

No.	<b>OUTSTANDING CHANGES TO ONTARIO CO-OPERATIVE CORPORATIONS ACT &amp; REGULATIONS</b> <i>Document Updated: January 13, 2014 for Co-op Sector Regional Meeting Jan. 15/14</i>	STATUS
	SHORT FORMS: <b>MoF</b> = Ontario Ministry of Finance; <b>Minister</b> = The Minister of Finance; <b>FSCO</b> = Financial Services Commission of Ontario, an agency of MoF; <b>On Co-op</b> = Ontario Co-operative Association; <b>CCO</b> – Conseil de la coopération de l’Ontario; <b>RA Committee</b> = Regulatory Affairs Committee, a cross-sectoral committee of co-ops and sector partners and stakeholders convened by On Co-op and formerly known as the Regulations and Legislation Committee.	
1	<p><b>50% Rule (conducting 50% or more business with members)</b>  <b>– LEGISLATIVE CHANGE – Refer to the Ontario CO-OPERATIVE CORPORATIONS ACT, Section <a href="#">144 (1)</a></b></p> <p><b>BACKGROUND:</b>            SECTION 144 (1) CURRENTLY STATES:            “Where the Minister is of the opinion that a co-operative has for a period of three years or longer conducted 50 per cent or more of its business with non-members of that co-operative, the Minister may, after giving the co-operative an opportunity to be heard issue a certificate of amendment changing the co-operative into a corporation.”</p> <p>The request was proposed to FSCO and MoF in 2010 by the On Co-op Regulations and Legislation Committee (now called the Regulatory Affairs Committee). An extensive province-wide consultation was undertaken by On Co-op and the RA Committee in 2011, and consensus was to recommend total abolishment of this provision. Based on the information received, the decision to recommend to FSCO to remove the 50% rule was approved by the On Co-op board of directors and confirmed by the On Co-op membership during the June 2011 Annual General Meeting. A report was sent to FSCO in 2011, and acknowledged the broad sectoral support for abolishing the 50% Rule. The issue has been with FSCO and MoF since then. The RA Committee meets with FSCO and MoF regularly and this item remains on the agenda.</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  <b>A recommendation has been made to FSCO and MoF to remove this provision entirely from the Act.</b> If the proposed change was made to the Act, co-operatives could then have the option to determine their own percentage of membership (from 0-100%), and include in by-laws or policies.</p> <p><b>SECTOR ACTION REQUIRED:</b>  <b>FSCO and MoF are amenable to moving forward in the legislative process with this change, however they require additional evidence-based data from Ontario co-operatives, stakeholders and sector federations (which could be supported by anecdotal information) to proceed.</b>            A process for obtaining strong evidence-based data from co-operatives, stakeholders and federations will be developed by early 2014.            If a strong business case is made by the co-operative sector, MoF will proceed with the legislative process.</p> <p>REASON FOR ADDITIONAL SECTOR-INPUT REQUEST: In March, 2013, the Ministry of Finance requested specific empirical evidence and listing of burdens/impacts on co-ops in order to make a business case for changes to the Act.</p>	<ul style="list-style-type: none"> <li>• July, 2010 – Consultation process determined to be the best way to provide sector input into evaluation of 50% Rule.</li> <li>• 2011 - Extensive sector-wide survey and consultation process completed. Recommendation to abolish.</li> <li>• 2011 - Decision to recommend removal of 50% Rule formally accepted and approved by On Co-op board of directors and On Co-op membership.</li> <li>• 2011 - Report sent to MoF and FSCO.</li> <li>• Ongoing - Regular (generally quarterly) meetings continue between RA Committee and FSCO/MoF; changes to Act and Regulations remain on agenda.</li> <li>• March, 2013. Ministry of Finance requests evidence-based business case to move forward with this item.</li> <li>• May, 2013. Request for evidence-based data made to co-op sector through electronic means. Limited response indicates a more focussed and guided data gathering process is required.</li> <li>• September, 2013. FSCO advises it is undertaking inter-jurisdictional comparisons. Sector plans for additional co-op sectoral input process begin.</li> <li>• December, 2013 - Additional questions developed to provide MoF with the co-op sector data required.</li> <li>• January, 2014 – Data-gathering and consultation process to be discussed with co-op sector in a roundtable format.</li> </ul>

## OFFERING STATEMENT EXEMPTIONS

– REGULATORY CHANGE: [REGULATION 178](#), section 12

### BACKGROUND:

As per the current limits contained in the Regulations, a co-op is exempt from submitting an offering statement to FSCO if:

- A member purchases securities for a total price of not more than \$1,000 per year and \$10,000 in total.
- All securities issued to members are not more than \$200,000 of issued securities.

