



A SUMMARY OF KEY RECOMMENDATIONS FOR LEGISLATIVE CHANGES TO THE *CO-OPERATIVE CORPORATIONS ACT* AND REGULATION 178

The recommendations below were discussed and approved to move forward on by the Ontario co-operative sector's Regulatory Affairs Committee. Further details on the recommendations or background information below can be provided upon request.

1. 50% RULE (i.e. conducting 50% or more business with members)

– LEGISLATIVE CHANGE – CO-OPERATIVE CORPORATIONS ACT, Section [144 \(1\)](#)

BACKGROUND:

The *Co-operative Corporations Act* (CCA) requires that a co-operative conduct 50 percent or more of its business with the members of that co-operative.

The 50% Rule is a barrier to co-operative incorporation and sustainable growth - especially for retail co-ops - and is an arbitrary value that bears no relevance to the co-op principles. Ontario and Quebec are the only two provinces with this type of limit; the other Canadian jurisdictions (including federal co-operatives) generally rely on wording similar to what is already contained in the CCA regarding carrying on business in a 'co-operative manner.'

Compliance is cumbersome to monitor and manage, and incurs additional auditing costs for both the government and co-operatives. "Co-operative" and "co-operative basis" is already defined in the Interpretation section 1(1) of the CCA.

RECOMMENDATION:

To remove this provision entirely from the *Co-operative Corporations Act*.

If the proposed change was made to the CCA, co-operatives could then have the option to determine their own percentage of business to members (from 0-100%), and include that percentage in its by-laws or policies.

A sector position paper on the 50% Rule was submitted to FSCO and the Ministry of Finance in March, 2015.

2. OFFERING STATEMENT EXEMPTION REQUIREMENTS

– REGULATORY CHANGES: [REGULATION 178](#), section 11.1 and 12

2(a) Exemption Limits (section 12)

BACKGROUND:

Co-operatives raise capital for their development and operations by offering to sell securities to members and non-members. Securities include both shares issued by the co-op as well as other instruments like bonds or debentures. These securities are not traded on the open market.

Membership shares are available only to those wishing to become members of the co-op. Preference shares are available for purchase by both members and non-members (i.e. outside investors), however the ownership of preference shares does not mean the holder has the right to vote in the co-op.

The regulatory process in Ontario for co-op securities is unique in Canada. Called an “offering statement,” it is designed to allow prospective purchasers to make informed investment decisions while also ensuring that co-ops can raise their capital from their members and other supporters without undue cost. When an exemption from offering statement requirements is available, a co-op can raise funds from the sale of securities free of regulation and, obviously, with less burden on the co-operative.

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.

There have been no changes to limits or exemptions in the Act and Regulations for many years resulting in an erosion of the values due to inflation (\$1,000 in 1992 dollars = \$592 in 2014 dollars). The Act and Regulations do not include provisions for inflationary increases or periodic review of the legislation.

Beyond inflation erosion, the current limits are inadequate for co-operatives to prudently and efficiently raise the capital they need in order to capitalize their businesses. The recommendation is to increase these exemption limits by a minimum of **five**.

RECOMMENDATION:

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 \$5,000 per year and \$50,000 in total.
- All securities issued to members are not more than \$1,000,000 of issued securities.

OFFERING STATEMENT EXEMPTIONS (CONTINUED)

2(b) Threshold Number of Members (section 11.1)

BACKGROUND:

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.” Co-ops that create offerings that would result in fewer than 35 security holders do not have to prepare an Offering Statement to sell securities.

RECOMMENDATION:

To be consistent with other legislation, an increase is being sought to raise the prescribed number to 50.

AUDITOR GENERAL’S 2014 REPORT

On December 9, 2014, the Auditor General, tabled her report in the Ontario Legislature.

A number of the recommendations in Chapter 3, Section 3.03 of the Report will impact the co-operative sector, particularly in relation to the review and approval of Offering Statements.

We request that FSCO and the Ministry of Finance include the Ontario Co-operative Association in its discussions and plans from the very beginning of this process, particularly as they meet with other stakeholders, agencies or departments, and evaluate the implications and potential actions resulting from the Auditor General’s Report.

We look forward to consulting with FSCO and MoF to add additional context to the background information in the Report, and then to evaluate these recommendations in an open and transparent manner.

We wish to work with government to implement realistic and practical solutions that provide member and co-operative investor protection – and best meet the needs of both FSCO and the Ontario co-operative community.

