### 2015 PRE-BUDGET SUBMISSION TO CHARLES SOUSA, ONTARIO'S FINANCE MINISTER.



Ontario Co-operative Association 450 Speedvale Avenue West, Suite 101 Guelph, ON N1H 7Y6 <u>www.ontario.coop</u> Mark Ventry, Executive Director <u>mventry@ontario.coop</u> 519.763.8271 x30

### Co-operatives are a vital component of the Ontario economy

Co-operatives are legally incorporated business enterprises, distinct from any other model currently operating in Ontario. The co-operative business model is international, utilized in 100 countries around the world, and impacts more than 1,000,000 members.

Ontario's 1,300 co-ops operate 1,900 locations in more than 400 communities. Co-ops do business in 25 key sectors of the Ontario economy including transportation, local food, communication, social services, financial services, housing, child care, agriculture and arts & culture. The co-operative movement in Ontario includes co-operatives that range in size from zero employees (operating with volunteers and boards of directors) to large multi-branch enterprises such as Meridian Credit Union, Gay Lea Foods dairy co-operative or The Co-operators insurance. Overall, the equivalent of 15,500 full time employees receives T-4 slips from being directly employed by an Ontario co-operative.

Co-operative vitality provides a strong economic and social benefit to communities and relieves some of the burden on the Province to provide programs and services. The establishment of new co-ops in First Nations communities, those with new immigrants, and regions experiencing business closures or aging independent business-owners will assist in retaining jobs and local control -- and create sustainable local economic development hubs.

Co-operatives are created locally to meet the needs of their memberships and their communities. Each co-operative is unique, autonomous and independent. They are accountable to their membership and board of directors, and the legislative environment in which they operate. While other forms of business enterprise are legally obligated to maximize **shareholder** value, co-operatives are required to maximize **member** value, meaning that their primary focus is <u>always</u> on their members and customers!

The multiplier effect on local economies by investing in community-based co-operatives has been estimated at 4:1 – almost double that of chain stores. Investing in emerging and existing co-ops makes good economic sense.

### The role of Government

The Ontario Government -- working through the Ministry of Finance (MoF), the Financial Services Commission of Ontario (FSCO), Ministry of Economic Development, Employment and Infrastructure (MEDEI) and other Ministries, departments and agencies -- has an important role to play in ensuring that co-operative businesses can evolve in an environment that enables them to develop, grow and thrive.

As such, co-operatives should be included <u>by name</u> in budget documents and policy papers. Terms such as 'small business', 'non-profit', or even 'social enterprise', do not adequately recognize the unique, community-based role of co-operatives, nor their legal distinctions.

Under Ontario legislation, co-operatives are not classed as "non-profit" or "for profit". Instead they are incorporated "without share capital" or "with share capital" (see endnote summarizing the legal interpretation of a co-operative on page 11). These terms are not always comparable with phrases used to describe other types of business. When co-operatives are arbitrarily grouped with other business models, it contributes to systemic confusion and lessens recognition within Government and the business community about this unique form of business enterprise.

Co-ops *may* be social enterprises. However not all co-ops have a primary or obvious social focus – and not all are what may be called non-profit. Most co-ops embrace the triple bottom line philosophy: achieving social, environmental <u>AND</u> economic results to support and sustain their membership base and communities. As an example, Ontario's telecommunication co-operatives are profit-making enterprises that excel in customer service, often providing high-speed internet and fibre optic connectivity to homes, hospitals and businesses in rural areas that the mainstream phone company does not because their members have directed the co-op in that manner.

Co-operatives have a demonstrably higher survival rate than other forms of business enterprise, and studies show that over a 10-year period, more than twice as many co-ops remain in business than other types of business. It makes sense, then to encourage the growth of this business model and reduce barriers for existing and emerging co-operatives.

### RECOMMENDATIONS TO SUPPORT ONTARIO'S CO-OPERATIVE SECTOR

It is the recommendation of the Ontario Co-operative Association that the Ministry of Finance, and therefore the Provincial Government, include a number of initiatives to support the co-operative sector in its budget documents and policy papers.

