CCA Legislative Review
c/o Financial Services Policy Division
Ministry of Finance
95 Grosvenor Street, Frost Building North, 4th Floor
Toronto, ON
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Submission to the Consultation on the 2018 Legislative Review of the Co-operative Corporations Act

Attention: Jessica Harper

Improving the business environment for co-ops: We want to hear about the benefits of the co-op business model and how the government can make it easier for co-ops to do business in Ontario.

Co-operatives are community-focused businesses that balance the needs of people, planet and profit. They are formed to seize local opportunities or respond to local challenges. Co-operatives are democratic, values-based and member focused. 2 out of 3 Canadians agree that co-operatives are a trusted place to do business. As a result, twice as many co-operatives remain in operation after 10 years as other types of business enterprise.

Co-operative businesses in Ontario, including financial co-operatives, create $6 billion in economic value for the province. Our co-operatives employ 57,000 people full time and more than 3 million people are the members of our businesses. There are 49,000 volunteers within the co-operative sector, 10,000 of which are board members.

With a modernization of the Co-operative Corporations Act (CCA), our success will most significantly be measured in economic impact. We estimate, based on the impact modernization had in other provinces, that we will see 10-15% annual growth in our sector. This growth will create 5,000 new jobs and $250 million in revenue per year in Ontario. Success will also be measured in access to new markets. The changes to the CCA will allow larger co-operatives to grow in Ontario and also into national and international markets.

The government can reduce red tape through online access to co-operative incorporation under Service Ontario, improved connection between business development programming under the Ministry of Economic Development, Job Creation and Trade and the co-operative business model option, improved business supports within communities where the co-operative model is the best fit for the business plan and a general increase in co-operative knowledge within government departments that service the needs of businesses in Ontario.

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Most importantly, through the process of reviewing the CCA, the government can address our sector's most immediate needs – elimination of the 50% rule, changes to the audit requirements and a clear, modernized offering statement process.

Submission Overview:

The Ontario Co-operative Association (OCA) will answer the consultation questions in the following document, including, where necessary, references to appendices with additional research and background information. However, we have structured the document in three parts:

1. The three most crucial needs are addressed first;
2. Followed by the areas where change can be made in the shorter term (18-24 months);
3. Then finally addressing the questions that require significant consideration and an additional consultation process with our sector to answer.

Part 1: The Three Most Critical Needs of the Co-operative Sector

What are the top three priorities that should be considered as part of the CCA legislative review?

1. *Elimination of the 50% Rule*
2. *We request audit requirement parity with co-operatives in other Canadian jurisdictions*
3. *Moving the Offering Statement process to the Ministry of Government and Consumer Services and increasing Offering Statement limits*

The "50 per cent rule": This rule limits the amount of business that co-ops are permitted to do with non-members to 50 per cent. Provide your views on whether this rule should be changed and whether co-ops and their members should be allowed to set their own rules.

What are the core elements that define a co-op or the concept of operating on a "co-operative basis"?

Should these elements be legislative requirements, or could they be left to a co-op's articles or by-laws?

Should the restrictions in the CCA on how much business a co-op can do with non-members (i.e., the "50 per cent rule") be maintained? Or should co-ops be permitted to determine thresholds for non-member business as part of their articles, by-laws, or other incorporation or governance documents?

Are there any specific types of co-ops (e.g., housing or other) for which the 50 per cent rule is of particular importance, relative to other types of co-ops?

Do you feel that the Minister's authority to convert a co-op to another type of business for non-compliance with the 50 per cent rule is an appropriate enforcement mechanism? Is there a better alternative for enforcement? Please explain.

If there is no 50% rule, there is no requirement for the Minister to act on non-compliance.

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The co-operative sector is requesting the ***elimination of the requirement to do 50% of business with members*** *and in its place allow the members of co-operatives to set their own bylaws determining the percentage of business with members. However, both the co-operative housing sector and the worker co-operative sector have requirements related to business with members that are outside of the scope of this response. Both sectors will respond with a separate document to address the answers to this question and OCA is in support of their individual requirements.*

An extensive province-wide consultation was undertaken by OCA in 2011, and consensus was to recommend total abolishment of this provision for all co-operatives with the exception of housing and worker co-operatives. Based on the information received, the decision to recommend to FSCO to remove the 50% rule was approved by the OCA board of directors and confirmed by the OCA 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 position paper on the 50% rule from 2011 has been included for reference as an appendix to this document.

The change to the requirement to do 50 percent of business with members will not compromise the "co-operativeness" of our businesses because at their root, co-operatives are differentiated because they are democratically controlled by members that all have an equal vote. There are 7 overarching, internationally recognized co-operative principles (reproduced, below, in this submission) that define a co-operative business, and the CCA already defines a co-operative by reference to carrying on an enterprise on a "co-operative basis" (also a defined term in the CCA). Neither the international co-operative principles nor the expression "co-operative basis" in the CCA includes a requirement to do business with 50% of members. OCA recommends that the members of a co-operative be able to choose the percentage of business with the members, with the percentage to be included in the co-operative's bylaws. Co-operatives operate in a competitive environment with other corporate types not constrained by a business requirement rule. ***The elimination of the 50% rule will level the playing field for co-operative businesses.***

Audit requirements: Tell us whether co-op audit requirements and exemptions from such requirements should be the same as or different from those in place for other types of business corporations in Ontario.

Should co-ops that meet certain criteria be permitted to provide their members with alternative forms of assurance other than a full audit (e.g., a review engagement)? What should those criteria be?

What changes, if any, should be made to the audit requirements in the CCA? For example, are the existing exemption thresholds for members, capital, assets and gross revenue or sales reasonable, or should they be changed? For each recommended change, please provide your rationale.

Should co-ops be eligible to qualify for exemptions from the audit provisions if they only meet one, or a subset, of the criteria? Which audit exemption criterion is the most difficult to meet for co-ops?

Should audit requirements in the CCA be aligned with those in either the ONCA or the OBCA?

Should separate treatment be given to non-share capital co-ops versus share capital co-ops with respect to audit requirements?

Should co-ops that meet certain criteria be permitted to provide their members with alternative forms of assurance other than a full audit (e.g., a review engagement)? What should those criteria be?

Is a special resolution (i.e., a resolution confirmed by two-thirds of the members of the co-op) adequate for co-ops that have between 15 and 51 members, when deciding to grant an exemption from the audit requirement? Should all members be required to consent in writing to an audit exemption similar to the OBCA and CA?

Audits are a method of ensuring accountability and transparency on the part of the management for the financial affairs of a co-operative. However, the cost and administrative burden associated with undergoing an annual audit can be considerable, especially for co-operatives with low levels of capital, assets or revenue.

Based on our review, the OCA recommends that Sections 123 and 124 of the Co-operative Corporations Act, be harmonized with Section 255(1) and (2) of the Canada Cooperatives Act. This section of the Canada Cooperatives Act, like similar co-operative legislation in other Canadian jurisdictions, has been in place for many years and there are no known instances of fraud or member risk as a result of this section.

(1) ***Therefore, OCA recommends that a co-operative be exempt, in respect of a financial year, from sections 124 and 125, subsections 126 (1) and (2), section 127, clause 128 (1) (b) and subsection 128 (3) of the Co-operative Corporations Act if,***

- *the co-operative is not required to have filed an offering statement under subsection 34 (1);*
- *no government grant or subsidy that the co-operative receives during the financial year has a condition requiring the co-operative to be audited; and*
- *a special resolution not to appoint an auditor is confirmed at the most recent annual meeting before the beginning of the financial year.*

Non-profit housing co-operatives
(2) Subsection (1) does not apply to a non-profit housing co-operative in respect of a financial year if at the end of the financial year the co-operative has more than $50,000 in capital or more than $50,000 in assets.

Interpretation of capital
(3) For the purposes of this section, capital shall be computed by adding together the sums represented by the amounts of,

- *member and patronage loans made to the co-operative that are outstanding;*
- *unsecured long-term debt; and*
- *surplus, as shown on the financial statement of the co-operative for the preceding year.*

A position paper on the Audit Rules and a comparison matrix with other Canadian jurisdictions was prepared by OCA and submitted to government in 2014. This paper and the comparison matrix have been included as an appendix to our submission to provide further background.

Raising capital: We want to hear your views on whether there should continue to be a different regime for co-ops that wish to raise capital than the regime in place under the *Securities Act* for other types of businesses in Ontario, which currently provides various exemptions from prospectus requirements.

Should there continue to be a separate capital-raising framework for co-ops, or should co-ops be subject to the same Ontario securities laws to which other business corporations in Ontario are subject, including the exempt market framework?

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 called an "Offering Statement," and is designed to provide up-to-date information so that prospective investors have the right information to make an informed decision while also ensuring that co-ops can raise their capital from their members and other supporters without undue cost.

In addition to the Offering Statement process, co-operatives in Ontario can also choose to comply with the Act by issuing a Prospectus under the Ontario Securities Act. However, the Ontario legislature recognized the unique nature of co-operatives by providing the Offering Statement exception. There are no compelling reasons why the decision of the Ontario legislature should change.

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; or*
- *The number of security holders is below 35.*

Notes:
OCA recognizes there are 13 offering statement exemptions within Act, we are only recommending updates to three (see below).

There have been no changes to limits or exemptions in the Act and Regulations for at least 25 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. OCA recommends government 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.*
- *Increase the prescribed number of security holders from 35 to 50.*

Offering statements should provide up-to-date information so that prospective investors have the right information to make an informed decision. That should mean, as the fortunes of the co-operative change, the offering statement can be amended to reflect that change, if it is material. OCA is recommending flexibility to issue Offering Statement updates at any time to ensure full true and plain disclosure of all material facts is maintained. We need the ability to revise the terms of the securities.

OCA is recommending an increase to the length of time an offering statement is open, from 1 year to 5 years, when there is no material change to the offering statement. This will reduce the administrative requirements of government and co-operatives, and improve efficiencies in the offering statement processing.

OCA recommends, that to ensure finance records remain up to date, co-operatives submit an addendum each year including financial statements and a summary of any material changes to the Offering Statement.

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, OCA recommends an exemption from offering statement required for accredited investors.

Oversight of the offering statement process should move with the rest of the Act to the Ministry of Government and Consumer Services. It is important to the co-operative sector to maintain offering statement oversight. The receipt is important to our investors.

***Oversight does not belong under the Ontario Securities Commission.** The co-operative offering statement process is specifically designed for the unique oversight needs of a much lower capital need and a smaller, more engaged group of investors. The cost of a full prospectus is significantly beyond the reach of most co-operative corporations. Moving to a full prospectus under the Ontario Securities Commission (OSC) would jeopardize the future of the entire co-operative sector through over-reaching reporting requirements and serious financial harm.*

Should the CCA's private issuer limit of security holders be increased from 35 to 50, to align with the private issuer exemption available to other corporations under the OSA?

Yes

Are there any other aspects of the current offering statement regime that should be considered as part of the review, including, for example, the definition of material change or continuous disclosure requirements, or the type of securities that can be sold?

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."

OCA is recommending an increase to these criteria of 'material change'.

If the government were to maintain a separate capital-raising framework for co-ops, should the process for reviewing offering statements continue to be subsidized by the government or should the fee be determined on a cost-recovery basis, and based on factors such as the amount, type, or complexity of the offering? If the former, please explain why subsidization should continue.

The sector is open to a discussion about fees.

Within the fee discussion, there are opportunities to consider ways to reduce the administrative burden on the government. These include increasing the number of years an offering statement can be open, from 1 year to 5 years. Work can also be done to develop a template approach to reduce internal review time and find ways to reduce cost so there is not too high a cost burden on co-operatives.

OCA believes that a more streamlined, economical and efficient process will lead to more new co-operative businesses in Ontario and quicker growth of existing co-operatives.

Administration and oversight: Share your experiences working with the government and your views on which government body should be responsible for administering the CCA.

OCA recommends the CCA be administered by the Ministry of Government and Consumer Services.

Oversight of the offering statement process should move with the rest of the Act to the Ministry of Government and Consumer Services. ***Oversight does not belong under the Ontario Securities Commission.*** *The co-operative offering statement process is specifically designed for the unique oversight needs of a much lower capital need and a smaller, more engaged group of investors. The cost of a full prospectus is significantly beyond the reach of most co-operative corporations.. Moving to a full prospectus under the OSC would jeopardize the future of the entire co-operative sector and would cause serious financial harm.*

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Part 2: Shorter Term Areas of Change

The following areas of change can be addressed in an 18-24 month timeframe. Our sector sees these areas as opportunities for working collaboratively with government to improve the sector for our co-operative members.

In what ways do you currently interact with government and what do you think could be improved with respect to those interactions?

OCA has met with FSCO staff and Ministry of Finance twice per year for many years and worked with the social enterprise branch of the Ministry of Economic Development, Job Creation and Trade on a regular basis. The co-operative sector has also developed an All Party Co-operative Caucus of MPPs and has met them on a semi regular basis to orient them to the benefits of co-operatives in Ontario and address co-operative issues.

Suggested improvements would include:

- *The move of incorporations to Service Ontario is excellent but there is a need for awareness training within the staff*
- *Access to an up to date, accurate registry of co-operative incorporations with more description of the type of co-operative and contact information*
- *Designated contacts within the Ministry of Economic Development, Job Creation and Trade to assist the development of more co-operatives*
- *Training/orientation for all Ministry staff that deal with co-operatives*
- *On various government forms and applications there should be a consistent reference to all business models i.e. There are 3 corporate models – private business corporations (OBCA), not for profit corporations (ONCA) and Co-operative Corporations (CCA)*

Should the governance framework be the same for co-ops with or without share capital?

Yes, OCA does not recommend that the corporate statutory regime applicable to without share capital co-operatives be under another Act (i.e. ONCA). It is important that the entire co-operative sector remain together under the CCA.

All co-operatives carry on business a co-operative basis and, as such, have a commonality of interest that would not be present if share and non-share capital co-operatives were under a separate Act from one another.

Is the CCA sufficiently clear regarding the rights of co-op members? If not, please provide examples of provisions that should be clarified.

OCA does not recommend applying the "oppression remedies" within ONCA to the CCA.

With respect to the rights of co-operative members, the Act is quite comprehensive. The rights take into consideration the needs of the co-operative model and OCA has no recommended changes or clarifications.

In determining an appropriate administrative and oversight framework for co-ops, what considerations, if any, need to be given to non-profit housing co-ops, worker co-ops and other specific types of co-ops?

There are currently considerations given to each of these groups within the co-operative sector and within their own individual government oversight.

OCA supports the submissions made to the Ministry of Finance on behalf of these sectors by CHF Canada and the Canadian Worker Co-op Federation.

What are your views on requirements regarding the quorum of directors?

Is the CCA sufficiently clear in this respect? Please provide examples of provisions that should be clarified.

OCA proposed to Ministry of Finance 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 a co-operative's by-laws. However, many co-operatives 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, OCA recommends the following wording:

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.

Is there merit in aligning the quorum requirements under the CCA with either the OBCA or ONCA? Why or why not?

OCA recommends the changes outlined in the previous question.

Does the requirement for a special resolution by co-op members to enact by-laws and approve other decisions of co-op boards hinder the activities of a co-op?

A co-operative is a democratic corporation that requires full participation of the membership for major decision-making that will impact the course of the business. This democratic requirement may slow activities of the co-operative but without the requirement the business will not be following co-operative principle 2 – democratic member control.

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Co-operatives are a *different* kind of business model that are driven by people, planet and profit. The Ontario Co-operative Association (OCA) supports, develops, educates and advocates for Ontario's 1,500+ co-operative businesses.

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Does the CCA need to explicitly recognize federations or leagues? If so, what changes to the CCA should be contemplated to ensure that members of a federation (i.e., co-operative enterprise members) are represented?

> *The CCA already oversees federations if they are incorporated as a co-operative. If they are not a co-operative and incorporated under another Act they are already under government oversight. If the federation or league operates as an association, co-operatives are free to join and participate as any other business or person would participate in any other association – OCA does not believe additional oversight is required under the CCA.*

Is the CCA definition of conducting affairs on a "co-operative basis" still relevant to co-ops today?

> *OCA believes that carrying on business on a co-operative basis is fundamental to being a co-operative and is therefore quite relevant to co-operatives today. This is particularly the case with the elimination of the 50% rule. The test of being a co-operative should be whether the business is in compliance with this definition, not whether 50% of business is done with members.*

If not, what should be changed or included in this definition, e.g., should the act require a co-op to provide education to its members on the principles and techniques of cooperative enterprise, in accordance with the fifth ICA principle (Education, Training and Information)?

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Additional Comment:

The CCA contains sections and language that are out of date. OCA recommends a review of the Act, over the next 18-24 months, by a sector committee of experts with the goal of updating this language and addressing the references within the Act that are out of date.

OCA has included an appendix titled "Additional Changes to the Co-operative Act" that outline detailed changes we are requesting in the next 18-24 months not included within this document.

Other Issues:

The government is interested in understanding how potential proposed amendments to the CCA could impact the various types of co-ops defined in the CCA (e.g., non-profit housing co-ops, worker co-ops, renewable energy co-ops, multi-stakeholder and direct-charge co-ops). In addition, in looking at other provinces, there is an emergence of newer forms of co-ops being regulated in Western Canada, commonly referred to as new-generation co-ops (NGCs). NGCs tend to be agriculture-based, and their business structures tend to support producers by pooling sufficient capital to jointly own and operate processing as well as marketing enterprises.

The government is interested in hearing the views of the members and directors of these types of co-ops in order to inform decisions regarding the overall administration of the CCA and whether there are certain provisions of the CCA that could be clarified to ensure that they apply to various types of co-ops.

In determining an appropriate administrative and oversight framework for co-ops, what considerations, if any, need to be given to non-profit housing co-ops, worker co-ops and other specific types of co-ops?