2(c) OTHER CHANGES TO OFFERING STATEMENTS

BACKGROUND:

We are 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 when the minor changes do not affect materiality and the offering statement is otherwise exactly the same. The definition of Material Change needs further clarification. The diverse co-operative sector includes both large and small co-operatives, and a “one-size-fits-all” threshold may not be appropriate.

(1) Changes to the definition of Material Change, which is not currently defined in the Regulations; (2) To streamline the Offering Statement renewal process when minor changes to not affect materiality; and (3) To create an exemption from offering statement requirements for accredited investors similar to that contained in Ontario’s securities law.

RECOMMENDATION:

Recommendations for the Offering Statement changes in section 2(c) are currently being determined by the co-op sector. We welcome the opportunity to discuss the threshold(s) for material change with the Ministry of Finance and FSCO.

Discussions and sector recommendations for action relating to Offering Statements have taking place since at least 2009. A 2015 sector position paper on Offering Statements is currently being drafted.

3. CHANGES TO AUDIT EXEMPTIONS

– LEGISLATIVE CHANGE: -ACT, Section [123 \(2\)](#)

– REGULATORY CHANGE: [REGULATION 178](#), section 13.1

BACKGROUND:

Audits are a method of ensuring accountability and transparency on the part of the management for the financial affairs of a co-operative. Members of co-operatives, FSCO, as well as the general public have an interest in ensuring the integrity and financial stability of co-operatives.

However, the cost and administrative burden associated with undergoing an annual audit can be considerable, especially for co-operatives which have not issued securities and with low levels of capital, assets or revenue. The Act must be amended to allow for an improved balancing of the costs of an audit and the benefits received by a co-operative and its stakeholders.

The exemptions are currently described as,
- “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...”

- “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.”

RECOMMENDATION:

It is our recommendation that the Act be amended to:

- 1) Permit the membership of a co-operative, irrespective of the size of its membership, capital or revenue, on an annual basis, to exempt the co-operative from the requirement of appointing an auditor and having the co-operative’s financial statements reviewed to an audit standard by approval of a special resolution of the membership; and
- 2) Provide safeguards to protect members/investors who have purchased the securities of a co-operative which distributes securities of significant value by requiring that all such co-operatives annually appoint an auditor and make that auditor’s report available to the membership and investors.

These recommendations will generally benefit newly-formed co-operatives and co-ops with low levels of capital, assets or revenue, while safeguarding members and investors in the co-operative. These recommendations provide parity with other Ontario legislation, and co-operative legislation federally and in other provinces.

These recommendations were included in a sector position paper submitted to FSCO and the Ministry of Finance in October, 2014.

Regarding Dual Purpose (“hybrid”) Corporations

It is the recommendation of the joint Ontario Co-operative Sector Government Relations Committee (which includes representatives from both On Co-op and CCO, and representing the province’s 1,300 co-operatives) that the Province not proceed with hybrid corporation legislation at this time, and that the Province, instead, update and modify the *Co-operative Corporations Act* (CCA) and its Regulations.

This will permit a cost-effective and “shovel ready” approach to meeting the goals of hybrid legislation. We further recommend that the Province revisit the need for hybrid legislation and the resulting regulatory framework after changes have been made to the CCA and the *Ontario Not-For-Profit Corporations Act* comes into force.

4. QUORUM - CLARIFICATION OF WORDING

- LEGISLATIVE CHANGE: ACT Section [93](#)

BACKGROUND:

On Co-op has 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.

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 Regulatory Affairs Committee has submitted revised wording.

RECOMMENDATION:

It is our recommendation that the language in the Act be changed to:

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.

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.

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.

The updated wording was submitted to FSCO in May 2010. A revised version correcting section numbers was submitted again in September 2012 and April 2014.

5. 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.”

RECOMMENDATION:

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.

This recommendation was made to FSCO in 2010 and appears on our ongoing list of recommended changes to the Act, however a sector position paper has not been submitted.

6. ITEMS CURRENTLY ON HOLD

The following two items are dependent on the outcome of changes to the 50% Rule and will be revisited once that issue has been resolved.

6a) DEEMED BUSINESS

- LEGISLATIVE CHANGE: ACT Section [144 \(4\)](#)

BACKGROUND:

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.”

6b) BUSINESS WITH SUBSIDIARIES

- LEGISLATIVE CHANGE: ACT Sections **32 (1), 49(3), 55 and 144**

BACKGROUND:

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.**