Note: There have been no changes to limits or exemptions in the Act and Regulations for many years. The Act and Regulations do not include provisions for inflationary increases or periodic review of the legislation.

The current limits are inadequate for co-operatives to raise the capital they need in order to capitalize their businesses. The recommendation to increase these exemption limits by a factor of four (4) was proposed to FSCO by the Regulations and Legislative Committee in 2010. (The co-op sector had made an initial request to increase the exemption limits by a factor of ten (10) , but the number was reduced to four after discussions with MoF and FSCO indicated that four was the maximum that would be considered.)

### RECOMMENDATION TO GOVERNMENT:

Subject to receiving sector consensus, a proposal has been initiated to FSCO and MoF to increase the limits related to members purchasing securities and the total amount of issued securities to the following:

- A member purchases securities for a total price of not more than **\$4,000** per year and **\$40,000** in total.
- All securities issued to members are not more than **\$800,000** of issued securities.

### SECTOR ACTION REQUIRED:

Co-op sector consultation is required to confirm if the proposed increased limits are adequate and to provide empirical evidence to support the increase.

If the outcome from the consultation is positive and consensus among the sector to support increased limits is reached, a business case will be drafted for increasing the amounts. A recommendation will be presented to the board of directors of On Co-op and CCO for review and approval.

- July, 2010 – Exemption limits continue to be discussed with MoF and FSCO
- Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.
- September, 2012 – FSCO announces that consideration of limits is now in process with FSCO and MoF
- March, 2013 – MoF requests evidence-based business case to move forward with this item.
- December, 2013 - Additional questions created to provide MoF with the co-op sector data required. Plans begin for co-op consultation process.
- January, 2014 – Data-gathering and consultation process to be discussed with co-op sector.

2b	<p><b>CLARIFICATION OF “MATERIAL CHANGE” AND UPDATING OF THE TRIGGERS</b>  <b>– REGULATORY CHANGE: <a href="#">REGULATION 178</a>, section 12.1</b></p> <p><b>BACKGROUND:</b>  THE REGULATIONS CURRENTLY STATE:  “For the purposes of subsection 35 (6) of the Act, the following changes are not material changes:  1. A change that affects the co-operative’s gross revenue or gross sales by less than \$20,000.  2. A change that affects the co-operative’s net income or loss by less than \$10,000.”</p> <p>The Regulatory Affairs Committee is recommending an increase to these criteria of ‘material change’.</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( No recommendation has been submitted to FSCO or MoF pending sector consultation.</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector input will be sought during 2014 to develop a recommendation for increasing the gross revenue/sales amount and the net income/loss amounts.  ( Discussions will be undertaken with FSCO to determine if there are other items that may be considered a “material change”.  ( If the outcome from the consultation is positive and consensus among the sector on a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• March, 2013 – This item was presented to FSCO and MoF by the RA Committee</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> </ul>
2c	<p><b>A STREAMLINING OF THE OFFERING STATEMENT RENEWAL PROCESS WHEN MINOR CHANGES DO NOT AFFECT MATERIALITY</b>  <b>– REGULATORY CHANGE: <a href="#">REGULATION 178</a></b></p> <p><b>BACKGROUND:</b>  Currently, all offering statements are subject to the same approval process.  The Regulatory Affairs Committee is recommending a change to the Regulations to allow FSCO to develop a process which would allow a co-operative to make minor modifications to a recently-expired and previously-approved offering statement, possibly through an addendum, and re-submitting it as new using a streamlined review process <b><u>when the minor changes do not affect materiality and the offering statement is otherwise exactly the same.</u></b></p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( No recommendation has been submitted to FSCO or MoF pending sector consultation and further discussion with FSCO.</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector input will be sought during 2014 to determine if a business case should be made to support this recommendation.  ( Discussions continue with FSCO on the processes surrounding Offering Statements.  ( If the outcome from the consultation is positive and consensus among the sector on a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• March, 2013 – This item was presented to FSCO and MoF by the RA Committee</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> </ul>