OCA is in support of the submissions made to the Ministry of Finance by the following organizations on behalf of housing co-operatives, worker co-operatives, investment co-operatives and French language co-operatives:

Co-operative Housing Federation of Canada, Ontario Region
Canadian Worker Co-op Federation
Union SD Co-operative
Conseil de la cooperation de l'Ontario

Are there provisions of the CCA that should be clarified with respect to worker co-ops and non-profit housing co-ops?

See above

Part 3: Co-operative Governance:

Thank you for the opportunity to comment on the Co-operative Corporations Act consultations. The questions about co-operative governance and the comparison to other Acts listed below are interesting and require much consideration and sectoral consultation.

A deadline of January 31, 2019 is not sufficient time to complete the internal discussions, and sector consultations on such a comprehensive list of governance related questions.

OCA requests that government include in the updated language of the CCA that the Act be reviewed every 5 years. We further request that these questions listed below about co-operative governance and alignment with other Acts be tabled until the next Act review in 2024. This will allow our organization time to fully consider the questions and develop a response that can be reviewed and commented on by the sector through a full consultation. It will also allow for time to consult with representatives from the Ontario Not-for-Profit Network and other business associations on the governance items highlighted in this consultation document.

If a five-year timeline is not possible, OCA requests that the government allow sufficient time for a fulsome review of the list of questions below with the entire co-operative sector. It is important that as the representatives of the co-operative sector in Ontario, OCA and CCO be given an opportunity to participate in the consultation process. In addition, OCA would be happy to assist the government to design and carry out a full sectoral consultation across the province to ensure broad participation.

- **Co-op governance:** Tell us how co-ops could be better enabled to self-govern and possible ways to reduce red tape in the sector.
- Do you consider the existing governance framework in the CCA to be reflective of today's co-ops? Should the governance framework be the same for co-ops with or without share capital?
- What role should co-op boards play in ensuring legislative requirements are followed? Should government still play a role in enforcing whether CCA requirements are met?
- Should special circumstances exist under which directors would be able to enact specific by-laws by directors' resolution, without seeking the approval of members? Under what circumstances do you see that happening?

- The government is interested in obtaining views from co-ops, their members and other interested parties on whether the CCA should be amended to place responsibility on co-ops to ensure that their articles and other documents conform to law and adopt an "as of right" approach similar to the OBCA, or whether there are benefits to maintaining the existing "conform to law" approach.

- What role should co-op boards play in ensuring legislative requirements are followed? Should government still play a role in enforcing whether CCA requirements are met?
- In seeking to align the CCA with other business law statutes, are there requirements for co-ops that should be aligned with similar requirements for other types of business corporations, such as, but not limited to:

- Corporate powers, including borrowing powers
- Directors, officers and insiders
- Records
- Investigations
- Enforcement of legislative rights and duties
- Members' rights and responsibilities

Should the CCA adopt an "as of right" approach to incorporation?

Are there any other areas where co-ops can self-regulate more efficiently and effectively?

- Do you consider the existing governance framework in the CCA to be reflective of today's co-ops? Should the governance framework be the same for co-ops with or without share capital?
- Do you think it would be preferable to adopt an enabling approach with respect to co-op governance in the CCA, similar to the other business law statutes, such that by-laws would never need to be filed with the government?
- Should standard organizational by-laws apply to co-ops, if none are passed by the directors or approved by the members?
- Are there any other co-op board governance issues that should be examined as part of this review? If so, please elaborate.
- Should the requirements for duties and qualifications of directors be aligned with those in another business statute (e.g., the ONCA)? Would there be merit in aligning the board residency requirements in the CCA with those in other business statutes? Why or why not?

What other changes (if any) could be made to address co-op governance?

Are there elements of the CCA in relation to the rights and responsibilities of directors, including issues relating to joint and several liability for directors that should be considered as part of this review?

- Should special circumstances exist under which directors would be able to enact specific by-laws by directors' resolution, without seeking the approval of members? Under what circumstances do you see that happening
- Does the CCA adequately enable co-op members' participation in decision-making while setting out remedies that members could use if they were not satisfied with how the affairs of a co-op were conducted, or if disputes arise?
- Does the definition of deemed business under the CCA sufficiently account for all relevant business activities, including those of marketing boards and business with subsidiaries?

Final Thoughts:

What is your vision for co-ops in Ontario?

OCA sees a future in Ontario where co-operatives contribute to the sustainable development and growth of our communities, and to the overall social, economic and environmental well-being of the province.

Co-operatives follow 7 core principles recognized internationally by the entire co-operative movement.

1 **Voluntary and Open Membership**
2 **Democratic Member Control**
3 **Member Economic Participation**
4 **Autonomy and Independence**
5 **Education, Training, and Information**
6 **Cooperation among Cooperatives**
7 **Concern for Community**

These principles are a large part of the reason why twice as many co-operative businesses remain in operation after 10 years as other types of business enterprise. The principles are why more than 1 in 7 people worldwide are members of co-operatives. We believe people in Ontario are looking for businesses with strong principles that can be trusted to do business on their behalf for the benefit of customers, members and local communities in Ontario.

Co-operatives enable people to have ownership in the products or services they need, create jobs and contribute to sustainability of the communities they serve.

Under the present economic system, there are many community needs that the private sector cannot or will not provide services or solutions to solve as there is not "sufficient profit" to justify their involvement.

What are the benefits of the co-op model, compared to other business models?

- *Co-operatives keep jobs in communities and are member owned so loyalty to community is stronger as members shop or work locally*
- *The co-operative business model combines the best of small business ownership (local wealth creation, reflects community interests) and incorporation (governance, potential for longevity and limited liability).*
- *The co-operative model is the only business model that provides a governance model where every voice around the table is equal.*
- *All members have one vote. This differs from an investor-driven shareholder group where influence is based on number of shares owned.*
- *Profit distribution – especially for consumer co-ops, like gas stations or grocery stores – is often based on shareholder or membership use of the service or product the business delivers. We call this patronage distribution.*
- *https://coopcreator.ca/isl/uploads/2018/01/Business-model-comparison.pdf*

- *Employee Engagement is stronger in worker co-ops because as member/owners they "own a piece of the pie" and have input into how decisions are made.*
- *The seven International Principles provide a higher standard for performance typically summarized as the Triple Bottom Line rather than just the focus solely on profit. For example when Social Enterprises do not incorporate as co-operatives they risk losing their social purpose when the demands of shareholders or leadership change.*

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Audit Exemption Conditions and the Ontario Co-operative Corporations Act

A position paper submitted by the
Ontario Co-operative Sector Regulatory Affairs Committee
to the Financial Services Policy Unit, Ontario Ministry of Finance

October 31, 2014

The Ontario Co-operative Sector Regulatory Affairs Committee (the "Committee"), representing the interest of Ontario co-operatives, recommends a change to the conditions that a co-operative must meet, pursuant to section 123 of the *Co-operative Corporations Act* (the "CCA"), in order to be exempt from the annual audit requirement.

The purpose of the Committee's recommendation is to empower the memberships of co-operatives of all sizes to assess, on an annual basis and subject to certain restrictions, when engaging an external auditor benefits their co-operatives. The Committee's recommendation provides a more rational treatment of co-operatives in the 21st century marketplace, and aims to establish parity for co-operatives subject to the CCA with co-operatives subject to, respectively, the *Canada Cooperatives Act* and the provincial co-operative corporations statutes of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Prince Edward Island.

Specifically, the Committee recommends that the CCA 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.

Empowering Members

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, the Financial Services Commission of Ontario (FSCO, the regulator of co-operatives), 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 with low levels of capital, assets or revenue. The CCA 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 co-operative childcare sector, one of Ontario's largest co-operative sectors, provides a good example of the need for change. Many child care co-operatives have in excess of 50 members, meaning that the CCA mandates that these organizations engage an external auditor and conduct, annually, a review of financial statements to an audit standard. One GTA childcare co-operative, with revenues of $453,595 had a 2013 deficit of -$3,880 and had audit costs of $3,000. Childcare co-operatives, like other businesses within Ontario's childcare sector, have been under significant financial and enrolment pressures in recent years. Sections 123 and 124 of the CCA are a barrier to the sustainability of co-operatives operating in this sector as most of the non-co-operatives are not required to undergo or bear the expense of annual audits.

For co-operatives such as childcare centres or renewable energy co-operatives, an external audit is a considerable expense. Audit costs for small co-operatives generally range from $7,000 to $10,000. For most small or newly-formed co-operatives, this is a considerable portion of their annual revenue, sometimes as much as 20% or more of their revenue, and often moves them into an operating deficit position.

Members of many Ontario co-operatives, irrespective of size, generally purchase a nominal value membership when becoming a member and otherwise do not make any investments in their co-operative. The existence of a nominal value membership, with no other financial contribution to or in the co-operative, does not create a financial interest in the members that requires the protection of an annual audit. Consequently, the benefits of an annual audit to many co-operatives are negligible, while the costs can be quite significant.

Members of Ontario's co-operatives must be enabled to decide for their own co-operatives when circumstances exist that the costs of an annual audit are not justified and will not enhance good governance.

We acknowledge that the Superintendent may request that an audit be undertaken, and that the Province, funders or lenders may require an audit as a condition of providing financial assistance.

Protecting Investors

Based on our research, the CCA's requirement for annual audits when membership exceeds 50, irrespective of a co-operative's financial position and activities, does not exist in other jurisdictions (see the table included with our submission). For co-operatives with a membership below 50, the financial thresholds for capital, assets or revenue are inconsistent with co-operative legislation federally and in other Canadian jurisdictions.

To establish parity with federal and other provincial co-op legislation and because many co-operative members have only a nominal value membership, the number of members should not be a factor in assessing whether the members require the protection of an audit. Rather, it is when the members' interest in the co-operative becomes financially significant that members become investors and should be afforded the protection of annual audits.

Co-operatives in which a nominal membership is purchased can be contrasted with large distributing co-operatives[1] which raise significant capital by selling securities. Members of a distributing co-operative may, and in many cases do, have a significant financial interest in the co-operative. Consequently, it is in the public interest that these investors, whether members or not, be protected by mandating that distributing co-operatives annually appoint an auditor and undergo an audit.

[1] "Distributing Co-operative" is a term used in the *Canada Cooperatives Act* to identify a co-operative that has issued securities to members or other investors.

Currently the CCA has an exemption to create an offering statement if a co-operative issues shares to members which do not exceed $1,000 per member in a year and do not exceed an aggregate value of $10,000 per member. While we acknowledge that these particular values have been seriously eroded by inflation since they were instituted in 1974 and must be increased, a "financially significant" value has nonetheless been established beyond which the investor protection of an offering statement is appropriate. We maintain that a co-operative's members should not have the ability to opt out of the CCA's audit requirement when it has sold securities through an offering statement i.e. when a co-operative becomes a "distributing co-operative".

This approach would be very similar to that in section 255(1) of the *Canada Cooperatives Act* which does not allow distributing co-operatives to use that section to opt out of the *Canada Cooperatives Act*'s requirement to appoint an auditor in section 254. Based on our research, we were unable to find any examples of federally incorporated co-operatives which failed due to circumstances that could have been likely changed had annual audits been conducted.

In addition to an section 123 of the CCA's exception to the exemption based on membership, there is also an exception related to the capital, assets and gross of a co-operative in section 123(1.1)(b). We feel that such measures of a co-operative are not necessary in assessing whether or not a member has a financially significant interest in a co-operative given that the proposed exemption is only available to co-operatives that have not issued offering statements. Consequently, we recommend that such exceptions to section 123 be removed.

If a financial test exception to the exemption similar to Section 123(1.1)(b) is seen as necessary by the Government of Ontario, then then prescribed limits must be significantly increased. Based on our research a number of credit unions and chartered banks will not request audited financial statements until they have a credit risk of greater than $1-2 million dollars.

There is currently no enforcement mechanism to confirm that the audit review sections of the CCA have been adhered to, leading to the inevitability that some co-operatives will avoid a full audit, or attempt some kind of financial-review workaround not specifically permitted under the CCA, in order to reduce expenses. The removal of the membership and capital/assets/revenue thresholds will facilitate transparency and legislative compliance.

Examples

It is helpful to consider some actual examples of the impact of CCA's current audit provisions beyond the childcare sector.

In the renewable energy co-operative sector, many co-operatives have large memberships, as legislatively required, but very low revenue or assets. These co-operatives, therefore, are mandated by the CCA to engage an external auditor even when they have not issued offering statements. Most renewable energy co-operatives are less than five years old. Until these co-operatives raise capital, purchase a turbine or solar panels and connect to the electricity grid, their revenue will be

almost non-existent – a period of up to 24 months[2].However, renewable energy co-operatives are required to have a full audit, unlike similar organizations incorporated under Ontario's *Business Corporations Act*. To illustrate this point, a GTA renewable energy co-operative has total assets of $59,000, total revenue of $0, a deficit of -$9,000 and audit costs of $5,000, while a south-western Ontario renewable energy co-operative has total assets of $77,464 (created with borrowed funds), total revenue of $0, a deficit of -$26,758 and audit costs of $4,350.

The local food sector, an emerging and reasonably new co-operative category in Ontario, is also harmed by the audit requirements. One of the fastest growing co-op sectors in the province, local food co-ops often have more than 50 members within a short time of incorporation, which automatically triggers an audit at year end -- or they purposely keep their membership numbers below 50 which hampers the viability and sustainability of their co-operative. As an example, a Toronto-based farmer's market and multistakeholder food co-operative has revenues of $1,246,000, audit costs of $10,000, and like many local food co-ops still in start-up mode it runs a deficit. As of March 31, 2014, their deficit was -$65,359.

In a recent survey of cattle-financing co-operatives, audit costs as a percentage of revenue ranged from 3.93% to 21.73%. Eight of the 18 co-ops surveyed had audit costs greater than 12% of revenue, and only two co-operatives had audit costs lower than 5%. Nine of those co-operatives did not have surpluses after the audit fees had been paid, resulting in deficits of up to -$4,885.

In the above examples, as with the childcare sector, Sections 123 and 124 of the CCA are causing financial hardship and harm to these co-operatives and is a barrier to their continued sustainability and competitiveness.

Conclusion

Based on our review, the Committee recommends that Sections 123 and 124 of the *Co-operative Corporations Act*, be harmonized with Section 255(1) and (2) of the *Canada Cooperatives Act*. This section of the *Canada Cooperatives Act*, like similar co-operative legislation in other Canadian jurisdictions, has been in place for many years and there are no known instances of fraud or member risk as a result of this section.

Therefore, the Committee recommends the following modifications to Sections 123 and 124 of the *Co-operative Corporations Act*:

Exemption from audit provisions

123. (1) A co-operative **that is not required to issue an offering statement pursuant to section 34(1)** that meets the conditions in subsection (1.1) is exempt, in respect of a financial year, from sections 124 and 125, subsections 126 (1) and (2), section 127 and clause 128 (1) (b) and subsection 128 (3) if **a special resolution is approved resolving to not appoint an auditor,**

[2] There is an 18-month gap between receiving a contract to supply energy and the commercial operation date to produce energy, and a preceding application period of about six months, resulting in a 24-month period where the co-operative is in business, but not producing any revenue.

(a) ~~the co-operative has fifteen members or less and all the members consent in writing to the exemption; or~~

~~(b) the co-operative has more than fifteen but fewer than fifty-one members and the exemption is approved by a special resolution.~~

Conditions for exemption

(1.1) The conditions referred to in subsection (1) for an exemption in respect of a financial year are that,

~~(a) the co-operative has fewer than fifty-one members; and~~

~~(b) none of the following, as shown on the financial statement of the co-operative for the preceding year, exceed the prescribed maximums for an audit exemption,~~

~~(i) capital,~~

~~(ii) assets,~~

~~(iii) gross revenue or sales; and~~

(c) no government grant or subsidy that the co-operative receives has a condition requiring the co-operative to be audited.

~~Three members may require audit~~ Limitation

(1.2) ~~A co-operative is not exempt under clause (1) (b) if, within fourteen days after the meeting at which the special resolution was confirmed, three members of the co-operative give the co-operative written notice that they require an audit. 1992, c. 19, s. 16.~~ A resolution under subsection (1) is valid only until the next annual meeting of members

~~Exemption from audit provisions~~

~~(2) 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 from sections 124 and 125, subsections 126 (1) and (2), section 127 and clause 128 (1) (b) and subsection 128 (3).~~

~~Interpretation of capital~~

~~(3) For the purposes of this section, capital shall be computed by adding together the sums represented by the amounts of,~~

~~(a) member and patronage loans made to the co-operative that are outstanding;~~

~~(b) issued capital determined in accordance with section 29;~~

~~(c) unsecured long-term debt; and~~

~~(d) surplus,~~

~~as shown on the financial statement of the co-operative for the preceding year. R.S.O. 1990, c. C.35, s. 123 (2, 3).~~

Auditors

124. (1) The members of a co-operative at their first general meeting shall, subject to section 123, appoint one or more auditors to hold office until the close of the first annual meeting and, if

the members fail to do so, the directors shall forthwith make such appointment or appointments. R.S.O. 1990, c. C.35, s. 124 (1).

Idem

(2) The members shall**, subject to section 123,** at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed. R.S.O. 1990, c. C.35, s. 124 (2).

Casual vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act. R.S.O. 1990, c. C.35, s. 124 (3).

Removal of auditor

(4) The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of the auditor's term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in the auditor's stead for the remainder of the auditor's term. R.S.O. 1990, c. C.35, s. 124 (4).

Notice to auditor

(5) Before calling a general meeting for the purpose specified in subsection (4), the co-operative shall give the following documents to the auditor at least 15 days before notice of the meeting is sent:

1. Written notice of the intention to call the meeting, specifying the proposed date for sending notice of the meeting.
2. A copy of all material proposed to be sent to members in connection with the meeting. 2004, c. 31, Sched. 8, s. 19 (1).