#### In the coming year, we urge the Ontario Government to:

- 1. Update the *Co-operative Corporations Act* and its Regulations in a number of key areas, and develop a timeline to totally review and potentially overhaul this *Act*.
- Consult with the Ontario Co-operative Association and the Ontario co-operative sectors as it considers changes the mandate or scope of FSCO as recommended by the Auditor General in her 2014 report.
- 3. Facilitate the development of cross-Ministry policies to increase the usage of the co-operative business enterprise model to advance economic and social development in the province.
- 4. Use the funds from dormant accounts in Ontario's financial co-operatives (credit unions and caisses populaires) to establish a Co-operative Development and Investment Fund, with a goal to seed community investment in the province's co-operatives and non-profit sectors.
- 5. Adopt proven innovations in the financing and capitalization of co-operatives and other forms of social enterprise to enhance the strength, resilience, sustainability and diversity of local and regional economies.
- 6. Create a co-operative policy unit within the Ontario Government -- similar to the Co-operative Policy Unit within Industry Canada at the federal level -- to facilitate co-op development, research and awareness.

# RECOMMENDATION 1: UPDATE THE *CO-OPERATIVE CORPORATIONS ACT* AND ITS REGULATIONS

The Ontario co-operative sector<sup>1</sup> is hampered by decades-old legislation that is becoming out of step with co-operative legislation federally and in other provinces. Changes continue to be made to other corporate legislation such as Ontario's Business Corporations Act (OBCA), and the Ontario Not-For-Profit Corporations Act (ONCA) which should come into force within the next year.

Ontario's *Co-operative Corporations Act* ("the *CCA*") is 40 years old and has only had minor updates in that time. Legislative and regulatory frameworks require periodic re-evaluation by Government and the regulated industries to remain relevant and provide a competitive business environment. While the Superintendent is required to undertake reviews of the Insurance Act, the Mortgage

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<sup>&</sup>lt;sup>1</sup> The term "co-operative sector" is used to describe all of the co-operatives operating within the Ontario economy. The term "co-operative movement" generally also includes stakeholder organizations, federations and the people and organizations that support co-operatives. Co-operatives also operate in more than 25 sectors of the Ontario economy such as transportation, social services, housing, communication, new immigrants, local food, and so on.

Brokerages, Lenders and Administrators Act, and the Credit Unions and Caisses Populaires Act every five years, no such mandated review exists for the *CCA*. The *CCA* does not include inflation indexes, which means that every dollar-value limit and threshold contained is significantly out of date.

The Co-operatives Working Group<sup>2</sup> facilitated on behalf of the entire Ontario co-operative sector by the Ontario Co-operative Association<sup>3</sup>, is recommending – at a minimum – the following changes to the *CCA* and Regulations. Further details are contained in a series of position papers being submitted to the Financial Services Policy Unit of the Ministry of Finance:

- Removal of the provision that specifies the percentage of business co-operatives must conduct with their members, sometimes referred to as "The 50% Rule". ACT s 144.1. There are other areas of the CCA that could be used to ensure the legitimacy of the co-operative without having this clause, including section 1 (see endnote on page 11). This recommendation is consistent with co-operatives incorporated in other jurisdictions.
- 2. A revision to audit exemptions to allow co-operatives to effectively compete in a 21<sup>st</sup> century economy while still providing investor and member protections. **REGULATION 178, s 13.1.** 
  - Additionally, increases are required in other threshold limits within the *CCA* and Regulations to maintain what the original creators of the *CCA* envisioned. The thresholds that were last updated in 1994 have lost more than 50% of their value; the thresholds that have not been updated since 1974 have lost more than 80% of their value.
- 3. A series of revisions is required for Offering Statement exemptions and processes to allow co-operatives to raise capital in an effective, efficient manner while continuing to provide full, true and plain disclosure to investors. (Offering Statements are limited in Ontario to co-operatives, and are one of the only methods available for raising capital.)

