations. These recommendations will modernize the legislative environment for co-operatives while providing a high level of member/investor protection. A further explanation of these recommendations can be found at: http://www.ontario.coop/cms/documents/897/Summary_of_key_recommendation_for_legislative_changes_to_Coop_Act_2015.pdf

1. A SERIES OF REVISIONS TO OFFERING STATEMENTS

- a. An increase in the **exemption thresholds** set forth in the Regulations. These monetary thresholds were last reviewed approximately 25 years ago. However, even by restoring the value of the thresholds eroded by inflation, the current Offering Statement exemption limits relating to members purchasing securities are inadequate for modern co-operatives to raise the capital they need to capitalize their businesses. We recommend the current exemption to purchase securities for a total price of not more than \$1,000 per year and \$10,000 in total be increased by a factor of five to \$5,000 per year and \$50,000 in total, respectively. We also propose the exemption limit relating to all securities issued to members being not more than \$200,000 be increased to \$1,000,000.
- b. To increase the **threshold number of members** where an offering statement is required from 35 to 50.

² Source: Bank of Canada online inflation calculator <http://www.bankofcanada.ca/rates/related/inflation-calculator/> \$1000 in 2015 = \$614.10 in 1990

- c. An updating of the monetary thresholds for the filing of a **statement of material change** with regards to an offering statement. Presently, there is an obligation to file a statement of material change where there has been a \$20,000 change in revenue and \$10,000 change in results. We submit this is not significant enough to be considered to be “material” particularly for medium to large-sized co-operatives.
- d. A streamlining of the offering statement **renewal process** for those co-operatives looking to FSCO for receipting of offering statements with only minor changes from a recent - but previously approved - offering statement.
- e. To create an exemption from offering statement requirements for specified **accredited investors**.

2. Removal of the provision that specifies the percentage of business co-operatives must conduct with their members, sometimes referred to as “The 50% Rule”.

The only other province in Canada with similar ‘business with members’ legislation is found in Quebec. All other provinces which had defined a set amount of business with members have repealed such legislation. Extensive Ontario co-operative sector consultations have been undertaken around the “50% Rule”. It was determined that the “50% Rule” was unduly restrictive, hampered the growth of co-operatives and attempted to define a business model that had already been defined in legislation. Co-operatives should be able to determine the amount of business conducted with members themselves and include it in their bylaws.

All Canadian jurisdictions define “carrying on business in a co-operative fashion’ in their legislation without resorting to defining business with members. Ontario’s *Co-operative Corporations Act* includes this definition in Section 1: Interpretation, and so this restrictive clause is not required.

3. An increase in the audit exemption thresholds.

Audit exemption thresholds contained in the *Act* are unduly restrictive, particularly for new or small co-operatives with larger membership bases but low levels of capital, assets or revenue.

It is our recommendation that the *Act* be amended to exempt Ontario co-operatives from the requirement of appointing an auditor and having the co-operative’s financial statements reviewed to an audit standard, by annual approval of a special resolution of the membership; except where members/investors have purchased the securities of a co-operative, in which case the co-operative would annually appoint an auditor and make that auditor’s report available to the membership and investors.

RECOMMENDATION 2: PROVIDE ONLINE REGISTRATION AND INCORPORATION OF CO-OPERATIVES

The current system of registering and incorporating co-operatives is a manual and time consuming process involving submitting paper forms and paper-based cheques to FSCO through the mail.

We recommend a move to online registration and incorporation of co-operatives, consistent with Ontario Business Corporations Act corporations. This will speed up processing time and also reduce

workloads at FSCO. Systems and processes are already in place with Service Ontario and could easily be adapted to include co-operatives in a timely and cost-effective manner.

RECOMMENDATION 3: FACILITATE EQUITABLE CAPITALIZATION AND TAX TREATMENT FOR CO-OPERATIVES

A supportive environment means an equitable tax treatment for co-operatives. Unlike in other provinces (Manitoba, for example³), there are currently no tax incentives or government facilitated investment/capitalization measures in Ontario to invest in co-operatives.

Incentives must be considered as ways to enhance access to capitalization and financing for Ontario co-operatives. The majority of Ontario's 1,300 co-operatives are small businesses: A substantial sector of the Ontario economy that employs more than 88% of the province's workforce.⁴ We recommend that discussions begin with FSCO, the Ministry of Finance and the federal government towards the creation of Ontario Co-operative Development Tax Credits, the implementation of RRSP rules for investing in co-operatives, and equitable capital gains income treatment.

Additionally, co-operative business enterprises in Ontario require innovative ways of accessing and raising capital equivalent to those which exist in other provinces. A position paper from the co-operative sector containing the best practices of government-facilitated capitalization, investment and tax treatments is available at this link:

http://www.ontario.coop/cms/documents/1061/Capitalization_Measures_Toolkit_Final_June_18_2013.pdf. The current legislative and public policy environment for co-operatives and other small businesses in Ontario currently does not facilitate these proven community economic development initiatives.

RECOMMENDATION 4: FACILITATE EXPANDED CO-OPERATIVE RESOURCES

Co-operatives, particularly non-financial co-operatives, need to be more fully integrated into the government's promotion of ALL business enterprise. Ontario's co-operatives request a higher level of promotion and awareness-building, such as inclusion in FSCO's series of stakeholder webcasts, webinars, instructional videos and e-newsletters that FSCO launched in 2012 for regulated sectors including pension funds.

We request the co-operative sector, another FSCO-regulated sector, be included in this e-learning series to enhance co-operative outreach and education.

³ For more information visit <http://manitoba.coop/Page.aspx?MainPageID=co-op-community&MenuPageID=tax-credit-fund>

⁴ Statistics Canada, *Labour Force Survey (LFS)*, 2012, and calculations by Industry Canada. Statistic downloaded from <https://www.ic.gc.ca/eic/site/061.nsf/eng/02805.html> on May 29, 2015

IN SUMMARY

Sustainable co-ops provide strong economic and social benefit to communities and relieve some of the burden on the Province to provide programs and services.

Co-operatives are a proven method of assisting the Ontario government in its commitment to create more job opportunities, stimulate economic growth and provide a solid foundation for jobs and prosperity. As FSCO is the sole government entity with co-operative responsibility, the Agency has an important role to play in ensuring that co-operatives can evolve in an environment that enables them to develop, grow and thrive. We urge the Province to adopt our recommendations and include them in FSCO's 2015 statement of priorities.