Auditor's right to make representations

(6) An auditor has the right to make written representations to the co-operative, at least three days before notice of the meeting is sent, concerning,

(a) the person's proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) the person's resignation as auditor,

and the co-operative, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting. R.S.O. 1990, c. C.35, s. 124 (6); 2004, c. 31, Sched. 8, s. 19 (2).

Remuneration

(7) The remuneration of an auditor appointed by the members shall be fixed by the members, or by the directors if they are authorized so to do by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors. R.S.O. 1990, c. C.35, s. 124 (7).

Appointment by court

(8) If for any reason no auditor is appointed, the court may, on the application of a member, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the co-operative for the services of the auditor or auditors. R.S.O. 1990, c. C.35, s. 124 (8).

Notice of appointment

(9) The co-operative shall give notice in writing to an auditor of the auditor's appointment forthwith after the appointment is made. R.S.O. 1990, c. C.35, s. 124 (9).

COMPARISON OF CO-OPERATIVE LEGISLATION IN CANADA: AUDIT EXEMPTION SECTIONS

ONTARIO

Ontario Co-operative Corporations Act

Section	Type	Prescribed Capital Threshold, OR	Prescribed Gross Revenue Threshold, OR	Prescribed Assets Threshold	Member Threshold Exemption
123 (1)	Exemption				**MAXIMUM NUMBER OF MEMBERS:** **15 or less**, and all agree in writing, OR **>15 and <51**, approved by special resolution.
123.(1.1)*	Exemption	$500,000	$500,000	$500,000	
		Capital Threshold, AND	**Assets Threshold**		
123 (2)	Never issued securities	<$5,000	<$5,000		
	Notes				
	Exemption does not apply if co-op receives a gov't grant or subsidy that requires an audit.				
	3 or member members may request an audit within 14 days of a special resolution exemption.				
	*Prescribed in Regulation 178 Section 13.1				

BRITISH COLUMBIA

Cooperative Association Act

Section	Type	Prescribed Capital Threshold, OR	Prescribed Gross Revenue Threshold, OR	Prescribed Assets Threshold	Member Threshold Exemption
109 (1)a	Exemption				**VOTE**. 3/4 special vote, unless the co-op decides to lower its majority to a 2/3rds special vote.
109 (1)b	Exemption				**VOTE**. (b) "If the association has issued investment shares, by separate resolutions of investment shareholders of each class of issued investment shares."
Section	**Type**	**Capital Threshold**	**Assets Threshold**		
http://bcca.coop/news/community-investment-fund-co-ops-canadian-success-stories-environment-policy-hurdles	Share exemption, before requiring B.C. Securities Commission approval.	$5,000	$5,000		
	Notes				
	Housing co-ops are mandated to submit audited financial statements to BC Housing or the CMHC.				
Agriculture and Agri-Food Canada. http://www4.agr.gc.ca/resources/prod/coop/doc/creatcoopguide.pdf	"Originally, all members had to agree to waive the need for an auditor for one year. Now, members of a non-reporting co-operative may waive the need for an auditor by passing a special resolution."				
236 (2)	Dispensing with auditor is only valid for one financial year.				

ALBERTA

Cooperatives Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
236 1 a	Exemption				**VOTE**. 2/3rds special resolution of the members.
236 1 b	Exemption				**VOTE**. 2/3rds special resolution of all investment shareholders, including individuals who do not otherwise have voting rights.
		Capital Threshold	**Assets Threshold**		
http://bcca.coop/news/community-investment-fund-co-ops-canadian-success-stories-environment-policy-hurdles	Never issued securities	$10,000	$10,000		
	Notes				
236 (2)	Dispensing with an auditor is only valid until the next annual meeting of members.				

MANITOBA

Cooperatives Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
264(1) a	Exemption				**VOTE**. A non-distributing co-operative may dispense with an auditor with a special resolution of its members, involving a 2/3rds vote.
264(1) b	Exemption				**VOTE**. A non-distributing co-operative may dispense with an auditor with a special resolution of all its shareholders, including those who do not otherwise have the right to vote, with a 2/3rds vote.
		Capital Threshold	**Assets Threshold**		
	Never issued securities	n/a	n/a		
	Notes				
264(2)	Dispensing with auditor is only valid until the next annual members meeting.				
"special resolution" a) ii	For special resolutions, a voting threshold can be raised higher than 2/3rds with a unanimous agreement.				

SASKATCHEWAN

The Co-operatives Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
133 (2)	Exemption				**VOTE**. For <20 members, an auditor can be dispensed of without being verified by the Registrar, according to the co-op's by-laws.
133 (2) b	Exemption				**VOTE**. 20+ members, notification of the resolution must be filed with the Registrar within 30 days after the resolution is passed.
133 (4)	Exemption				**VOTE**. 20+ members, a resolution to dispense of an auditor must be consented to by all members, shareholders, and members not otherwise entitled to vote, who voted on the resolution.

		Capital Threshold	Assets Threshold	
	Never issued securities	N/A	N/A	

	Notes
133 (3)	Resolutions to not appoint an auditor are valid until the next annual meeting of members.
133 (5) a	Exemptions are void if in the opinion of the Registrar, the co-op does not provide goods or services mainly for its members.
133 (5) b	Exemptions are void in the event of receiving or soliciting donations, financial gifts or property from the public.
133 (5) c	Exemptions are void if a co-operative has obtained funding from a government or government agency above 10% of its total income for a fiscal year.
133 (5) d	Exemptions are void if a co-operative is a registered charity

QUEBEC

The Cooperative Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
136.	Exemption				**APPLY.** If no auditor is appointed, 3+ members of the co-op or a federation in which the co-op is a member, may make an application to the Minister.
136.1	Exemption				**VOTE.** An auditor can be exempted at a special meeting called by the B of D, co-op President, or the B of D of the co-op's federation.
77.	Exemption				**VOTE.** A special meeting must be called by at least 500 members of a co-op that has 2000+ members. A special meeting can also only be called by at least 25% of members for co-ops with <2000 members.
		Capital Threshold	**Assets Threshold**		
Regulation under the Cooperative Act 4.	Never issued securities				REGULATION 135. "The Government, by regulation, may exempt a cooperative from the application of the second paragraph, in consideration of its volume of business."
	Notes				
128.2.	If a co-op (e.g. without an auditor) does not stipulate the percentage of business transacted with its members in its annual report, the government will deem the percentage to be below government prescribed regulation unless verified by an auditor within 90 days of the notice.				
Regulation under the Cooperatives Act 4.	If a co-op shows revenue below $250,000 during the fiscal year before appointing an auditor, the co-op must be ready to make available any necessary information as indicated under Schedule I.				

NEW BRUNSWICK

The Co-operative Associations Act of New Brunswick (EXISTING LEGISLATION)

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
38. (1.1) b	Exemption	>$50, 000	> $50, 000	>$50,000	**VOTE.** An extraordinary resolution, passed by a 3/4ths vote of members, at a special meeting or at an annual meeting.
38 (1.2)	Exemption	<$50,000	<$50,000	<$50,000	**VOTE/PERMISSION.** An extraordinary resolution, passed by a 3/4ths vote of members, at a special meeting or at an annual meeting. With the permission of the Inspector.
		Capital Threshold	**Assets Threshold**		
38(1.1) a	Never issued securities.	Below $50,000	Below $50,000		
	Notes				
41(1) *b*	A co-op operating without an auditor may still be required to provide financial information to the Inspector in regards to the previous fiscal year.				
38. (1.1) b **38** (1.2)	For co-operatives with a business volume of more than $50, 000, the extraordinary resolution to not appoint an auditor must be passed in accordance with bi-laws that are verified by the Inspector and filed with the Registrar.				
38 (1.3)	A co-op operating without an auditor may still be subject to additional requirements as the Inspector sees fit.				
38 (1.4)	Dispensing of an auditor is only valid until the next annual general members meeting.				

New Brunswick PROPOSED co-op legislation. Recommended Audit Exemption Categories

Type	Prescribed Revenue Threshold	Prescribed Capital Threshold	Membership Requirement
Audit	>$200,000	>$200,000	**VOTE**. Special resolution
Review Engagement	>$500,000	>$500,000	**VOTE.** Special resolution, Registrar exemption.

NOVA SCOTIA

Co-operative Associations Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
40 (1)	Exemption				**VOTE.** 2/3rds consent in writing of members during a financial year.
		Capital Threshold	**Assets Threshold**		
	Never issued securities	N/A	N/A		
	Notes				
40 (1)	An auditor exemption is valid until the next annual general members meeting.				
40 (13)	The Inspector can appoint an Auditor to a co-op at any point in time, for purposes of producing an audit.				
41. (1)	Even if a co-op has exempted an auditor, the co-op must still send a financial statement to the Inspector within 2 weeks of its annual general members meeting.				

PRINCE EDWARD ISLAND

Co-operative Associations Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
38.	Exemption				**VOTE.** 2/3rds extraordinary resolution at a membership meeting made by the members.
		Capital Threshold	**Assets Threshold**		
	Never issued securities	n/a	n/a		
	Notes				
39. (13)	The Minister can appoint an Auditor at any point in time to produce a report for the Minister.				
38.	A vote to exempt an auditor is valid for one year from the decision to give consent.				

NEWFOUNDLAND & LABRADOR

Co-operative Societies Act

Section	Type	Prescribed Capital Threshold	Prescribed Gross Revenue Threshold	Prescribed Assets Threshold	Member Threshold Exemption
91. (1)	Exemption				**VOTE.** Auditor appointed by member resolution, otherwise financials presented at AGM.

COMPARISON WITH FEDERAL COOPERATIVES ACT, AND OTHER ONTARIO CORPORATION LEGISLATION

Entity	Act / Section	Never Issued Securities Exemption	Voting Requirements	Financial Requirements	Length
Co-operative	Ontario Co-operative Corporations Act, 123 (1, 1.1)	To dispense with an auditor <15 members, unanimous; special resolution, 16-50 members.	2/3rds vote	Capital: < $5,000	One financial year
Co-operative	Federal Cooperatives Act Section 225	To dispense with an auditor	2/3rds special resolution	n/a	Next annual members meeting
Corporation	Business Corporations Act, 148. (a) and (b)	To dispense with an auditor	All shareholders consent in writing	n/a	One financial year
Corporation	Corporations Act, 96.1 (a), (b), and (c)	To dispense with an auditor	All shareholders (members, for non-share capital) consent in writing	Annual income, <$100,000	One financial year

Summary of audit exemption provisions in the new Ontario Non for Profit Corporations Act (ONCA) - section 76 and its Regulations

Public Benefit Corporation	**Prescribed Revenue Threshold**	**Membership Requirement**
Audit	$500,000 or more (or other prescribed amount)	n/a
Review Engagement	>$100,000 (or other prescribed amount) - <$500,000 (or other prescribed amount)	n/a
Compilation	$100,000 or less (or other prescribed amount)	n/a
If membership passes an "extraordinary resolution" (to be passed annually)		
Non-Public Benefit Corporation	**Prescribed Revenue Threshold**	**Membership Requirement**
Audit	n/a	n/a
Review Engagement	>$500,000 (or other prescribed amount)	n/a
Compilation	$500,000 or less (or other prescribed amount)	n/a
If membership passes an "extraordinary resolution" (to be passed annually)		

Public Benefit Corporations. A distinction is made between public benefit corporations and other not-for-profit corporations. A public benefit corporation is defined as: (a) a charitable corporation, or (b) a non-charitable corporation that received external funds (e.g. donations, grants or government financial assistance in excess of $10,000 in year

Special rules apply to public benefit corporations under ONCA that do not apply to other not-for-profit corporations. Examples include:

- Different audit and review engagement requirements (section 76 of ONCA)
- A three-year asset lock for voluntary dissolution (section 167 of ONCA)

The 50% Rule and the Ontario Co-operative Corporations Act

A position paper submitted by the Ontario Co-operative Sector Regulatory Affairs Committee to the Financial Services Policy Unit, Ontario Ministry of Finance.

Proposed Recommendation

The Ontario Co-operative Sector Regulatory Affairs Committee (the "Committee"), representing the interests of Ontario co-operatives, recommends a change to the business with members provisions (the "50% Rule") contained in section 144 of the *Co-operative Corporations Act* (the "CCA").

Purpose of Recommendation

The purpose of the Committee's recommendation is to allow co-operatives to, subject to the retention of existing provisions relating to specific industry sectors, determine what percentage of business the co-operative must conduct with its members.

The Committee's recommendations are premised on the fact that co-operatives operate in many different sectors in the Province of Ontario. Consequently, the needs of co-operatives are different. For example, interactions in many co-operatives are quite personal. As such, there is a strong sentiment to maintain a section in the Act that allows co-operatives to designate the amount of business they do with members. Conversely, many co-operatives are in direct competition with businesses incorporated pursuant to other legislation that do not have restrictions on the amount of business they must conduct with prescribed individuals or groups. The general sentiment for these types of co-operatives is that the 50% Rule is an impediment to competing with businesses that are governed by other legislation.

The Committee believes the proposed change allows co-operatives who wish to conduct business on a co-operative basis to do so while permitting them to compete with other business enterprises on a more level playing field the same time the Committee is of the opinion that the proposed changes allows those co-operatives who believe that retention of a business with members provision in some form is important to set their own business with members threshold.

Legislative Background

The 50% Rule has been contained in the CCA since its enactment in the early 1970s. Today, a business with members provision does not exist in co-operative law for any other provinces and territories, with the exception of a more limited restriction in the Province of Quebec. A summary of the Quebec legislation is contained in Appendix A attached hereto.

The Committee believes the fact that the vast majority of provinces and territories do not have a business with members rule is evidence that such other provinces and territories have recognized that a business with members rule is not required for co-operatives. That being said, given the Committee's finding that certain co-operative sectors in Ontario remain strongly in support of some form of a 50% Rule, the Committee is recommending a "made in Ontario" solution allowing co-operatives to determine what percentage of business a co-operative must conduct with its members.

What is the True Test for a Co-operative

One of the key internationally recognized principles for co-operatives involves member economic participation. This principle is recognized in the CCA's definition of "co-operative basis". Every Ontario co-operative is required to carry on business on a "co-operative basis". Indeed, co-operative legislation in every province and Canadian legislation has some form of a "carrying on business on a co-operative basis" requirement.

The failure of an Ontario co-operative to carry on business on a "co-operative basis" results in the same penalty as failing to comply with the 50% Rule, namely conversion of the co-operative to a business corporation or a not-for-profit corporation (see section 143 of the CCA). For a co-operative to carry on business on a "co-operative basis", each member has one vote, no member may vote by proxy, interest rates are capped and the enterprise is operated as nearly as possible at cost after providing for prescribed reserves and payments, including patronage. The Committee believes this is the right test for all co-operatives. This test is found in the definitions of "co-operative" and "co-operative basis" contained in Section 1.1 of the CCA.

Co-operative Sector Consultation

In 2010 and 2011 the Ontario Co-operative Association conducted a province-wide co-operative sector consultation regarding the 50% Rule. From November 1, 2010 to January 31, 2011, almost 1100 Ontario co-operatives were contacted to take part. In total, approximately 800 co-operatives participated. The consultation resulted in the June 16, 2011 position paper of the Ontario Co-operative Association. A copy of the paper is attached as Appendix B.

We direct your attention to the following findings contained in the paper:

1. On page 13 of the paper under the heading "Group A: All Data", you will note that 529 of the 754 co-operatives indicated they wanted to keep the 50% Rule unchanged. However, of the 529 responses received in favour of keeping the 50% Rule, 97% (or 508) of such responses came from the housing sector, which unanimously voted that section 144.2 of the CCA remain in place for non-profit housing co-operatives. Given the overwhelming response of the co-operative housing sector, the Committee recommends the specific provisions of section 144.2 of the CCA relating to non-profit housing co-operatives remain unchanged. In addition, the Committee recommends that, given the nature of the relationship among the participants, co-operatives whose primary objective is to provide

employment to its members (also known as "worker co-operatives") should retain the similar provisions pertaining to worker co-operatives that are found in section 144.1 of the CCA.

2. The heading on page 13 of the paper entitled "Group B: Data without housing sector" outlines the results of the responses received excluding the responses received from housing co-operatives. Of those who completed the survey, 40 were in favour of amending the 50% Rule, 21 responses were in favour of keeping the 50% Rule and 178 responses did not express an opinion one way or the other. Of the 178 neutral responses, 126 of such responses came from the childcare sector. The majority of neutral respondents indicated they would not be affected by any changes to the 50% Rule because the amount of their business conducted with members was significantly higher than the current 50% threshold. Of the 40 co-operatives voting in favour of amending the 50% Rule, 22 of such responses came from the agricultural sector. Support for amending the 50% Rule was particularly strong in the agricultural sector. Only 3 co-operatives from the agricultural sector indicated they wished to retain the 50% Rule.

Given all of the foregoing and after excluding the responses received from the co-operative housing sector, of the co-operatives who expressed an opinion on the matter, almost two thirds voted in favour of modifying the 50% Rule. Some of the comments received in support of modifying the 50% Rule during the course of the consultation process included the following:

- Compliance verification is difficult. Verification in a retail environment can also place a co-operative at a competitive disadvantage because tracking member business can be more cumbersome. It is not easy for a retail co-operative to record whether a cash sale was made to a member or non-member. Managing membership point of sale is a cost other corporations do not have to incur, thereby negatively impacting upon competitiveness of the co-operative.

- 50% is an arbitrary value: it bears no relevance to co-operative principles. The essence of being a co-operative is not who you do business with, but how you do business. It is the desire of members to be governed by the one member, one vote, distribution of patronage and other principles that are fundamental to co-operatives.

- Compliance is costly and incurs additional auditing costs. There are extra costs in both time and labour to maintain records to verify compliance.