**MAKING IT HAPPEN:** An updated legislative environment for co-operatives can be realized in a timely and cost-effective manner. The Co-operative Working Group currently meets with representatives from the Financial Services Policy Unit at the Ministry of Finance to discuss potential changes to the *Co-operative Corporations Act*. Changes to the *CCA* could easily be included in legislation that also updates the Credit Union and Caisses Populaires Act.

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<sup>&</sup>lt;sup>2</sup> The **Co-operatives Working Group** is known by that name to FSCO. Within the Ontario co-operative movement, it is known as the Regulatory Affairs Committee. It is comprised of co-op sector representatives and is facilitated on behalf of the entire co-operative sector by the Ontario Co-operative Association.

<sup>&</sup>lt;sup>3</sup> The **Ontario Co-operative Association** believes that co-operatives build a better world. Based in Guelph, we are a trade association and capacity-building organization that develops, engages, educates and advocates for Ontario's 1,300 co-operative businesses. On Co-op is an information and resources network with a mission to lead, cultivate and connect co-operatives. Through our membership, we represent approximately 85% of the province's co-operative enterprises.

# RECOMMENDATION 2: CONSULT WITH THE ONTARIO CO-OPERATIVE MOVEMENT ON ANY CHANGE OF MANDATE OR FOCUS FOR THE FINANCIAL SERVICES COMMISSION OF ONTARIO

In her Fall 2014 report to the Speaker of the Legislative Assembly, the Auditor General of Ontario reported, among other things, on the Financial Services Commission of Ontario (FSCO)'s role and functioning in exercising oversight of co-operatives and credit unions. Recommendations included that FSCO should consult with the Ontario Securities Commission on "... the benefits of sharing or transferring the responsibility of reviewing offering statements [from co-operatives]" and transferring oversight of credit unions to the Office of Superintendent of Financial Institutions.

The Ontario Co-operative Association would welcome and expect the Government to include the Ontario credit union system and the Ontario co-operative sector in discussions and consultations concerning the current or future mandate of FSCO, and the manner in which it reviews and receipts Offering Statements.

Additionally, on behalf of Ontario co-operatives, we encourage the Government to look at other models for incorporating and registering co-operatives that may be more cost-effective, efficient and directly accountable to the co-operative sector. For example, a registration model based on the province of Nova Scotia, where the Nova Scotia Co-operative Council is contracted to be the Registrar for that province's co-operatives, would be easily replicable in Ontario leveraging the existing resources of the Ontario Co-operative Association.

The current system of registering and incorporating co-operatives is a manual and time-consuming process involving paper forms sent to FSCO through postal mail and payment only by cheque. This system is not consistent with registration processes available to other Ontario business enterprises.

We recommend a move to online registration and incorporation of co-operatives, consistent with OBCA and ONCA businesses and other corporations, but with the ability to track or confirm the unique aspects required by co-op incorporations. This will speed up processing time and also reduce workloads and increase efficiencies and record-keeping/reporting at FSCO or whomever is deemed to be the Registrar for co-operatives.

**MAKING IT HAPPEN:** The Ontario Co-operative Association requests that the Government actively engage the Ontario co-operative sector in discussions and consultations well in advance of any decision to modify significant administrative processes at FSCO, or transfer administrative, oversight or regulatory powers to OSC, OSFI or others from FSCO.

# RECOMMENDATION 3: DEVELOP CROSS-MINISTRY POLICIES TO INCREASE THE USAGE OF THE CO-OPERATIVE BUSINESS ENTERPRISE MODEL

Eligibility criteria for Government programs most oftentimes does not specifically mention co-operatives as being able to participate. This moves co-ops into a discretionary category, or forces co-operatives to conform to non-co-op labels such as "non-profit" or loosely defined categories such as social enterprise.

All Government Ministries, departments and agencies should be mandated to specifically include or exclude the category of 'co-operative' in the eligibility criteria for procurement, programs, activities and access to business funding. As indicated above, the Government should work with the co-operative sector to determine and promote equivalents to the co-operative terms "with share capital" and "without share capital".

Programs that specifically target sole proprietors, such as MEDEI's Summer Company Program should be broadened to include eligibility for worker and other types of co-operatives (which require a minimum of 3-5 members to incorporate).