2d	<p><b>TO CHANGE THE THRESHOLD NUMBER OF MEMBERS WHERE AN OFFERING STATEMENT IS REQUIRED FROM 35 TO 50</b>  <b>– REGULATORY CHANGE: <a href="#">REGULATION 178</a>, section 11.1</b></p> <p><b>BACKGROUND:</b>  Currently, the Regulation states: “For the purposes of subsection 34 (1) of the Act, the prescribed number of security holders is 35. O. Reg. 414/07.”</p> <p>The Regulatory Affairs Committee is recommending an increase in the prescribed number (i.e. exemption limit) to 50 security holders.</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( No recommendation on an increase in the exemption limit to 50 has been submitted to FSCO or MoF pending sector consultation .</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector input will be sought during 2014 to determine if there is consensus on this issue.  ( If the outcome from the consultation is positive and consensus among the sector on a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• March, 2013 – This item was presented to FSCO and MoF by the RA Committee</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> </ul>
2e	<p><b>TO CREATE AN EXEMPTION FROM OFFERING STATEMENT REQUIREMENTS FOR ACCREDITED INVESTORS SIMILAR TO THAT CONTAINED IN ONTARIO’S SECURITIES LAW</b></p> <p><b>BACKGROUND:</b>  Currently, the Act provides no provision for exemptions from offering statements for accredited investors. To make the Act more consistent with Ontario’s securities law, the Regulatory Affairs Committee recommends an exemption from offering statement required for accredited investors.</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( No recommendation has been submitted to FSCO or MoF pending sector consultation and further discussion with FSCO.</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector input will be sought during 2014 to determine if a business case should be made to support this recommendation.  ( If the outcome from the consultation is positive and consensus among the sector on a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• March, 2013 – This item was presented to FSCO and MoF by the RA Committee</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> </ul>

3a	<p><b>INCREASE THE EXEMPTION FROM AUDIT PROVISIONS FOR A CO-OP THAT HAS NEVER ISSUED SECURITIES</b>  <b>– LEGISLATIVE CHANGE: - ACT, Section <a href="#">123 (2)</a></b></p> <p><b>BACKGROUND:</b>  THE ACT CURRENTLY STATES:  “A co-operative that has never issued securities and that at the end of a financial year has less than \$5,000 in capital and less than \$5,000 in assets is exempt in respect of that year...”</p> <p>A series of sector consultations is required to determine if these limits should be increased.</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( No recommendation has been submitted to FSCO or MoF pending sector consultation.</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector input will be sought during 2014 to determine if a business case can be made, and what increases should be made to capital and asset exemption limits.  ( If the outcome from the consultation is positive and consensus among the sector for a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• March, 2013 – This item was presented to FSCO and MoF by the RA Committee</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> </ul>
3b	<p><b>INCREASE THE PRESCRIBED MAXIMUMS FOR AUDIT EXEMPTION</b>  <b>– REGULATORY CHANGE: <a href="#">REGULATION 178</a>, section 13.1</b></p> <p><b>BACKGROUND:</b>  SECTION 13.1 sets the prescribed maximums for an audit exemption for capital, assets, and gross revenue or sales. IT STATES: “For the purposes of clause 123 (1.1) (b) of the Act, the capital, assets or gross revenue or sales of a co-operative shall not exceed \$500,000 each for the year in which the audit exemption is claimed.”</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( No recommendation has been submitted to FSCO or MoF pending sector consultation.</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector input will be sought during 2014 to determine the impact of the current exemption levels and to develop a recommendation for increasing the limits.  ( If the outcome from the consultation is positive and consensus among the sector for a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• This item was proposed to the Regulatory Affairs Committee for consideration by a sector group. It meets the Committee’s acceptance criteria that the issue may affect a number of co-operatives throughout the province. A series of sector consultations is required to develop a set of recommendations and determine if a business case can be made.</li> <li>• March, 2013 – This item was presented to FSCO and MoF by the RA Committee</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> </ul>

4	<p><b>QUORUM - CLARIFICATION OF WORDING</b>  <b>- LEGISLATIVE CHANGE: ACT Section <a href="#">93</a></b></p> <p><b>BACKGROUND:</b>  The Regulatory Affairs Committee proposed to FSCO and MoF wording to clarify the phrases “a quorum of directors remains” and “a majority of the board of directors constitutes a quorum” in section 93 of the Act.</p> <p>This wording does not raise a problem if the quorum is stated as a fixed number, such as “four directors” in co-ops’ by-laws. However, many co-ops state that a quorum is “a majority of directors” (or a certain percentage “of directors”). It is then argued that if there are seven directors a quorum is four, but if two of them resign, there are five directors, so a quorum is three. As the number of directors is reduced, the quorum is automatically reduced. To clarify the language in this area, the RA Committee recommends the following wording:</p> <p>93. (1) Unless the articles or by-laws otherwise provide, a majority of the number of directors of a co-operative constitutes a quorum, but in no case shall a quorum be less than two-fifths of that number.</p> <p>93. (1.1) In determining quorum, subject to subsection (2), the number of directors of a co-operative is the number of directors specified in the articles as increased or decreased by by-law, or if the articles provide for a minimum and maximum number of directors, the number of directors determined by a special resolution, or resolution of the directors, under section 88.1.</p> <p>93. (2) Directors who are non-members or who are not directors, officers, shareholders or members of a corporate member are not to be counted in the numerator or denominator for the purpose of constituting a quorum.</p> <p><b>RECOMMENDATION TO GOVERNMENT:</b>  ( While clarifying wording has already been submitted to FSCO and MoF, no formal recommendation can be made pending sector consultation.</p> <p><b>SECTOR ACTION REQUIRED:</b>  ( Co-op sector consensus on wording changes will be sought during the 2014 consultations.  ( If consensus among the sector for the recommended wording is reached, a report will be drafted and presented to the boards of On Co-op and CCO for review and approval.</p>	<ul style="list-style-type: none"> <li>• July, 2010 – Updated wording discussions continue with MoF and FSCO</li> <li>• Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.</li> <li>• May, 2012 – Updated wording drafted by the co-op sector sent to MoF and FSCO.</li> <li>• September, 2012 – Section numbers corrected and updated document given to FSCO</li> <li>• March, 2013 – FSCO requests sector input to move forward</li> </ul>
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## FINANCIAL ASSISTANCE TO CO-OPERATIVE EMPLOYEES