- Compliance with the 50% Rule often places a co-operative at a competitive disadvantage with business corporations. One co-operative reported that in order to ensure compliance with the 50% Rule, they offer a discount on the member's first purchase that is roughly equivalent to the membership fee. That co-operative is in direct competition with a number of national retailers, none of whom have to do this, thereby making the co-operative less competitive.

- If co-operatives have to offer discounts in order to induce individuals to become members, the person receiving the discount is not necessarily joining the co-operative because they want to be a member. They may have joined because they want to receive the discount. Quite often this results in the co-operative having a number of inactive members. This will increase compliance costs in other areas such as mailing out notices of meetings to members who never show up and the like. Once again, this places the co-operative at a disadvantage with business corporations they compete with.

- Each time a group of individuals wish to carry on business as a co-operative in a new industry sector, it is possible the legislation will have to be revisited to create another exemption to allow co-operatives to participate in this industry. In addition, there is also the risk that such an exemption may create unintended consequences that could impair the success of these co-operatives.

- If a co-operative is successful and many people want to do business with the co-operative but not necessarily join, the co-operative faces a dilemma. If it places no limitations on the individuals it wishes to do business with and fails to comply with the 50% Rule for three years, the Minister can compel that co-operative to become a business corporation. The business corporation will have to comply with the Ontario *Securities Act* when soliciting investors, which could be cost prohibitive, and could even threaten the solvency of the business. The Committee feels this is not fair to members who want to conduct business according to co-operative principles and notwithstanding this, must carry on as a business corporation.

The Committee is of the opinion that the results of the 2011 consultation paper are still relevant today. There have not been significant changes to either the co-operative sector or the Ontario economy since 2011 that would lead to significantly different results. Furthermore, within the past year the Committee has actively sought further input on the 50% Rule from the co-operative sector. No responses were received that would lead the Committee to believe the results of the 2011 consultation were not applicable today.

In support of the foregoing commentary regarding the relevancy of the results of the 2011 consultation process, we include the following excerpt that was received from a co-operative as part of the consultation process undertaken in 2014. The Committee believes the commentary aptly summarizes many of the problems faced by co-operatives that believe an amendment to the 50% Rule is both necessary and appropriate:

> "The primary burden for (name withheld) is turning away new accounts or not calling on certain potential accounts because they do not meet our member definition. This suppresses our opportunities to grow and take advantage of scale that is important in distribution. We have to seek new accounts that fit our member definition in more distant markets that raises transportation costs and make logistics more expensive, thus rendering us less competitive in our market. We want to localize our distribution to reduce our carbon footprint and build stronger local markets so having to find new accounts further away does not align well with our values… Suppressing sales cost us over $1.0 million a year in lost sales, thus increases fixed costs as a percentage of sales, reducing potential surplus by $30,000 - $50,000 a year. We believe that our co-operative nature has more to do with factors other than strictly sales to members. Adherence to the seven co-op principles is important to us. This includes practicing democracy, engaging and educating the existing members and entire customer base, supporting community, doing trade with other co-ops, etc. We could continually change our member definition to fit new accounts into our membership but that requires a lengthy process of engagement with members and by-law changes, etc. It would make things much simpler to drop the 50% Rule. Our goal is to be a thriving member owned co-operative regardless of whether the percentage sales to members (exists)."

The 50% Rule is Not Required for all Co-operatives

It has been argued by some that having a rule that a co-operative must conduct more than 50% of its business with members is fundamental to carrying on businesses as a co-operative. However, if that were the case, then why are co-operatives that do business with marketing boards (section 144(4) of the CCA) and renewable energy co-operatives (section 144(8) 3. of the CCA) exempted from the 50% Rule under the CCA? A precedent has been statutorily created by the legislature to exempt certain businesses in the co-operative sector from the provisions of the 50% Rule. These exceptions were created because such entities could not comply with the 50% Rule. The Province saw fit to create such exceptions in order that the affected co-operatives could become/remain co-operatives. In so doing, the Committee submits that a precedent has been set establishing that strict compliance with the 50% Rule is not necessary for co-operatives.

Summary and Proposed Change to CCA

There are a great number of co-operatives in Ontario that carry on many different types of businesses. The Committee believes that no single "business with members" solution accommodates all co-operatives and that the true test for co-operatives to meet is whether or not they are carrying on business on a co-operative basis. As such, the Committee believes that subject to the our foregoing comments regarding not-for-profit housing co-operatives, worker co-operatives, co-operatives that do business with marketing boards and renewable energy co-operatives, having no fixed membership requirement allows co-operatives to choose what best fits their organization.

Given all of the foregoing and recognizing that section 1.1 of the CCA already defines what a co-operative is, the Committee recommends that section 144(1) of the CCA be amended to provide as follows. The proposed amendments to section 144(1) of the CCA have been highlighted for your ease of reference, with proposed additions being underlined and proposed deletions being stroked through:

> 144(1) 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 than is specified in the articles or by-laws of such co-operative, or 50% or more of its business with non-members of that co-operative if no limit on business with non-members is prescribed in that co-operative's articles or by-laws, the Minister may, after giving the co-operative an opportunity to be heard,
>
> (a) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of the *Business Corporations Act* and, where necessary for the purpose, changing the co-operative into a corporation with share capital; or
>
> (b) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of Part III of the *Corporations Act* and, where necessary for the purpose, changing the co-operative into a corporation without share capital.

The Committee would be pleased to answer any questions or receive any comments you may have regarding this position paper. Furthermore, the Committee would welcome, and would expect, to participate in any further discussions and consultations before any final decision is made regarding amendments to Ontario co-operative legislation that might in any way impact upon the 50% Rule.

Thank you for the opportunity to provide this position paper. We look forward to receiving your response.

Appendix A

Summary of Quebec Legislation

Quebec

Regulations: BUSINESS WITH MEMBERS

16. For the purposes of the first paragraph of section 128.1 of the Act, the proportion of business that a cooperative, a federation or a confederation must carry on with its members is 50% of its total business.

O.C. 953-2005, s. 16.

17. For the purposes of sections 128.1 and 211.5 of the Act, "business" means the following, depending on the classes of cooperatives listed below :

Classes of cooperatives	Meaning of "business"
(1) Producers cooperatives, including agricultural cooperatives governed by Division I of Chapter I of Title II of the Act :	
(a) whose object is to provide goods and services	sales and revenues from services
(b) whose object is processing or marketing	purchase and consignment of marketed products, except those of the same nature as those marketed for the members, originating from persons who are not eligible to become members
(2) Consumer cooperatives, except those referred to in paragraphs 2.1 and 2.2	sales and revenues from services
(2.1) Funeral service cooperatives	the number of funerals
(2.2) Housing cooperatives	the number of dwellings in use
(3) Work cooperatives	remuneration paid

(4) Shareholding workers cooperatives	remuneration paid by the company In the case of a shareholding workers cooperative made up exclusively of workers of a place of business of the company, the remuneration paid by the company in that place of business
(5) Solidarity cooperatives, according to the categories of members :	
(a) user members, where the cooperative provides goods and services for their personal use	sales and revenues from services
(b) user members, where the cooperative provides goods and services necessary in the practice of their profession or the operation of their enterprise	sales and revenues from services
(c) user members, where the cooperative processes or markets the products or services of its members	purchase and consignment of marketed products
(d) worker members	remuneration paid

The provisions of this section apply, with the necessary modifications, to federations and confederations.

Where the object of a cooperative, federation or confederation is to provide goods and services and be engaged in processing or marketing, the proportion of its business that must be carried on with its members is to be calculated separately for each sector of business.

Where a cooperative, federation or confederation has work done for a fixed price, the word "business" includes the price paid for the work, but does not include the supply and sale of goods and services required to perform the contract and the resulting goods and services.

The word "business" does not include purchases and sales of goods and services contracted between a cooperative and a federation or confederation or La Coop fédérée or other cooperative.

For the purposes of section 128.1 of the Act, "subsidiary" means

"a legal person in which the cooperative holds more than 50% of the issued capital stock having full voting rights or has the right to elect a majority of the members of its board of directors."

O.C. 953-2005, s. 17.

Appendix B

Province Wide Consultation Paper

Ontario Co-operative Association
Le Conseil de la coopération de l'Ontario

Co-operative Sector Consultation

Regulations and Legislations Committee

6/16/2011

The Co-operative Consultation was a collaborative effort to connect and educate the co-operative sector on the regulations that govern their business and the effect that changes to this legislation can have on the way they do business.

The lead writer was Paul Skinner, Research and Policy Coordinator at the Ontario Co-operative Association. Lead editor on this report was Shane Arbuthnott, Membership and Communications Coordinator at the Ontario Co-operative Association.

The Regulations and Legislations Committee provided feedback to the writer and editor throughout the development process. The Ontario Co-operative Association would like to express thanks to the following individuals, without whose contribution and dedication to the principles of co-operation, this research project would not have become a reality.

Denyse Guy	Ontario Co-operative Association
Jen Heneberry	Ontario Co-operative Association
Christian Howald	le conseil de la coopération de l'Ontario
Luc Morin	le Conseil de la Coopération de l'Ontario
Gilles LeVasseur	le Conseil de la Coopération de l'Ontario
Ian Shewan	Lerners LLP
Jay Harris	The Co-operators
Glenn Agro	BDO Canada LLP
Harry French	Ontario Sustainable Energy Association
Ted Hyland	Organic Meadow Co-operative
Ramesh Nedadur	On Co-op Board Member
Michael Barrett	Gay Lea Foods Co-operative
Ove Hansen	Gay Lea Foods Co-operative
Dale Reagan	Co-operative Housing Federation of Canada - Ontario Region
Doug Dowhos	Team Werks Co-operative
David Robertson	Prentice Yates Clark
Jennifer Williams	La Siembra Co-operative
Jessica Duarte	Ethical Coffee Chain Trade Co-operative

CO-OPERATIVE SECTOR CONSULTATION:

An analysis of the co-operative sector and the impact of potential changes to the *Co-operative Corporations Act*.

Ontario's Co-operative Corporations Act, as with other legislation that defines co-ops, attempts to balance the business and social objectives of co-ops by providing certain definitions and limitations on how co-ops are structured and operate. Two requirements in the Act -a provision known as the "50% Rule" requiring co-operatives to conduct the majority of their business (at least 50%) with members and a provision requiring the use of par value preference shares for co-operatives- have caused some controversy regarding their place in the co-operative movement in Ontario and their potential removal or amendment from the Act. Some co-operatives feel that they act as a barrier to the growth and sustainability of their business while others believe the provisions to be a fundamental element of the co-operative ideology.

From November 1st, 2010 to January 31st, 2011 over 1090 co-operatives were contacted to take part in a province wide consultation on these two legislative issues. In total, approximately 800 co-operatives contributed by participating in the consultation. This research paper assesses the current impacts these pieces of legislation have on co-operatives across the province, the recommended courses of action identified by co-operatives consulted, and the potential consequences of restructuring the Act to allow for non-par value preference shares or to remove/lower the "50% Rule" threshold.

When analyzing the implications of the consultation data with the housing and childcare sectors included (housing co-ops are governed under a separate threshold (144.2), child care co-ops operate well above 90% membership and non-profit co-ops do not offer preference shares) the results indicate an overwhelming inclination to keep both par value preference share structure and the "50% Rule" intact. Without the inclusion of these two sectors, the results indicate an inclination to keep par value preference share structure as a provision of the Act and to amend the "50% Rule" granting co-operatives the ability to choose their own threshold for business with members through their bylaws.

Keywords: Regulations, Par Value, Co-operative, 50% Rule, preference shares,

Background

Introduction

One of the roles of the Ontario Co-operative Association (On Co-op) is to head up activities related to developing an appropriate regulatory regime for Ontario co-operatives. This involves working with co-op sector representatives and the co-op regulator in order to identify needed changes to the *Co-operative Corporations Act* (the Act) through On Co-op's relationship with the regulatory agency, the Financial Services Commission of Ontario (FSCO). In many cases, the process of identifying amendments and moving them forward to the government is relatively straightforward. However, there are some legislative and regulatory issues that are more difficult to deal with because they are complex and/or controversial – various subsectors or co-ops have differing viewpoints about the impacts of or need for certain changes. This makes it challenging to develop a harmonized position on the best course of action. In these cases, broad consultation with the co-op sector can be useful in getting a more complete picture of the impacts and need for particular controversial changes. This can assist On Co-op in facilitating the process of consensus building around any major changes proposed to the co-op legislation.

There are two such proposed changes that are currently facing the sector. One proposed change is related to the relative merits of the provision of the Act requiring the use of par value shares for co-operatives in Ontario. The other is related to a provision referred to as the "50% Rule" and whether or not to seek the removal of this provision of the Act.

Par Value

The first proposed amendment deals with a change to par value preference share structure. Shares refer to documents that record the money invested into a business by an owner. Usually shares are proportional to the amount of money that each shareholder has invested in the business. In Ontario, a share-based co-op must generally speaking, have at least five members (who are typically the shareholders) in the business. This number is reduced to three for worker co-ops.

A preference share is a share that has special conditions attached that are different than conditions carried by ordinary shares, which are called "common shares" in a share based company and "member shares" in a co-operative. Preference shares typically have conditions that give them some defined priority related to dividends compared to common or member shares. This priority could pertain to timing or level of dividends or a veto over certain transactions that the co-op may make, such as whether dividends are cumulative or non-cumulative, any expansion of the share issue etc.

A "par value" share refers to a share that has a face value price declared on the document. This may be the selling or redemption price of the share or basis on which other financial transactions are derived, typically dividends. A share without par value is a share without a face value declared on the document. Since a share without par value has no declared price, determining the purchasing price of a share involves relying on some form of market evaluation of the value of the shares and company.

The concept of par value goes back to the early days when joint stock companies were created. At the time, the government regulators of the day issued company charters that used the concept of par value for shares in order to provide a disclosed selling price to the buyer. The "base price" of the par value then became a reference point from which dividends and premiums were calculated. In modern corporate terms, there are very few instances of par value shares.

In the Act, it is presumed that the purpose of the par value provision is related to the fact that there is typically no public market where buyers can purchase co-operative shares, either member shares or preferred shares. Without a public market, there is no market price to be used as a reference point. The use of par value provides a clear base selling price for the co-op going forward.

It can be argued that the use of market mechanisms to value the assets of a company makes the usefulness of the par value mechanism largely obsolete. There are also arguments made that the use of par value makes it difficult to provide financial "rewards" to the early members and investors in a co-op because the value of their shares doesn't increase in value if the co-op's total equity increases. Early members and investors, who take a lot of risk to invest in the start-up phase get the same "reward" as those members that join the co-op at a more mature stage and take less risk. This is the capital gain argument (capital gains refer to the amount that the selling price of the share exceeds the original price that the share was bought at).

Others argue that the definition of par value is an essential part of the co-operative identity and makes it clear that the purpose of the co-op is not to generate profit for members or investors, but instead to provide a service or meet a need.

The 50% Rule

The Act, as with other legislation that defines co-ops, attempts to balance the business and social objectives of co-ops by providing certain definitions and limitations on how co-ops are structured and operate.

The second proposed amendment deals with a provision commonly referred to as the "50% Rule." The 50% Rule refers to section 144(1) of the Act, which limits the amount of business that a co-operative can do with non-members. More specifically, this provision requires co-operatives to do the majority of their business (at least 50%) with members. This requirement

does not exist in co-op law for other Canadian provinces and territories, with the exception of a similar provision in s. 16 and 17 of Quebec's *Cooperatives Act*. Credit Unions and Caisses Populaires in Ontario are subject to different legislation that has no such requirement, the *Credit Unions and Caisses Populaires Act,* and so are not impacted by the 50% Rule. It is also worth noting that Section 144(8) of the Act already exempts non-profit housing co-ops, renewable energy co-operatives and worker co-operatives from this provision in the Act. Section 144(2) however, requires a threshold of 50% of business with members for housing co-ops.

The definition of "business" depends on the type of co-operative. If the co-op is created to sell goods or services to its members as in a housing co-op, a child care co-op or grocery store, for example, the "business" is the sale of those goods or services and so the co-op would have to provide a minimum of 50% of those goods or services to the co-op members. On the other hand, if the function of the co-op is to buy goods or services from its members and process, market and sell them to the general public, then the "business" is the purchase of goods or services from its members and the co-op must make sure to buy a minimum of 50% of the goods or services from its members rather than outside sources. For the purposes of the 50% Rule, Section 144(4) of the Act also deems the sale of products to a marketing board to be "business."

This requirement was created to recognize the idea that, because co-operatives are formed to meet the needs of members, the majority of co-op business must be done with their members – otherwise they are effectively no different from a business corporation.

There have been sectors of the co-operative movement that believe this requirement hampers the financial viability and success of co-operatives. They have indicated that some co-ops cannot effectively meet the needs of their members if their business functions are limited this way, and that the rule should be changed or removed. This requirement also has impacts on the accounting and financial practices of the co-op and requires administrative and operational resources in order to track the information.

There are other parts of the co-op movement that believe that the requirement for co-ops to do business with members is an essential part of the co-operative identity, and that without it, co-ops will not be unique from other forms of enterprise.

Purpose

The purpose of the Ontario Co-operative Consultation is to gather information and determine the prevailing opinion of the non-financial co-operative sector regarding two proposed legislative changes to the Act:

1. The relative merits of the provision in the Act requiring the use of par value preference shares for co-operatives in Ontario.
2. The "50% Rule" and whether or not to seek the removal or amendment of this provision in the Act.

The consultation is aimed at gathering input from members, staff or directors of co-operatives and federations to allow them to comment on specific impacts of these legislative requirements and any proposed changes. Detailed information on the consultation issues is available on On Co-op's website, including position papers outlining the arguments for and against each of the proposed amendments.

The purpose of this paper is to provide an overview of the process and results obtained through the consultation from November 1st until January 31st, 2011.