Increased awareness of co-operatives by Government staff -- including how they operate, are governed and raise capital -- will lessen the barriers to growth of the co-operative model due to oversight or ineligibility of Government programs.

The co-operative model is more well-known and utilized to a higher degree in other Canadian jurisdictions including Manitoba, Saskatchewan and Nova Scotia. There are many low-or-no-cost best practices/policies that can easily be adopted in Ontario, including the provision of co-operative knowledge training for Government departmental staff and Government-supported business resources centres such as SBECS. Knowledge and training could be provided or co-ordinated by the Ontario Co-operative Association through online or printed material, sector-led sessions, or participation in provincial/regional co-op conferences, as examples.

**MAKING IT HAPPEN:** Our recommendation is for all Government forms, websites, communication vehicles, applications, granting documents and programs/initiatives to also include a check-box for "co-operative enterprise" whenever other forms of business enterprise are mentioned. Including co-op friendly terminology and updating websites and documentation could be implemented almost immediately for online forms, information or documents, and during the next review cycle for printed materials.

Adopting co-operative-positive best practices and co-op knowledge training can be accomplished by having one of more departments working with the Ontario Co-operative Association or one of its sector committees to research and recommend appropriate policies and programs, and capacity-building initiatives. These could then be rolled out to other departments and Ministries. This is consistent with co-operative sector recommendations forthcoming from an Open for Business initiative for the social enterprise sector.

## RECOMMENDATION 4: USE THE DORMANT ACCOUNTS OF ONTARIO'S FINANCIAL CO-OPERATIVES TO ESTABLISH A CO-OPERATIVE DEVELOPMENT AND INVESTMENT FUND

Current legislation allows for the Minister of Finance to request all funds sitting in dormant (unclaimed for 10+ years) credit union and caisse populaire accounts upon request. To our knowledge, that request has never been made, meaning that potentially hundreds of thousands of dollars (if not millions) remain on the books of credit unions.

Echoing a similar recommendation made by the Ontario Non-profit Network, the Ontario Co-operative Association recommends that the dormant accounts of Ontario's financial co-operatives (credit unions and caisses populaires) be used to establish a Co-operative Development and Investment Fund, with a goal to seed community investment through grants in the province's co-operatives and non-profit sectors.

The Co-operative Development and Investment Fund would complement any current community investment by credit unions, and provide funds that could be used for capitalization, research and co-operative development — ultimately leading to the creation of stronger and more co-operatives providing meaningful employment within the community. There is an elegant logic to having dormant deposits made originally in a financial co-operative being used to further strengthen and expand the co-operative community, as it would be consistent with the motivations of the original depositor.

**MAKING IT HAPPEN:** This would require minor rewording to section 182 of the Credit Union and Caisses Populaires Act, directing the unclaimed money currently warehoused at credit unions to the Co-operative Development Investment Fund instead of the Finance Minister. These changes could easily be incorporated into other legislative changes currently being contemplated for the Credit Union and Caisses Populaires Act.

There would be minimal cost to the Government. There would be no lost revenue to the Government, and in fact a stronger co-operative sector will generate additional income tax revenue and job growth for the Province.

Having the Co-operative Development Investment Fund managed by the Ontario Co-operative Association or a co-operative sector-led panel would be a time- and cost-effective solution. A model for this type of Fund already exists, and was utilized by the Canadian Co-operative Association and others for ten years through the federal Co-operative Development Initiative. On Co-op was one of the key delivery partners of the CDI program and has extensive experience in overseeing and deploying funds of this nature.

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<sup>&</sup>lt;sup>4</sup> <a href="http://www.canadianworker.coop/funding/cdi">http://www.canadianworker.coop/funding/cdi</a>. CDI has been studied extensively and the outcomes of the project are well documented. Further CDI reports and studies can be obtained from the Ontario Co-operative Association.