### LEGISLATIVE CHANGE: ACT Section [17.\(1\)](#)

#### BACKGROUND:

THE ACT CURRENTLY STATES:

“A co-operative shall not make loans to any of its members, directors or employees or give directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance to any member, director or employee, except in the course of transactions of a type available to all members of the co-operative.”

To allow co-operatives, excluding non-profit housing co-operatives, to attract employees by offering financial assistance similar to that offered by private sector businesses, the Regulatory Affairs Committee is recommending that FSCO and MoF replace that section with wording similar to the year 2000 amendments to the Ontario Business Corporation Act (OBCA), essentially stating that a co-operative may give financial assistance to its employees for any purpose by means of a loan, guarantee or otherwise, and that it shall disclose fully this in the notes to its financial statements.

This section of the OCBA was also amended in 2002 and 2007, however, the specific changes the co-op sector are proposing are modeled on the year 2000 amendments to the OCBA.

#### RECOMMENDATION TO GOVERNMENT:

⌋ **No recommendation has been submitted to FSCO or MoF pending sector consultation.**

#### SECTOR ACTION REQUIRED:

⌋ **Co-op sector input will be sought during 2014.**

⌋ If the outcome from the consultation is positive and consensus among the sector for a recommendation is reached, a business case will be drafted for increasing the amounts and presented to the boards of On Co-op and CCO for review and approval.

- July 2010 –Broad sector consultation required before recommendation can be made to FSCO and MoF
- Ongoing - Regular (generally quarterly) meetings continue with the RA Committee and FSCO/MoF; changes to Act and Regulations remains on agenda.
- March, 2013 – FSCO requests sector input to move forward

6	<p><b>DEEMED BUSINESS</b>  - <b>LEGISLATIVE CHANGE: ACT Section <a href="#">144 (4)</a></b></p> <p><b>BACKGROUND:</b>  THE ACT CURRENTLY STATES:  “If a member of a co-operative sells products to a marketing board under a marketing plan established under an Act of the Legislature and the marketing board in turn sells the products, or equivalent products if the products are fungible, to the co-operative, the co-operative shall be deemed, for the purposes of this section, to have bought the products or equivalent products directly from the member. 1992, c. 19, s. 17.”</p> <p>Changes to the deemed business provision to include language that would work for renewable energy co-ops selling electricity to the grid was the original driving force behind this amendment. With the introduction of a “renewable energy co-op” definition that makes these co-ops exempt from the business with members provision, this is no longer a concern for this particular sector. However, there may still be a need to broaden the language to more easily allow for other co-ops in similar types of situations to operate.</p> <p><b>NO CURRENT SECTOR ACTION REQUIRED:</b>  This issue is dependent on the outcome of changes to the 50% Rule and will be revisited once that issue has been resolved.</p>	<ul style="list-style-type: none"> <li>• July 2010: No action required at this time but will be revisited if the 50% Rule is removed.</li> </ul>
7	<p><b>BUSINESS WITH SUBSIDIARIES -</b>  <b>LEGISLATIVE CHANGE: ACT Sections 32 (1), 49(3), 55 and 144</b></p> <p><b>BACKGROUND:</b>  Co-operatives are increasingly entering into joint ventures, establishing subsidiaries, and other vehicles to enhance their business opportunities, and protect their members’ interests. Currently, business by members with subsidiaries does not count as business with the co-operative. Amend the noted sections to deem business with a subsidiary (as defined in s. 1(4)) to be business transacted with the co-operative.</p> <p><b>NO CURRENT SECTOR ACTION REQUIRED:</b>  This issue is dependent on the outcome of changes to the 50% Rule and will be revisited once that issue has been resolved.</p>	<p>July 2010: No action required at this time but will be revisited if the 50% Rule is removed.</p>