Consultation Approach

Sample Selection

The sample was created by consulting both the Ontario Co-operative Association's comprehensive listing of Ontario based co-operatives available in the e-directory and the Ontario Co-operative Association's Co-operative Information System. Any business listed as a co-operative in Ontario was selected for the consultation. When determining the scope of co-operatives that were to be included in the consultation, it was decided that Credit Unions and Caisse Populaire branches were to be excluded from providing an official position through the survey as they are currently governed by the *Credit Unions and Caisses Populaires Act* and would not be affected by any proposed amendments to *the Act*.

Co-operatives represented by federations were given the option to submit an individual position on the issues, or to allow their federation to submit a position on their behalf. Federations were approached and asked if they would provide a position on behalf of their members. Co-operatives not represented by a federation were given the option to provide a position by filling out the consultation survey or by providing a general statement of their position on the issues.

In total, approximately 1090 co-operatives were selected and contacted as part of the Ontario Co-operative Consultation (Note* It is not possible to be sure that this number is 100% accurate as the census and database information available is out of date and the normal startup of new co-ops and closing of other co-ops may impact these numbers.) On Co-op continues to add newly incorporated co-ops to their database with the help of regular updates from FSCO but 100% accuracy cannot be guaranteed.

As decided in the December 3rd Regulations and Legislations Committee meeting, the consultation deadline was extended from November 31st to January 31st, 2011. To date, extending the deadline has produced approximately 60 new responses from some of the less represented industries such as community development, energy, communications, arts and culture, wholesale and retail. In addition to this, further outreach to the French speaking co-operative sector was undertaken by le Conseil de la coopération de l'Ontario (**CCO**) who completed their consultation outreach on January 31st, 2011.

Response Rate

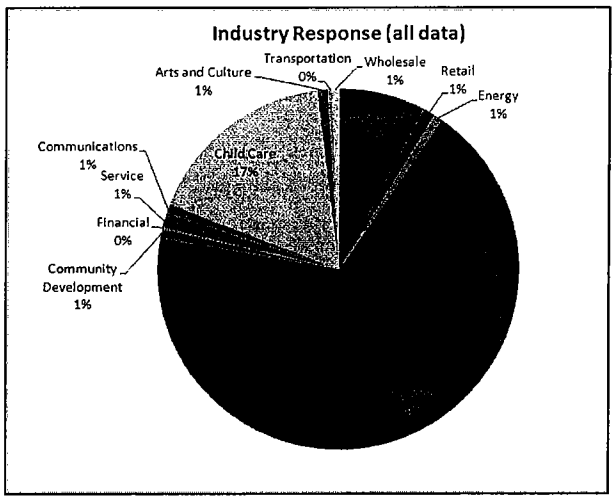
As of Monday, January 31st, 2011, On Co-op has contacted 800 co-operatives and received positions representing 754 co-operatives (73% of total sample) within the province. More specifically, On Co-op has received positions from 508 housing co-ops (91% of housing sector) via CHF Canada – Ontario Region and individual submissions, 127 child care co-operatives (54% of child care sector) largely via the member councils of OPPCEO, 57 Agriculture co-operatives (66% of sector) including a position from GROWMARK Inc. and 58 smaller individual co-ops in the service, transportation, communications, wholesale and energy sectors. In creating the sample and contacting co-operatives to participate in the study, it was found that 46 co-operatives are either no longer in business or presumably no longer in business as contact information either does not exist or is not available.

Due to the large number of housing co-operatives, the responses have been analyzed both with and without the housing sector included. This is to ensure that the prevailing opinions of the non-housing co-operative sectors are not overshadowed by the sheer volume of the housing sector responses. It should also be noted that the housing sector can be considered a separate entity from a regulatory perspective as the non-profit housing sector is already exempt from section 144.1 (and regulated by a separate business with members threshold found in section 144.2) and would be unaffected by any changes to par value preference shares, which is why it is important that the data be analyzed both with and without their inclusion.

Analysis

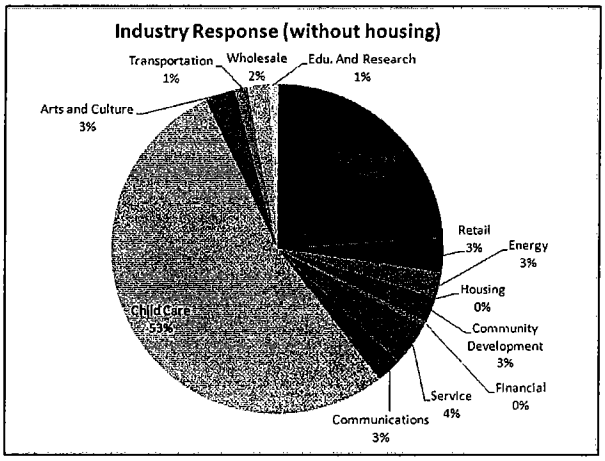
Industry Response

When analyzing the responses by industry type, the largest response rate came from the housing sector with approximately 68% of the total sample. Since the non-profit housing sector is to be considered a separate entity, the industry types have also been displayed without the housing sector. This is particularly important when analyzing the responses because non-profit housing co-operatives are governed under a separate adaptation of the 50% Rule (144.2) and non-profit co-operatives do not offer preference shares.



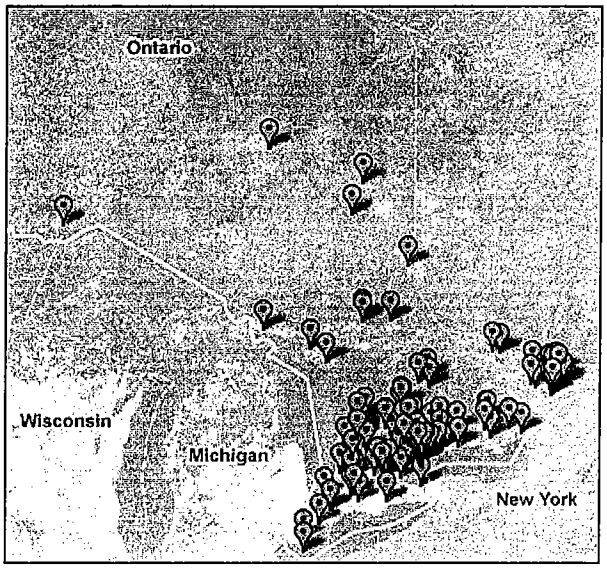
Industry Response (without housing)

Aside from the housing sector, the industries participating in the consultation with the highest response rate are child care, agriculture and service with 53%, 24% and 4% of the sample respectively. When analyzing the industry distribution without the inclusion of the housing sector, the proportions of co-operatives participating in the consultation become more visible and help to proportionately demonstrate the diversity of the businesses that currently exists within the co-operative sector.



Geographic Distribution

The geographic representation of the consultation participants has been plotted on the map to the right. When analyzing the respondent's location based on the four geographical regions established in the *2007 Co-operative and Credit Union Census*, it was found that 55% of responding co-operatives reported being from Central Ontario, 22% from Southwestern Ontario, 15% from Eastern Ontario, and 8% from Northern Ontario. The sample distribution of this study closely matches the distribution of co-operatives found to exist in Ontario during the 2007 census, which found 49% of co-operatives to be from Central Ontario, 25% from Southwestern Ontario, 15% from Eastern Ontario, and 10% from Northern Ontario.



Generally speaking, the distribution of co-operatives that participated in the co-operative consultation is reflective of Ontario's population distribution with the majority being based in Southern Ontario and a particularly high concentration in the Greater Toronto Area

Consultation Results

Raw Data

The following tables summarize the response numbers from the co-operative sector for each issue. Table 1 displays all of the data currently received, table 2 displays the data without the housing sector and table 3 displays the data without the housing and child care sectors. A detailed analysis of the data can be found on the following pages.

Group A: All data

Industry	Count
Agriculture	57
Retail	8
Energy	7
Housing	508
Community Development	8
Financial	1
Service	12
Communications	6
Child Care	128
Arts and Culture	8
Transportation	3
Wholesale	6
Edu. And Research	2
Total	754

Par Value	Count
Keep	544
Neutral	144
Undecided	5
Amend	11
NA	1
Skip	49
Total	754

50% Rule	Count
Keep	529
Neutral	178
Undecided	5
Amend	40
NA	2
Skip	0
Total	754

Group B: Data without housing sector

Industry	Count
Agriculture	57
Retail	8
Energy	7
Housing	0
Community Development	8
Financial	1
Service	12
Communications	6
Child Care	128
Arts and Culture	8
Transportation	3
Wholesale	6
Edu. And Research	2
Total	246

Par Value	Count
Keep	36
Neutral	144
Undecided	5
Amend	11
NA	1
Skip	49
Total	246

50% Rule	Count
Keep	21
Neutral	178
Undecided	5
Amend	40
NA	2
Skip	0
Total	246

Group C: Data without housing and child care

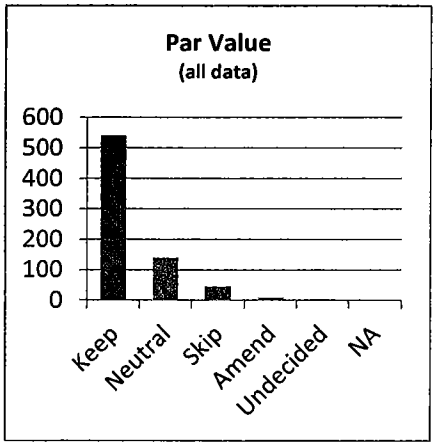
Industry	Count
Agriculture	57
Retail	8
Energy	7
Housing	0
Community Development	8
Financial	1
Service	12
Communications	6
Child Care	0
Arts and Culture	8
Transportation	3
Wholesale	6
Edu. And Research	2
Total	118

Par Value	Count
Keep	36
Neutral	28
Undecided	5
Amend	11
NA	1
Skip	37
Total	118

50% Rule	Count
Keep	20
Neutral	51
Undecided	5
Amend	40
NA	2
Skip	0
Total	118

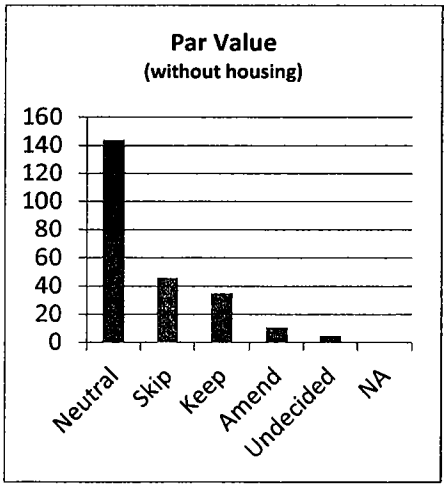
Par Value Share Structure

Group A: All Data



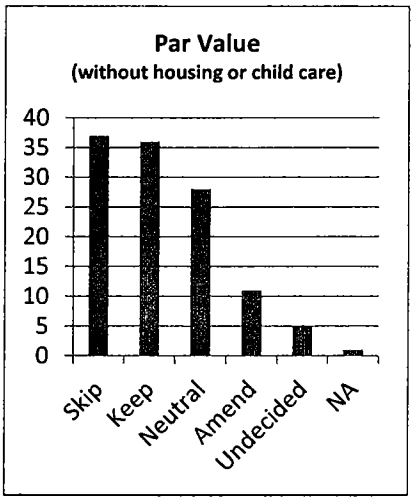
From the responses collected, representing a total of 754 co-operatives, the current results have indicated a strong inclination to keep par value share structure intact. With the housing sector included, there are 544 responses in favour of keeping par value share structure, 144 neutral responses, 49 co-operatives who chose to skip responding as they felt it would not affect them, 11 co-ops favouring amending the Act to remove par value preference shares, 5 undecided responses and 1 respondent who left the survey unfinished. It should be noted that the position of CHF Canada's Ontario Council and the majority of housing co-ops was that this provision remain specifically for housing co-ops, not that this provision remain for all co-ops.

Group B: Data without housing sector

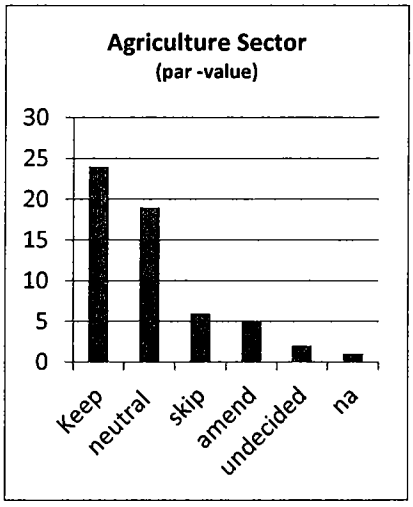


Without the housing sector's 508 co-ops included, the largest category of responses becomes neutral with 144 responses. This is predominantly due to the inclusion of the child care sector, which adds 126 counts of neutral responses. The second largest grouping with 49 responses belongs to the co-operatives who opted to skip the issue as they felt a change in this provision of the Act would not affect their co-operative. The main reason identified as to why the issue would not apply is that the co-operative did not offer preference shares to its members. The third largest grouping is now the position in favour of retaining par value share structure with 36 responses. This is due to an agricultural federation who unanimously voted to keep par value and adds 20 co-ops to the count. The 5 undecided responses largely came from the arts and culture, retail, service and community development sectors. Finally, the 11 co-ops in favour of amending the Act to move to non par value preference shares came from the agriculture (5), retail (2), energy (2), wholesale (1) and community development (1) sectors.

Group C: Data without housing or child care



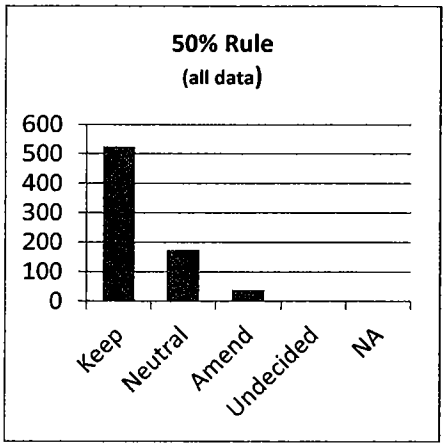
Without the housing and child care sector's collective 636 responses, the largest grouping belongs to the co-operatives who opted to skip through the issue with 37 respondents. The high volume of co-operatives skipping the issue occurs because many co-operatives do not offer preference shares and as a result remain unaffected by any changes to this provision of the Act. The second largest category belongs to those who opted to keep par value in the Act with 36 respondents. From the co-operatives opting to keep the Act unchanged, 24 (69%) of the responses came from the agriculture sector. The remaining respondents came from the retail, service, communications and community development sectors. The third largest category is now neutral with 25 respondents. Once again there were 11 co-operatives opting to amend this provision from the Act and the 5 undecided responses largely came from the arts and culture, retail, service and community development sectors.



Since the Agriculture sector was identified as one of the industries predominately affected by changes to this provision and comprises 51% of the remaining data, the sector was analyzed on its own to identify any trends or patterns in responding. When specifically analyzing the agricultural co-operative sector, approximately 24 of the respondents opted to retain par value preference shares, 19 chose to remain neutral to the issue, 6 chose to skip through the issue, 5 would like to amend the provision from the Act, 2 remained undecided and 1 failed to complete the survey.

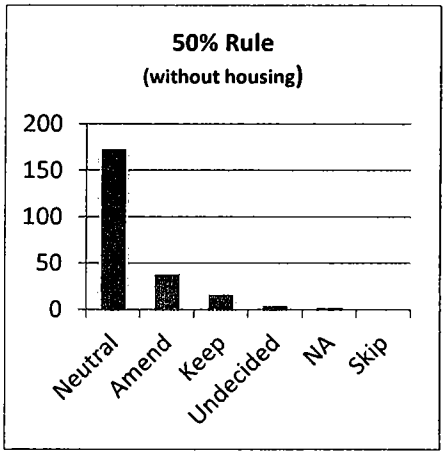
50% Rule Analysis

Group A: All Data



From the responses collected, representing a total of 754 co-operatives and with the housing sector included, the results are in favour of keeping the 50% Rule as a provision of the Act. There are 529 responses in favour of keeping the 50% Rule the way it is, 178 neutral positions, 40 positions to amend the provision from the Act, 5 undecided positions and 2 incomplete surveys. Of the 525 positions in favour of keeping the 50% Rule, 97% of the responses came from the housing sector, who unanimously voted that s. 144.2 remain specifically for housing co-ops, not that the Rule remain for all co-ops.

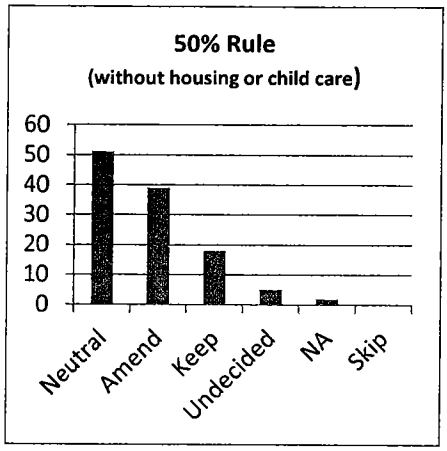
Group B: Data without housing sector



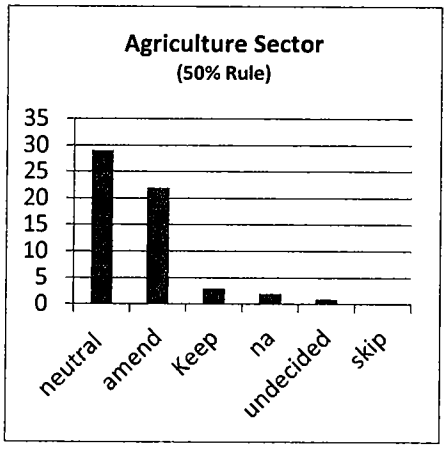
Without the housing sector's 508 co-ops included, there are now only 21 responses in favour of keeping the Act unchanged, 178 neutral responses, 5 undecided responses, 2 incomplete surveys and 40 responses in favour of amending the Act. As was the pattern with par value, 126 of the neutral responses came from the child care sector. The majority of neutral responses indicated that they would not be affected by any changes to this provision since their business conducted with members was significantly higher than the current threshold. The undecided responses came from co-operatives who felt that they would not be greatly affected but considered the repercussions on other business models. The co-operatives opting to keep the Act unchanged came from various sectors including agriculture, retail, service, communications, community development and arts and culture. Of the 40 co-operatives voting in favour of amending the Act, 22 responses came from the agricultural sector.