### RECOMMENDATION 5: ENHANCE CO-OPERATIVE CAPITALIZATION AND FINANCING

Co-operatives need to access capital and financing to grow and thrive. Unlike shareholder-based corporations however, co-operatives have more difficulty in attaining sufficient levels of capitalization, largely due to the requirement that capital must be provided by the membership. (This is one of the key drivers for legislative changes to modernize the Offering Statement process.)

Ontario is one of the very few jurisdictions in Canada to not address the capitalization, financing and sustainability of co-operatives. An examination should be undertaken by FSCO, MoF and the Ontario co-operative sector of a variety of innovative and practical tools that could be made available to co-operatives (and their investors) to enable them to attract the type and level of investment required for their sustained growth. For example, the participation of outside sources of co-operative financing is generally seen as a powerful mechanism to address issues around capitalization of co-operatives. An exploration of this capitalization tool should include an analysis of the legal and tax implications, and of the potential impact of introducing such a change.

A supportive environment also means an equitable tax treatment for co-operatives. There are currently no tax incentives in Ontario to invest in co-operatives, unlike provinces such as Manitoba. We recommend beginning discussions towards the creation of Ontario co-operative development tax credits, different RRSP rules for investing in co-operatives, and equitable capital gains income tax treatment -- all examples of the types of incentives that must be considered as ways to enhance access to capitalization and financing. Investing in co-operatives in this manner will continue to add employment growth and stability -- and income tax revenue -- to the Ontario economy.

By adopting proven innovations in the financing, incenting and capitalization of co-operatives, the Province will save the time and money of developing its own programs, and be able to select the best of what has already been proven to work across the country. In allowing emerging co-operatives to form, and existing co-operatives to expand, the Government is ensuring the strength, resilience, sustainability and diversity of local and regional economies.

Implementing capitalization and financing solutions and modernizing the *Co-operative Corporations Act* to allow co-operatives to effectively operate in a 21<sup>st</sup> century economy will also reduce the need for introduction of hybrid corporation (dual purpose) legislation in Ontario. Proposed and contemplated revisions to the *CCA* would allow the co-operative business model to meet almost all of the most commonly presented reasons for hybrid legislation. This would eliminate the need for additional, overlapping legislation, oversight and systems.

**MAKING THIS HAPPEN:** A task force should be created, to include representatives from MoF, FSCO, other Ministries as appropriate and the Ontario co-operative sector. This group would investigate programs and create a business case to move this recommendation forward. A summary of provincial capitalization programs and Government support related to co-operatives has already been compiled, complete with best practices from across the country. Some or all of the recommendations could easily be implemented in Ontario for co-operatives, social enterprises and even small business.

### RECOMMENDATION 6: FACILITATE THE CREATION OF A CO-OPERATIVE POLICY UNIT

In Ontario, co-operatives are regulated by the Financial Services Commission of Ontario, an agency of the Ministry of Finance. FSCO is very clear that its mandate extends only to regulation, and not to advocacy, research, promotion or co-operative development. While co-operatives have existed in Canada for more than 170 years, they have a low profile within the Ontario economy and Government policies.

It has been successfully demonstrated at the federal level that a small team of dedicated and knowledgeable co-operative advocates housed within Government can increase the use and effectiveness of the co-operative model, facilitate research, networking and co-operative development, and demonstrate its benefits to Government Ministries, agencies and departments. Initiatives that affect regions across the province -- such as transitioning retiring small businesses to the employees through worker co-ops or to the community through multi-stakeholder co-operatives -- can be effectively initiated or co-ordinated at this level.

MAKING THIS HAPPEN: The Ontario Co-operative Association recommends that the Ontario Government follow the lead of Industry Canada and create a home for co-operatives of all types within the Ontario Government, preferably within the Ministry of Economic Development, Employment and Infrastructure. This could be a co-operative policy unit, supporting "share capital" and "non-share capital" co-operatives from any co-op sector, or could have a broader mandate to also advocate for the needs of the social enterprise.

Responsibility for co-operatives is well-aligned with MEDEI's mandate to help make Ontario more productive and competitive and improve the province's economic and social well-being.

An in-progress Open For Business (OFB) initiative for the social enterprise sector (in which the Ontario Co-operative Association and many socially-focussed co-ops participated) has short listed this item for future discussion. We urge the Government to continue to support the reasons behind the creation of the social enterprise OFB, and to ensure that the social enterprise OFB does not remain on hiatus indefinitely.

#### **IN SUMMARY**

The Ontario co-operative movement has a long and proud history of serving members and communities. A modest level of recognition and support by the Government would enable co-operatives to effectively compete in the 21st century marketplace. The emergence of new co-operatives and the strengthening of existing co-operatives will benefit Ontario communities and support the Government's economic, social and environmental policies.

Additionally, co-operatives (individually and through sector federations and associations such as the Ontario Co-operative Association) are poised to partner with Government to provide cost-effective, local services in a wide variety of social, environmental economic sectors. This will further leverage Government resources.

Minister, it is the recommendation of the Ontario Co-operative Association that the provincial Government -- and primarily the Ministry of Finance --include a number of initiatives to support the co-operative sector in its budget documents and policy papers, and direct other Ministries that interact with co-operatives to also foster co-operative supportive environments.

We also urge you to add the Ontario Co-operative Association and co-operative sector federations to the list of organizations your Ministry consults with on a regular basis.

We respectfully submit these recommendations to you for consideration, and would be pleased to meet with you and your representatives to further explore the ways that co-operatives can build a better Ontario, by strengthening local businesses and communities.

Co-operatively yours,

Mark Ventry
Executive Director,

Ontario Co-operative Association

Email: <a href="myentry@ontario.coop">myentry@ontario.coop</a> Telephone: (519) 763-8271 ext. 30



### Appendix 1



#### **CO-OPERATIVES ARE IMPORTANT TO THE ONTARIO ECONOMY**

Ontario's 1,300 co-operative business enterprises should play a central role in Ontario in building a more resilient and equitable economy that is not only economically sustainable but socially just.

Co-operatives operate in almost every sector of the Ontario economy. To further leverage Government resources, they are poised to work with the Province to provide cost-effective, local services in a wide variety of social, economic and environmental areas including finance (banking and insurance), transportation, social services, renewable energy, resource management, telecommunications, retail services, job retention, succession planning, local community economic development and child care. As such, these legally-incorporated, community-based businesses should be included in your policy discussions.

Co-operatives are community-focused businesses that balance people, planet and profit. Co-ops are democratic and value-based, formed to respond to economic or other challenges, seize local opportunities and meet the needs of their member-owners and their communities. As a trusted place to do business, co-operatives are chosen by more than 1 in 7 people worldwide. Twice as many co-operatives remain in operation after ten years as other types of business enterprise.

Co-operatives can be **large for-profit businesses** (think of The Co-operators, Hensall District Co-operatives or Mountain Equipment Co-op), **medium-sized operations** (think of Mornington Telecommunications Co-op, Ag Energy Co-operative or any of Ontario's 100+credit unions), or **small businesses** (child care co-ops, Sleepless Goat Cafe in Kingston, Bee Keepers Co-op in Toronto, or Aron Theatre in Campbellford).

There are 1,300 co-operatives, credit unions and caisse populaires in Ontario, operating 1,900 locations in 400 communities. Ontario's non-financial co-ops have more than \$30 billion in assets and \$2.1 billion in revenue, with more than 15,500 employees. The sector is owned by more than 1.4 million members, and is supported by 49,000 volunteers. The co-operative business model is almost 170 years old and is utilized in 100 countries.

<sup>i</sup>The distinctiveness of Ontario's co-operative enterprises is reflected in the definition provided in Section 1 of the Co-operative Corporations Act, and summarized below:

- "co-operative" means a corporation carrying on an enterprise on a co-operative basis and to which this Act applies
- "co-operative basis" means organized, operated and administered upon the following principles and methods,
  - (a) each member or delegate has only one vote,
  - (b) no member or delegate may vote by proxy,
  - (c) interest on loan capital and dividends on share capital are limited to a percentage fixed by this Act or the articles of incorporation, and
  - (d) the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, after providing for such reasonable reserves and interest or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members ...