From the co-operatives that chose to amend the Act, 36 answered that they would like to see the 50% Rule removed entirely while 4 co-ops suggested that they would like to see the provision lowered to 20 or 30%.

Group C: Data without housing or child care



Without the housing and child care sector's collective 636 responses, the largest category of responses shifts to neutral with 51 responses indicating that a majority of co-operatives are neutral on the issue. The second largest category is to amend this provision from the Act with 40 co-operatives. Aside from the agriculture sector (22), the co-operatives opting to amend this provision came from the service (5), energy (4), wholesale (3), community development (2), arts and culture (2), transportation (1), and communications (1) sectors. From the remaining respondents, 20 co-operatives opted to keep the 50% Rule, 5 remained undecided and 2 neglected to complete the survey.



Since the Agriculture sector once again comprises 51% of the remaining data, the sector was analyzed on its own to identify any trends or patterns in responding. When specifically analyzing the agricultural co-operative sector, approximately 29 of the respondents opted to remain neutral on the 50% Rule, 22 chose to amend the provision from the Act, 3 chose to keep the 50% Rule, 2 remained undecided and 2 failed to complete the survey.

A Co-operative Discussion: Provincial Focus Groups

Purpose

Throughout the month of March, the Ontario Co-operative Association hosted and facilitated three focus groups across the province in an attempt to connect co-operatives from different sectors, educate them on two regulatory issues (the 50% Rule and par value preference shares), share the consultation findings with them, discuss how each co-operative felt about the findings, and collectively decide on the implication on the co-operative sector on a whole.

Attendants

The 50 individuals participating in the co-operative discussions on these two regulatory issues came from a variety of different parts of the co-op world. Provincial and federal co-operative agencies, government representatives, co-operatives from all backgrounds and interested co-operative minded individuals attended to make this outreach attempt successful. Co-operatives representing almost all of the industries comprising Ontario's diverse co-op sector came together to share their thoughts, concerns, and suggestions regarding par value preference shares and the 50% rule. A detailed attendance list can be found on the following page.

The co-operative sectors that were not represented in the co-operative focus groups were the child care sector and newly established local food co-operatives. A detailed list of focus group attendants can be found at the end of this document.

Outcomes

The general consensus of the focus groups was that the entire consultation process served as a good learning experience and provided a useful educational tool for the co-operative sector to learn about the *Co-operative Corporations Act* and the effects it can have on different co-operatives. The participants also noted the size and diversity of businesses within the co-operative sector and the difficulties that exist in attempting to update a piece of legislation that represents all of them.

It was also determined that more intelligence on preference shares is needed and to further the consultation report, an analysis of the current provisions that exist in other provinces/countries would be conducted to provide additional background context to this issue. In addition to this it was identified that it would be beneficial to collect statistical information regarding businesses that formed as a corporation instead of a co-operative specifically because of the limitations of either of these provisions in the Act. The logistics of this were noted as problematic but the general consensus was that this would be helpful information to know.

Focus Group Recommendations

The 50% Rule

In terms of the discussing the consultation data and the 50% Rule, it was identified that since s. 144(4) of the Co-operative Corporations Act already exempts non-profit housing, renewable energy and worker co-operatives from the 50% Rule, there is a very small demographic of co-operatives that remain affected by this provision. Because of this, the proposed recommendation to amend section 144 to allow co-operatives to set their own threshold for business with members (while keeping 50% as a default value) was widely received.

Par Value

It was identified that many individuals in the co-operative sector lack a full understanding regarding the different options that are available to manage the issue of capitalization. Further research would be useful in providing a more thorough understanding of the impacts of par value on particular industries and the alternatives that are available.

To achieve these results, it was determined that a detailed analysis of par value preference shares would be conducted throughout the month of May. This would consist of a legislative analysis regarding the legislation that exists in the other provinces and commonwealth countries. The targeted co-operatives for these case studies would be drawn from the emerging, newly developed, and established co-operative sectors and attempt to cover a representative sample of both large and small sized co-op businesses. The case studies themselves will be used in an attempt to help portray a more tangible picture of how par value is specifically affecting co-ops. The variety in co-ops selected will help address the different affects changes to this provision will have on co-ops, depending on the industry type and stage of development.

Preference Shares in Co-operative Legislation

Canadian Legislation

Legislation without par value preference shares

Canada's Federal legislation for co-operative businesses, the *Canada Co-operatives Act* offers investment shares in lieu of preference shares. Through a co-operative's articles, section 124(1) of this Act gives co-operatives the ability to determine a number of provisions relating to investment shares, including whether the shares may be issued to non-members, whether the number of shares is unlimited and, if not, the maximum number of investment shares that may

be issued, the number of classes of investment shares and the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to each class of investment share.

Section 125(1) of the *Canada Co-operative Act* addresses the issue of par value directly by stating "investment shares of a co-operative must be in registered form and without a par value." This language can be found in both the *Alberta Co-operatives Act* and Manitoba's *The Co-operatives Act* as both provinces have followed the Federal model on share capital and do not offer investment shares with a par value.

Neutral Legislation

Instead of adopting the Federal model on investment shares, British Columbia, Quebec, Nunavut, the Northwest Territories, Yukon, Nova Scotia and Saskatchewan provide co-operatives with the opportunity to determine their own stance on the issue by allowing co-operatives and associations to offer preference shares with or without a par value.

Section 48(1) of British Columbia's *Co-operative Associations Act* provides that if authorized by the association's memorandum, the co-operative may offer "one or more classes of investment shares, with or without par value." If the investment share capital of an association consists of investment shares both with and without par value, the investment shares with par value must be a class or classes of shares distinct from the shares without par value and every investment share of a class of investment shares without par value must be equal to every other investment share of that class.

Section 46 of *Quebec's Cooperatives Act* grants decision-making powers with regards to preferred shares to the board of directors. More specifically, this provision states that if authorized by by-law, the board may issue preferred shares to any person or partnership and shall determine the amount of and the preferences, rights and restrictions attached to the shares and the conditions of their redemption, repayment or transfer. Under this Act, preferred shares may be issued in series of the same class and the interest rate may be different for each series.

Instead of granting power specifically to the board of directors, Section 8(1.1) of Nunavut and the Northwest Territories' *Consolidation of Co-operative Associations Act* addresses preferred shares by stating that an association may issue preferred shares in addition to other shares with "with such restrictions as the association may from time to time determine." Section 12(1) of Yukon's *Co-operative Associations Act* follows a similar pattern by providing that the capital of an association having share capital "shall be divided into shares of the denomination set out in the memorandum of association and may be changed from time to time by amendment of the memorandum."

Section 20 of Nova Scotia's *Co-operative Associations Act* grants co-ops the ability to determine the terms and conditions attached to preference shares in the by-laws of the association. Specifically, Section 20.2 (4) states that when an association has issued preference shares, the

association may redeem or purchase such shares on such terms and in such manner as may be provided in the by-laws of the association and by the provisions attached to the said shares or, if none so provides, at fair market value.

Saskatchewan's co-op legislation introduces a unique situation in that it offers two provincial co-op options, each with their own interpretation of preference shares. Section 32(1) of Saskatchewan's *Co-operative Act* states that shares of a co-operative must be in registered form unless the bylaws provide otherwise, and "must have a par value fixed in the articles," while section 31(4) of *The New Generation Co-operatives Act* requires that "preferred shares shall be without nominal or par value."

Legislation with par value preference shares

Along with Ontario's *Co-operative Corporations Act*, co-operative legislation in New Brunswick, PEI, and Newfoundland requires that preference shares be offered with a par value. Section 35(2) of both New Brunswick and PEI's *Co-operative Associations Act* states that no member shall be required to purchase shares in the capital stock of an association at a price in excess of the par value thereof. Section 53 of Newfoundland's Co-operatives Act states that a co-operative may issue preferred shares as prescribed by regulation but prescribes that the shares of a co-operative shall have a par value fixed in the articles at an amount not less than $5 per share.

International Co-operative Legislation

United Kingdom

According to the Office of Public Sector Information and the Union of Co-operative Enterprises, the majority of co-operatives in Great Britain are registered under the Industrial & Provident Societies Act which has recently been renamed the Co-operative and Community Benefit Societies and Credit Unions Act.

As an Industrial and Provident Society, a co-operative has the option of issuing withdrawable share capital. This type of share is subject to any conditions stated in the society's rules and as the name suggests, is withdrawable by the member. There is no requirement to specify an amount of share capital upon registration. Societies have some exemptions from the Financial Services and Markets Act, including exemptions covering the approval of financial promotions, which can reduce the cost of a share issue. Withdrawable share capital is nevertheless risk capital and, despite the exemptions, the FSA will expect a society to provide appropriate information regarding this risk to potential investors. There is a shareholding limit of £20, 000, but there is no limit to the size of shareholding held by another society. The interest payable on shares must be limited to what is "necessary to obtain and retain enough capital to run the business". Those people investing in societies usually do so for socially motivated or philanthropic reasons rather than for any financial return.

New Zealand

Section 15 of New Zealand's national *Co-operative Companies Act* allows co-operatives to offer shares with a nominal value by exempting them from section 38 of the *Companies Act*, which usually requires that shares must not have a nominal value. According to the New Zealand Co-operative Association, preferred, nonvoting stock may be issued to both non-members and members for additional capital investment. This stock may be divided into classes and a have a par value or separate set of conditions. Interest paid on preferred stock may be limited by State statute and redemption determined by the board of directors. If the cooperative is changing structure or going out of business, preferred stock is paid before the common stock. If a co-operative is organized as a nonstick organization, capital certificates may be issued in lieu of preferred stock. They are sold in various denominations, may bear interest, and may or may not have a due date. For nonstick co-operatives, the combination of membership fees, sale of capital certificates and capital certificates issued for retained patronage are sources of risk capital (equity) for nonstick co-operatives.

Australia

Co-operatives in Australia are classified as financial co-operatives or general co-operatives. Financial co-ops such as Credit Unions or Building Societies are administered by the Australian Prudential Regulations Authority while general co-ops such as worker co-ops and non-profit co-op organizations are governed under State legislation.

Each Australian State and Territory, apart from Western Australia, regulates co-operatives through legislation based on core consistent provisions, originally developed by the Standing Committee of Attorneys General in the mid 1990s. Australian Capital Territory, Tasmania, South Australia, Queensland, New South Wales and Victoria's Co-operatives Acts state that the share capital of a cooperative varies in amount according to the nominal value of shares from time to time subscribed and that the shares are to be of a fixed amount which is to be specified in the rules of the co-operative. The only restriction placed on shares is that the shareholding and the rights of shareholders must comply with the co-operative principles.

Many of the Australian states also offer co-operative capital units (CCU) for the purpose of raising equity. A CCU is an interest issued by a co-operative conferring an interest in the capital (but not the share capital) of the co-operative. They can be offered to non- members, are given priority upon the winding up of a co-operative and have none of the rights and entitlements of membership with the co-operative. A CCU acts as a personal property that is transferable as provided by the rules of the co-operative. Any equitable interests in respect of a CCU may be created, dealt with and enforced as in the case of other personal property. In terms of redeeming co-operative capital units, the redemption of a CCU is not to be considered a reduction in the share capital of a co-operative and any premium on redemption is to be provided for out of profits or out of the share premium account or an account created for that purpose.

Newly Incorporated Co-operative: Ethical Coffee Chain

About the Co-operative

Ethical Coffee Chain Trade (ECC) is a newly incorporated consumer co-operative based out of Brantford, Ontario. They are currently in the pre-launch phase of development and will begin annual subscriptions with the September coffee harvest. They have 2 full-time employees and 7 part-time-as-needed employees working on web development, marketing and day-to-day operations. At this point, ECC has no assets except for inventory, which is valued at $8800.

ECC imports coffee from, directly from farmers in Nicaragua. Their members pay $2 for a lifetime membership, giving them equal ownership of the co-op and the right to sign up for coffee subscriptions of any amount of coffee they would like to purchase each month. Coffee subscriptions are administered through the company website, and coffee is delivered to member's homes upon arrival to Canada from the farmer.

With ECC the farmers and their workers are provided with prices that are both sustainable and profitable. These prices are determined through open negotiation directly with the farmers based on the actual on-the-ground economic situation of each farm. At the same time, ECC's aim is to use their collective bargaining power to maintain coffee prices that are reasonable for their members. The more members they have, the more affordable their coffee will be while still benefiting the farmers more than most of the other buyers currently do. In addition to this, a portion of all ECC's coffee is returned to the farming community through a social fund which their membership help build and control.

Investment Structure

In addition to the $2 lifetime membership shares, Ethical Coffee Chain Trade Co-op offers $100 Preference Shares with an annual return of Prime plus 2% for the members wishing to invest in the business. ECC has plans to follow in the footsteps of Mountain Equipment Co-op by redistributing patronage returns in the form of membership shares at the end of each fiscal year, after paying out preference share returns and contributing to a social fund to help the farm's workers.

Impacts of Par Value

As a co-op in the start up phase of development, ECC is undergoing severe challenges of capitalization. ECC originally planned on funding the co-op through the sale of preference shares. Although the return on these shares would be small, the unlimited number of potential members would theoretically allow for sufficient funding through small investments from many individuals. The main issue with this strategy is that ECC would need to acquire immediate

funding in order to secure inventory and cover operational costs before they are able to amass any helpful amount of members and their corresponding investment.

They have considered reaching out to traditional capitalization avenues available to regular corporations, including seeking Angel investors and government grants. Many of the grants that are available, however are not available for co-ops and traditional investors will not invest in ECC because of the limitations of par value shares. In addition to this, the ownership structure of ECC has made it difficult to attract larger investors as they often expect businesses they invest in to be sold for profit should they be successful. Since the goals of ECC are first and foremost to help the farmers and their community and to keep prices low for members, they cannot promise the commitment to investors' profits that most require. Because of this, ECC is forced to relying on revenue from sales and bank loans to overcome the initial obstacle of paying for inventory and capitalizing the co-op. As a long-term investment tool, par value shares could provide a viable source of income and sustainability for co-ops, but for those in the start up phase who have not yet built up membership and sales, the par value model acts as an obstacle to financial stability.

The other important aspect of par value shares to ECC is that Preference Shares are not tax deductible. The Common Shares offered by ECC, on the other hand are. The idea behind this is that once the co-op is self-sustainable the preference shares will be bought back and the co-op will no longer be dependant on them for financing. The profits could then be redistributed in tax-deductible common shares allowing ECC to redistribute the profits to their members, and pay less in taxes. ECC believes this is one of the most beneficial aspects of the co-operative model when it comes to financing and growing the co-op. Although ECC needs investors to start up the co-op, in the long run, it is ideal for the co-op to be self-sustained by the consumption of our members.

Co-operative Principles and Preference Shares

Although capitalization is a major issue to ECC that is negatively impacted by par value shares, at the same time, ECC recognizes that these par value shares are "an embodiment of co-operative values" which is an important factor for a consumer co-op where membership can expand quite rapidly. Although ECC desperately needs money during this initial phase of development, most of the incentives that drive investors to want higher returns from their investments are not in-line with the co-operative values of equal ownership, democratic control and member investment. Members who are loyal to the co-op will only benefit if they maintain their investment and allow the co-op's equity to grow and sustain the business. Investing in large amounts with the hope of large returns that one may pull out is reflective of a profit-driven attitude which ECC does not have and has no interest of developing. While ECC would like to see an increase in profits to benefit members with lower costs and greater opportunities to invest in social programs for the communities they work with both at home and abroad, profit for individual gain is not their objective and should not be a driving force behind their business. If this becomes the case, ECC believes that its values will be abandoned and the business will fail.

As a consumer co-operative, ECC believes that if large investments (from anyone) are not maintained more or less equal, they can affect the structure of ownership. Even if following the principle of "one member, one vote," larger amounts of shares owned in the co-op may still hold sway for the Board of a co-op. In ECC, where they seek to create a grassroots movement of ethical consumption, it is important to share the burden of financing the co-op and investing in it as evenly as possible amongst all their members.

It is the opinion of ECC that what needs to be found is a share structure that enables a start-up co-op to be able to gain capitalization for its early stages that will be fundamentally different than the type of capitalization that is required once the co-op is off the ground and doing regular and successful business. What is required is a system of share offerings that is more flexible at the start-up of a co-op and not necessarily throughout the entire life of the co-op. What a co-op needs changes throughout its life and the law should be flexible to meet these needs. Co-ops need to compete with regular corporations but their life is statistically most likely to be longer than those businesses they compete with, so, a more stage-based system of shares may benefit co-ops to compete hard in their early stages and then to sustain themselves when they have become more profitable and mature.

Fundamentally, ECC believes that it is crucial to uphold the principles of democratic and equal ownership, as well as member investment and that these principles are at the foundation of any co-operative. Capital is important and necessary, but it cannot be the driving force or the raison d'etre of a co-operative, like this, that aims to make social change that may not be quantifiable in dollar amounts. Members and members' needs must drive the staff at ECC, not simply economic gain.

Emerging Co-operative: La Siembra Co-operative

About the Co-operative

La Siembra Co-operative was established with the objective of connecting Southern producers of commodities such as cocoa and sugar with Canadian consumers. La Siembra was formed as a worker-owned co-operative due to the fact that the many of the commodities being purchased through the Fair Trade system were coming from co-operatives and aligning their structure with that of the producer groups would establish greater synergy. As a co-operative, they envision a world where people collaboratively build vibrant local and global communities, fostering diverse and sustainable economies through equitable trade and environmental stewardship.

La Siembra was formed in 1999 by a group of friends wanting to produce a Fair trade and organic hot chocolate for the Canadian market. After a year of blending and packing hot chocolate by hand in a church basement, La Siembra had sold over $44,000 worth of hot chocolate to natural health food distributors across the country under the brand name of Cocoa Camino. It did not take long before stores across the country were asking for more Cocoa

Camino products and by 2002 La Siembra had diversified to include not only cocoa and sugar to the hot chocolate line but also 100 gram chocolate bars. In 2009 La Siembra drafted a new business plan based on brand and distribution strength as well as product diversification by producer coops in Latin America to become Canada's national fair trade food brand. Since then Cocoa Camino has re-branded itself as Camino and expanded outside of cocoa and sugar products to include over 30 retail products including a variety of chocolate bars, chocolate chips, sugars, baking chocolate, coconut, hot chocolate and most recently a line of juices.

As of April 2010, La Siembra consists of 9 worker-owners and 13 staff based in Ottawa. Due to the nature of the business distribution (national through distributors and direct to large grocery chains) and the nature of fair trade (advance purchasing, pre-harvest financing), La Siembra's annual revenues are approximately $7 million with assets of approximately $3 million. In addition to this, La Siembra has sold products from over 15,000 co-operatively organized small producers in Latin America and the Caribbean and holds between 1.5 and 2 million dollars of inventory.

Investment Structure

The financing structure of the co-operative consists of Preference A Shares which are held by the worker owners, Preference B shares that allow for external investments, a line of credit with Caisse Populaire, small working capital loans from the BDC (Business Development Bank of US Fair Trade Worker Co-op) and a line of credit with Shared Interest Lending Society- a UK Fair Trade Lender.

The members of La Siembra invest in the co-operative through one membership share, an initial purchase of Preference B shares and an ongoing purchase of Preference B shares, between 5 and 8% depending on the level of the employee within the co-op. La Siembra raises its external equity through the sale of Preference B shares sold through a Memorandum Offering. These shares are for individuals interested in investing in an ethical company and offer a targeted dividend rate of 5%. Through this investment tool, La Siembra has raised approximately $1 million in external equity with an average investment of $8,000.

Defining the Issue

As a worker owned co-operative, La Siembra invests between 5-8% of their employee's salary towards an ongoing Worker Investment Program. This program is intended to build internal equity in the co-operative and is directed towards Preference B shares. As a small co-op, La Siembra does not offer a pension plan or other long-term financial security for its members, which makes retention for long periods of time challenging. Because their preference shares are par value shares La Siembra feels that it is difficult for members to feel that if building a long-term career at La Siembra they are able to build sufficient financial reserves to ensure financial stability at the time of retirement. In addition to this, despite having a loss on the books for several years, the shares in La Siembra remain at the same value under the par value system. The members who decide to leave and withdraw their shares receive the amount they initially

invested which causes concern for the remaining members who carry the risk of the loss moving forward.

La Siembra is in a growth phase and aims to double their revenues in the coming two years and as a result they will need a great deal more working capital to finance this growth. A non par value share offering may help them do this more efficiently. According to La Siembra, many of the larger investors view the option of a par value share as uninteresting and as a result do not pursue investment in the co-operative. Because of this, La Siembra feels that they would be better able to capitalize if they offered non-par value shares.

Established Co-operative: Gay Lea Foods Co-operative

About the Co-operative

Established in 1958, Gay Lea Foods Co-operative Ltd. provides a vital link between Ontario dairy farmers and consumers located across Canada. As Ontario's largest dairy co-operative, Gay Lea Foods is owned and operated by 1200 milk producer members, representing approximately 30% of the dairy farms in Ontario. Today Gay Lea Foods has annual sales of over $440 million and enjoys a respected position as a major contributor to the success of the Ontario and Canadian dairy industries.

Gay Lea Foods has over 600 employees and operates processing facilities in Guelph, Teeswater, Ivanhoe and Toronto which manufacture a wide variety of dairy products including: award winning butter, cottage cheese, sour cream, aerosol whipped cream, skim milk powder, milk and cheese. They are continually introducing new products, including spreadable butter blend and an award winning single serve cottage cheese. Their product line serves retail, industrial and food service markets, primarily in Ontario.

Background on Par Value shares in Gay Lea Foods

Par value shares have been an integral part of Gay Lea Foods' member investment model since their inception in 1958. The pricing for the par value of shares is controlled by the Board of Directors. Initially the par value of the shares in 1958 was set at $10 per share. This remained relatively stable until the 1970s when the par value of the shares was increased over a period of years from $10 to $15 per share to compensate for the inability for Gay Lea Foods to issue patronage directly to producer members (this was ultimately fixed with a change in legislation, allowing co-ops with members in supply managed commodities such as dairy to issue patronage to their members based upon milk deemed to have been received through a marketing board such as the Ontario Milk Marketing Board). The par value of Gay Lea shares was further increased from $15 to $17 per share in 1989 through the reinvestment of a $2 share dividend declared that year. The par values for Gay Lea member producer shares and investment shares

are currently set at $17 per share. Currently there is no desire by the Board of Directors to increase the par value of shares.

Investment Structure

Producer Members

Producer members in Gay Lea Foods are required to purchase 3 producer member shares (MPS) per thousand litres of annual milk production at the par value of $17 per MPS. These shares can be purchased by a minimum 1% deduction off of their milk cheque. For the average producer member in Gay Lea Foods, this translates into a MPS investment of approximately $31,000, although some of our larger volume members have investments of over $400,000 in MPS. Currently there are approximately $39 million in MPS invested with the co-operative.

Investor Members

Investor members in Gay Lea Foods are required to purchase a minimum of 100 investor shares at the par value of $17 per investor share. Investor members may consist of retired producer members, employees, producer members who have reached their minimum MPS level, and investors. Investor members in Gay Lea Foods are committed to the ideals of the co-operative. Investor members do not have a vote. Currently there are approximately $23 million in investor shares invested with the co-operative, with some members holding well over $100,000 in investor shares.

Return on Investment

Producer Members

Producer members do not receive a dividend on their MPS but are eligible to receive a patronage payment based upon their annual milk shipments. Patronage is currently issued as 25% cash and 75% into patronage shares, which Gay Lea Foods holds onto for a target period of 7 years. T-slips for income tax purposes are issued when cash is issued – with the patronage shares this effectively delays the declaration of income for 7 years. Current returns for producer members are averaging between 12 to 15%, even after taking into account a 5% opportunity cost per year for the patronage shares held by Gay Lea Foods.

Investor Members

Investor members receive a share dividend on the investor shares held on our fiscal year end. A share dividend has been issued every year since Gay Lea Foods inception in 1958. Currently the dividends have averaged $0.90 per share, although a $1.00 dividend was issued for the most recent year. The $1.00 per share dividend equates to a 5.9% straight return. Factoring in the available dividend tax credit can make this equivalent to a 7-8% return on a similar interest-bearing investment. Investor members are advised up front when investing not to expect any increase in the par value for investor shares.

Defining the Issue

The current value of Gay Lea Foods has been accumulated over generations since 1958 and passed on to next generation through retained earnings on the balance sheet (this is a long term view for the co-operative and for its members). Implementing a market value share price now would allow current members (some have only been members for less than a year) to benefit from a considerable capital gain through the significant retained earnings on the balance sheet

In addition to this, an increase in market value of a share could have several detrimental effects on the way Gay Lea Foods conducts their business. The first of these effects involve the fact that the co-operative will have to issue a higher dividend to remain competitive with other investments offered in the marketplace. For Gay Lea Foods, if investor share prices went from $17 to $20 per share, they would have to increase the $1.00 dividend by 18% to $1.18 to maintain a dividend rate of return of 5.9%, effectively draining additional capital/earnings out of the company. The second aspect of the introduction of market mechanisms is that with an increase in market value, there could be an incentive for members to withdraw shares from the co-operative to capture this capital gain, draining additional capital out of the company and affecting the balance sheet. A decrease in member equity on the balance sheet can affect financial ratios, which would affect the co-operative's ability to gain outside financing. Building on this is the added cost of completing an independent evaluation every year to determine market value of co-operative shares and the fact that implementing market valuation of shares can compel co-ops to focus on short term management of a member share value instead of the longer term management and goals of the co-operative.

Concerns over investment shares and the Canada Co-operatives Act

If Gay Lea Foods were incorporated under the Federal act, then all classes of shares would have the embedded right to a vote on significant matters such as mergers, acquisitions, sale, etc. An individual class of investor members holding only a fraction of the shares in the co-operative could block any significant move that the producer members would like to implement for the betterment of the co-operative. This is why Agropur (dairy co-operative in Quebec), which operates under the federal act, does not have any investor members. When producer members retire, they are not allowed to maintain the member producer shares – Agropur redeems their shares out and they lose their connection with the co-operative

Currently Gay Lea Foods governance structure under Ontario's Co-operative Corporations Act allots voting rights to producer members only (one vote per DFO licence or DFO milk production unit). Under the Ontario Act, it allows co-operatives to incorporate by-laws that allocate voting rights to their various classes of shares as they see fit to. Under this provision, Gay Lea's 1200 producer memberships elect 60 producer delegates as their representatives. These 60 delegates are responsible for reviewing and approving the by-laws of the co-operative, which outline the voting rights held by various classes of members. If a decision was required on a significant matter, a general vote of the 1200 producer memberships would be held to determine the

outcome. This ensures that producer members maintain control of the direction of Gay Lea Foods, a dairy processing co-operative originally set up to meet the needs of dairy producers (and not investor members). The current structure with investor memberships also allows Gay Lea Foods to maintain a tie with its retired dairy farmers and employees (of which most have a strong co-operative consciousness). Gay Lea Foods is also able to encourage and utilize significant investments from its investor members ($23 million in 2011).

Gay Lea Foods remains a strong supporter of maintaining the option to utilize par value shares for both its producer members and its investor members. Altering the Ontario Co-operative Corporations Act to remove the option of par value shares would have a significant impact on the way Gay Lea Foods raises capital from its members and supporters.

In addition, Gay Lea Foods is very apprehensive about suggestions to align portions of the Ontario Co-operative Corporations Act with the Faderal Canada Co-operatives Act. Gay Lea Foods is concerned that if recommendations are put forth to the Ontario government or FSCO to align portions of the Ontario act with the federal act, that the Ontario government may choose to align the acts in totality. This would again affect Gay Lea Foods significantly. To maintain producer control of the co-operative under the federal act, Gay Lea Foods would be forced to remove investor members and investor shares from our investment structure and pay out $23 million in investor shares.

Gay Lea Foods Co-operative Ltd. would not support the elimination of par value shares or the alignment of the Ontario Co-operative Corporations Act with the federal Canada Co-operatives Act such that it would not allow for the allocation of voting rights to producer members only.

Courses of Action Scenarios

Par Value Scenario A: Leave Par Value Unchanged

In leaving the Act unchanged, the co-operatives who currently identify this provision as having a negative impact will remain dissatisfied. When questioned about the current impacts of par value share structure on their co-operative, the main negative impacts co-operatives identified were that this provision negatively influences a co-op's membership relations and recruitment, hampers the ability of the co-operative to grow its business and hinders a co-operatives ability to attract investment by rewarding early investors.

The positive ramifications of leaving the Act unchanged indicated by the 34 co-operatives opting to keep the rule highlighted the importance of par value as a component of the co-operative model since it enhances member relations by creating a sense of security/equality and coincides with the nature and values of the business.

Par Value Scenario B: Amend Par Value

When questioned about the potential impacts of restructuring the Act to allow for non-par value preference shares, co-operatives desiring change stated that founding members would feel better about the time they invested in getting the business started. Removing this provision may encourage others to invest early into a co-operatives development. They have also indicated that amending this would have a positive impact on the co-operatives member relations and recruitment.

The co-operatives cautioning against amending the act indicated that amending the Act to allow for non-par value shares would have a negative impact on membership relations and recruitment. They also highlighted the importance of par value preference shares as a part of the co-operative ideology and argue that without the par value provision in place, there is little to differentiate co-operatives from a traditional corporation. According to these co-operatives, this element is very important as it acts as a fundamental principle to co-operation in Ontario.

Par Value Preference Share Structure	
Reasons to keep par value shares	**Reasons to remove par value shares**
1. Par value shares are an essential part of a co-operative's **identity.** 2. Removing par value provisions encourages speculation and profit **motives and the introduction of** speculation undermines the purpose **of the co-operative.** 3. It is a fundamental change in thinking: sustainability and fair return vs. short term profit motives and the removal **of capital.**	1. It is an outdated model. 2. Hampers investment due to the fact that there is no reward for the risk. 3. Particularly discourages early investment in co-operatives. 4. Incentive to de-capitalize.

50% Rule Scenario A: Leave 50% Rule Unchanged

Co-operatives recommending keeping the 50% Rule indicated that this provision currently enhances co-operatives strengths and values, reinforces the co-operative growth model and that this condition coincides with the fundamental principle that co-ops primarily exist to fill a need which is not to generate income.

Co-operatives in favour of amending the Act indicated that the 50% Rule currently risks putting co-operatives out of business due to an inability to meet the required threshold. They also suggested that this provision currently has a negative impact on short term hiring and growth, that compliance with the rule is difficult and time consuming and that the rule is not relevant to the co-operative principles.

50% Rule Scenario B: Amend 50% Rule

When asked to comment on the impact of amending the 50% Rule, the co-operatives indicated that by removing this provision or allowing co-operatives to determine their own limits through articles and by-laws, co-operatives could pursue a regulatory vision that suits their particular business. The additional comment suggested that by not enforcing the 50% Rule during an initial growth period of approximately 10 years, co-operatives would have the opportunity to develop their membership.

The co-operatives indicating a negative impact from amending this provision suggested that amending the rule might erode one of the fundamental principles of co-operation by allowing non-members to "ride on the backs" of current members. They also identified that non-members wouldn't feel the same sense of ownership as the current members and that this difference separates co-operatives from corporations.

The 50% Rule	
Reasons to keep the Rule	**Reasons to amend the Rule**
1. The 50% Rule is what makes a co-operative a co-operative. 2. Respecting the 50% Rule enhances co-operatives' strengths and values. 3. Why change it? It has worked for almost 40 years.	1. Why 50%? The number is arbitrary 2. Compliance is difficult and incurs additional auditing costs. 3. People may become members for the wrong reasons. 4. It's not relevant to co-operative principles.

Recommendations

Par Value

Based on the information collected during the Co-operative Consultation, it is the opinion of the Ontario Co-operative Association and the Co-operative Regulations and Legislations Committee that the co-operative sector believes par value preference shares to be an important aspect of the co-operative movement and thus should not be amended from the Act. The current recommendation is to remove par value as an operational issue before the Regulations and Legislations Committee's sector meeting with the Financial Services Commission of Ontario in September.

The 50% Rule

Since the information collected during the Co-operative Consultation on the 50% Rule indicated that while there are a significant number of co-operatives that would like to see this provision removed from the Act, there are also some that would like to retain a threshold for their co-operative. Because of this, it is the recommendation of the Ontario Co-operative Association and the Regulations and Legislations Committee that the *Co-operative Corporations Act* be amended to give co-operatives the opportunity to determine their own threshold for business with membership through their own articles and by-laws. In doing so, the co-operatives who currently view the regulation as imperative can continue operating under this model, while the co-operatives who find the provision to be restrictive may determine a limit that is appropriate for their particular co-operative.

Ontario Co-operative Association

OFFERING STATEMENTS: REGULATORY CHANGE PROPOSAL

A position paper submitted by the Ontario Co-operative Sector Regulatory Affairs Committee to the Financial Services Policy Unit, Ontario Ministry of Finance

SUMMARY:

1. The Ontario Co-operative sector's Regulatory Affairs Committee (the "Committee"), representing the interest of Ontario co-operatives, recommends the following changes to Ontario Regulation 178 (as amended):

   a) The number of prescribed security holders for the purpose of subsection 34(1) of the *Co-operative Corporations Act*, R.S.O., c.C.35 (as amended) (the "**CCA**") be increased from 35 to 50;

   b) The requirement to file an offering statement not apply to a co-operative's issue of shares to its members if the value of the shares issued not exceed $5,000.00 per member in a year and not exceed an aggregate value of $50,000.00 per member;

   c) The requirement to file an offering statement not apply to a co-operative's issue of debt obligations to its members if the value of the debt obligations not exceed $5,000.00 per member in a year and not exceed an aggregate value of $50,000.00 per member; or

   d) The requirement to file an offering statement not apply to a co-operative's offering of securities to its members, if the offering does not result in the co-operative having more than $1,000,000.00 of issued and outstanding securities.

2. The recommended changes in this Position Paper are intended to recognize the risks and benefits of co-operative enterprises by their size, their experience, their resources, their capacity, and, fundamentally, that the overwhelming motivation of investors in co-operatives is not to promote the dominance of capital within the co-operative, but to create and enable an enterprise that responds to their needs and interests (and the needs and interests of the community) without speculation.

3. Investments in co-operatives do not determine the extent of members' financial and governance rights, but are a condition of membership and participation in co-operatives. To the extent that the changes recommended below increase co-operatives' financial means for conducting their business and achieving their objectives, they will also serve to facilitate more opportunity among a greater number of Ontarians to become members of and participate in co-operatives.

BACKGROUND:

4. The offering statement process for co-operatives has its origin with the 1971 Ontario Legislature's Select Committee *Report on Co-operatives* (the "**Select Committee Report**"), which led to the 1973 adoption of the CCA. This report revealed a clear understanding of co-operatives in the mid-20th century, how they did business, and their role and potential for growth in Ontario's economy and communities at that time.

5. When it was drafted, Ontario co-operative legislation was unique in Canada because it recommended a distinct regime for regulating co-operative securities in the province, separate from those businesses incorporated under other legislation and regulated under the Ontario *Securities Act*. Other co-operative legislation, such as Manitoba's *Cooperatives Act (1998)*, now include Offering Statements or similar exemptions from provincial securities regulations.

6. Co-operatives raise capital for their development and operations by offering securities to members and to others who wish to support financially the social and economic objectives of co-operatives in their local, regional and provincial communities. Securities include both shares issued by the co-operative, as well as other instruments like bonds or debentures. These securities are not traded on the open market.

7. Membership shares are available only to those wishing to become members of a co-operative. Under the CCA, preference shares are available for purchase by both members and others who choose not to become members, but who wish to support the goals and objectives of the co-operative. The ownership of preference shares, however, does not mean the holder has the right to vote in the co-operative.

8. The regulatory process in Ontario for co-operative securities is designed to allow prospective purchasers to make informed investment decisions while also ensuring that co-operatives can raise their capital from their members and other supporters without undue cost. When an exemption from offering statement requirements is available, a co-operative can raise funds from the sale of securities with less financial, regulatory and administrative burdens on the co-operative. Even if a co-operative is exempt from offering statement requirements, it is still obligated to provide full disclosure to investors.

9. The CCA was proclaimed in 1974, and the offering statement environment - pioneering in its day - has not been updated in more than 20 years. The financial limits and thresholds below which there is an exemption were prescribed in 1995, and have not changed since that year. They have lost about 50% of their value in that time due to inflation -- $1,000 in 2014 dollars would be equal to $642 in 1995 dollars.

RECOMMENDATIONS:

A. <u>Threshold of Security Holder Exemption Requirements: Regulation 178, Section 11.1</u>

10. Currently, Regulation 178 (as amended) states: "For the purposes of subsection 34 (1) of the Act, the prescribed number of security holders is 35." Co-operatives that create offerings that would result in fewer than 35 security holders do not have to prepare an offering statement to sell securities and raise capital.

11. We recommend that the prescribed number of security holders, for the purpose of subsection 34(1) of the CCA, be increased to **<u>50</u>**.

12. As a general proposition, the goal of securities regulation is achieving a ***balance*** between protecting investors from unfair, improper or fraudulent practices <u>and</u> fostering fair and efficient capital markets and confidence in capital markets.[1] Both ends of the balance are important. It is submitted that the current regulation of securities for co-operatives, with its current limit of 35 security holders, undermines efficiency in the allocation of capital insofar as it causes persons to avoid adopting the co-operative enterprise model because of the low threshold (35) above which they must incur substantial costs in order to obtain a receipted offering statement.

[1] See section 1.1 of the *Securities Act*, R.S.O. 1990, c.S.5.

13. Increasing the prescribed number of security holders to 50 will allow more new or small co-operatives to increase their membership base by 44%, allowing them to raise start-up capital from a larger pool of members - and in a more cost-effective manner - before having to consider utilizing an offering statement. This will facilitate a more stable and sustainable co-operative business since there will be fewer restrictions on the membership pool. This will allow the co-operative's membership to be larger, more diverse, and attract a wider range of skillsets and experience.

14. A co-operative issuing securities typically does so to persons either who desire, already, to be members of the co-operative or who (in the absence of desiring to become members) are supportive of the goals and objectives of the co-operative, and who, in any case, generally have a relationship to the co-operative and its social and economic enterprise so that they understand the risks associated with the investment. In this regard**, there is an analogy to the "private issuer" exemption in effect across the country, including in Ontario: to the extent that persons acquiring securities in a co-operative are members of the co-operative and are not likely to base their investment decision on offering statement disclosure** – either they have access to information commensurate with the information contained in an offering statement by virtue of their membership in the co-operative or they may invest regardless of the disclosure in the offering statement because they are committed to social and economic objectives of co-operatives in their local, regional and provincial communities.

B. Current Prescribed Offering Statement Exemption Requirements

Current Limits

15. Ontario Regulation 178 currently exempts a co-operative from having to file an offering statement if:

- in respect of the co-operative's issue of shares to its members, the value of the shares issued does not exceed $1,000.00 per member in a year and does not exceed an aggregate value of $10,000.00 per member;

- in respect of the co-operative's issue of debt obligations to its members, the value of the debt obligations does not exceed $1,000.00 per member in a year and does not exceed an aggregate value of $10,000.00 per member; or

- in respect of an offering of securities to its members, the offering does not result in the co-operative having more than $200,000.00 of issued and outstanding securities.

Recommended New Limits

16. There have been no changes to limits or exemptions in the CCA and Regulations for many years resulting in an erosion of the values due to inflation. 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 TIMES, as follows:

a) the requirement to file an offering statement not apply to a co-operative's issue of shares to its members if the value of the shares issued not exceed **$5,000.00** per member in a year and not exceed an aggregate value of **$50,000.00** per member;

- the requirement to file an offering statement not apply to a co-operative's issue of debt obligations to its members if the value of the debt obligations not exceed **$5,000.00** per member in a year and not exceed an aggregate value of **$50,000.00** per member; or

- the requirement to file an offering statement not apply to a co-operative's offering of securities to its members, if the offering does not result in the co-operative having more than **$1,000,000.00** of issued and outstanding securities.

Rationale: Close Member-Investor Links to the Co-operative

17. With few exceptions, Ontario co-operatives are relatively small enterprises, with a close-knit membership base or source of community support that is strongly connected to their businesses. This membership and community connection reduces the need for disclosure through the offering statement process because, as noted above, the members are not likely to base their investment decision on offering statement disclosure.

18. As noted in the Select Committee Report, "[Securities] issued by a co-operative are not purchased with a view to capital appreciation or to obtaining a high return since the Act [the CCA] limits the rate of dividend which may be paid and in any event most of the earnings of a co-operative after provision for necessary reserves are distributed by way of patronage rebates. Persons become members of a co-operative to avail themselves of its services and not primarily for the purpose of investment." This statement of the Select Committee is no less true today, as members of co-operatives exhibit a stronger bond and understanding of the business in these enterprises that takes the place of an offering statement.

19. We recognize the importance of the goal of securities regulation referred to, above,[2] but wish to emphasize the principle of measured or proportionate regulation, which recognizes the unique features of the sector of the economy and the economic activity being regulated. While "investor protection" is an important aspect of fostering a securities market that is fair and entitled to public confidence, the principle of proportionality in the context of the co-operative segment of the securities market requires the regulator – government – to recognize the unique features of the investor / member in relation to the co-operative as issuer of securities.

20. As stated, above, the overwhelming motivation of investors in co-operatives is not to promote the dominance of capital within the co-operative, but to create and enable an enterprise that responds to the members' needs and interests (and the needs and interests of the community) without a speculative purpose. People invest in co-operatives because they believe in the importance of the goals and objectives of the co-operative, and of ensuring that the benefits from the co-operative's

[2] See paragraph 12, above.

enterprise remain in the local and regional economies and communities. They understand how the co-operative is structured and operated to achieve those goals and objectives.

21. While investors in co-operatives are not indifferent to financial return and the risk of financial loss, they are prepared to accept a (legislated) lower rate of return for the use of their money and the risk that some or all of their capital may be lost, in consideration for being a member of and participating in the co-operative's enterprise. Accordingly, the investment limits – established 20 years ago – should be updated to reflect the unique character of the co-operative segment of the economy, the close bond between new (defined as those incorporated five years or less) or smaller co-operatives and their members, and the reasonable expectations that members of, and investors in, co-operatives have of the role of regulators in their oversight of market participants.

22. ***CO-OP PERSPECTIVE:*** Growth in organics and local food initiatives has grown substantially in the last five years. This has included the development of retail stores to serve small communities (North Central Co-operative) or a defined neighbourhood in an urban area (Karma Food Co-operative, Garden City Food Co-operative, West End Food Co-operative). The development of a retail location for such a project is between $500,000 and $1,500,000, depending on the location and size of the store, and to some extent whether or not the building must be built new. In these cases, the members are heavily connected to the creation of these stores because: they are often the only store available in a community or neighbourhood; the stores are seen as a source of local employment; or they are a sustainable and democratic response to larger scale multi-national This connection ties the members and investors to the co-operative and keeps them involved in the day-to-day activities of the business. For example, Karma Co-operative members have the option to volunteer in the store or on a board committee to reduce the membership fees they pay, giving them knowledge of the co-operative operations that would not exist in the case of a customer shopping at a franchised grocery store. If Karma were to be developed in the current business climate (it was started in 1972) they would likely require an offering statement under the current limits, but not if the limits were increased. Again, the member bond and involvement reduces the need for disclosure for these types of co-operative s and projects

23. ***CO-OP PERSPECTIVE – In the words of the Aaron Theatre Co-operative:.*** Rural communities are at risk of losing their cultural institutions and co-operatives can provide a model to keep them in the community. The Aron Theatre Co-operative Inc. was formed to first save the theatre (built in 1949) in Campbellford Ontario from closing – by buying it from the long-time private owner – and then working to turn it into a sustainable cultural hub for everyone in the community.

    In order to do this successfully, the Aron needed to raise hundreds of thousands of dollars to:

    - Complete a feasibility study and business plan.
    - Purchase the business (including the land and building).
    - Renovate the marquee and replace the old light fixtures with LED lights.
    - Upgrade to digital projection and sound technology.
    - Replace the theatre seats.
    - Install a barrier-free entrance and accessible washroom.
    - A current need exists to raise additional capital to replace the old heating system and the roof of the building.

To facilitate the success of this project, it would have been helpful to increase the Offering Statement exemption from the current $200,000 to $1 million (as well as the individual member limits of $1,000 per annum and $10,000 accumulatively). The current limits are a barrier to raising capital for co-operative projects, including business succession from retiring baby boomer owners.

Because of the $200,000 Offering Statement limit, the Aron Theatre Co-op had to develop a mixed capitalization model that took much longer to implement (three years from the incorporation date of the non-share co-op). We sold $166,400 in Aron bonds (within the current Offering Statement exemption of $200,000), raised $211,000 in grants (some of which are no longer available from the government of Canada), and levered over $700,000 in in-kind contributions and volunteer labour from community members, including local businesses. A copy of the co-operative's financial statements is available upon request.

24. *Rationale: Cost Reduction and Efficiency:* As with all business sectors, the costs of doing business for co-operatives have increased over time, which means that the current offering statement limits now affect many more co-operatives than would have been affected in the early 1990s when these limits were first put in place.

25. The administration costs of proper documentation and compliance in processing membership applications and investments are ever increasing. A co-operative seeking to raise even a modest sum of $60,000 in a year, to avoid the cost burdens of preparing an offering statement, will have to handle at least 60 investments of $1,000 each. By having to attract many smaller investments, the co-operative is frustrated in its ability to attract capital at a low cost, due to the higher costs associated with administering the many investments. Put simply, one of the goals of securities regulation -- fostering efficient capital markets – is sacrificed to the other goal (reducing the risks that investors face), with the result that co-operatives face costs or other disincentives that affect their behaviour regarding their capital-raising choices. Increasing the thresholds 5-fold will represent up to a 75% savings in administration costs for the co-operative as a percentage of the investment, while still being consistent with the original goals and vision of the legislation.

26. Similarly, for the investor, the amount of due diligence required to learn about a co-operative, the business model, the related industry and the investment opportunity do not warrant the return that the investor may be able to receive on a single $1,000 investment or a cumulative 10-year investment plan totaling $10,000. The median household income in Ontario in 2010 was $71,540,[3] and using the RRSP contribution limit of 18% of earned income as a guideline provides a suggested investment amount of $12,877 per year. Even if a household strives for an investment level of 10% of earned income (that is, an investment of $7,154), applying the $1,000 threshold to all investments would result in having to maintain eight different investments in a year in order to place their $7,154 of capital. By any measure, this would not be an efficient way to allocate and invest such a small sum of money – having to make eight different investments, with the resulting transaction costs – nor is it fair to the investor.

27. Organizations in general have seen the need for capital increase substantially since the 1974 proclaiming of the act including investments in technology, automation, efficiency and scale.

[3] Statistics Canada, *Median Total Income, By Family Type, By Province and Territory (All Census Families* http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil108a-eng.htm (Access February 15, 2015)

Notwithstanding the fact that most Co-operatives are small operations, co-operatives compete in an increasingly global competitive business environment. The opportunity to start a co-operative within the current $200,000 capital exemption varies greatly by industry and the ability to leverage the equity of the members. The renewable energy sector is one with high capital requirements, not unlike many industries.

28. **CO-OP PERSPECTIVE: RENEWABLE ENERGY.** Within the renewable energy sector in Ontario, this leaves a co-operative needing to make a choice: A co-operative can either attempt to fund an offering statement process (which in the case of one renewable energy co-operative cost $94,000 for legal and accounting reviews) without first establishing operations, asking members to invest in a vision with the hope of becoming a financially viable operation in the future, or, alternatively, the co-operative can try to create a viable operation in the short term, at the risk of not having sufficient capital to grow the organization within a reasonable time period.

29. By way of example, an expected project return (excluding administration) for an individual renewable energy generating project or a few smaller projects that could be purchased with $200,000 of equity is in the 8-9% range. Involving a lender to provide an accompanying portion through a loan could potentially increase the returns for the equity portion of the investment to the 13% to 15%. In this scenario, the total contribution available from the projects to cover the administrative costs of the co-operative would range from $26,000 (13% return on $200,000 of equity) to $30,000 (15% return on $200,000 of equity). Professional fees for filing returns, preparing audited statements and other compliance will cost approximately $10,000 per year at the low end unless pro bono work is involved. Assuming a 5% investment return (interest on member bonds) to the investors would take another $10,000. This leaves between $6,000 and $10,000 of surplus before income tax, if it is possible for all day to day administration of the co-operative to be done through the work of volunteers. At this rate, it would take several years of setting aside surpluses before another acquisition of a renewable energy project could occur which implies a very slow growth rate.

30. Even if surpluses are reinvested into the co-operative rather than paid to members as interest or dividends, the level of working capital is extremely limited and is unlikely to support the hiring of people to dedicated positions. By relying on volunteer time and effort and limiting growth potential, this is relegating the co-operative business model to that of idealists rather than promoting the organization of a co-operative as a competitive business structure. Accessing the same lenders that international developers access with the most favourable rates and terms requires portfolios of projects that often start at $5 million in value and often need to exceed $15 to $20 million in value to be able to cover the fixed costs of legal reviews, due diligence expenses and loan administration expenses. The current limit of $200,000 for raising seed capital prior to the development of an offering statement makes achieving this scale of a portfolio extremely difficult and adds substantial uncertainty to the process. By increasing the threshold from $200,000 to $1,000,000, this provides sufficient working capital to pay people for their efforts, establish an operating track record and further fund the development of an offering statement based on a viable organization.

31. Many co-operatives such as housing co-operatives, agricultural co-operatives and organic food co-operatives have faced a real estate market that has seen property values (an essential component in the

operation, whether leased, rented or owned) increase at rates well beyond the rate of inflation. Using Ottawa as an example, in 1974, an average home cost $46,661, whereas the average home in 2013 cost $357,348, a more than 7-fold increase.[4] In 1974, the average price for farmland in Ontario was $1,700 to $1,800 per acre[5], while in 2014, average land prices in Southwestern Ontario was $11,000 per acre[6], a 6-fold increase overall, but doubling in cost in just the last 5 years.

C. Recommended Changes to Regulation 178

32. Based on the foregoing, therefore, we recommend the following amendments be made, respectively, to sections 11.1 and 12.6 of Regulation 178:

"11.1 For the purposes of subsection 34 (1) of the Act, the prescribed number of security holders is ~~35~~ 50. O. Reg. 414/07, s. 2. "

"12.6 Subsection 34 (1) of the Act does not apply to the following shares and debt obligations of a co-operative:

1. Shares issued to members if the value of such an issue does not exceed ~~$1,000~~ $5,000 per member in a year and does not exceed an aggregate value of ~~$10,000~~ $50,000 per member.

2. Debt obligations issued to members if the value of such an issue does not exceed ~~$1,000~~ $5,000 per member in a year and does not exceed an aggregate value of ~~$10,000~~ $50,000 per member.

6. Securities issued by the co-operative to its members, if the offering does not result in the co-operative having more than ~~$200,000~~ $1,000,000 of issued and outstanding securities."

[4] http://www.agentinottawa.com/1956_-_Present_Prices/page_491704.html
[5] http://www.uoguelph.ca/catprn/PDF-TPB/TPB-11-01-Weersink-Deaton-Bryan-Meilke.pdf
[6] http://valcoconsultants.com/20102014LandValuesStudy.pdf

CONCLUSION:

In concluding, we note the report of the Auditor General of Ontario to the Speaker of the Legislative Assembly of Ontario (Fall 2014), in which she reported, among other things, on the Financial Commission of Ontario's role and functioning in exercising oversight of co-operatives, in particular reviewing and receipting offering statements. Among her recommendations is 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]" (page 145). FSCO's response, as reported in the Auditor General's report, is that FSCO will initiate further discussions with the OSC about the implications of transferring the responsibility for reviewing co-operatives' offering statements to the OSC. Further, we note that FSCO is currently undergoing a review of its mandate.

The process for Offering Statement certification at FSCO is working well. Presently FSCO does not handle a large volume but the Offering Statements it does receive are reviewed using a much more comprehensive standard than previously. FSCO's current interpretation of the regulations surrounding Offering Statements has now stabilized. There are trained and experienced staff managing the function well at this point.

The receipting (approval) of Offering Statements should not move to the Ontario Securities Commission (OSC) or to any other agency unless the full complement of staff and resources move currently at FSCO moves as well. In particular, the OSC's priorities and shareholder-based expertise would have a negative impact on this community-oriented financing model that co-operatives increasingly utilize.

The Ontario Co-operative Association has been invited to participate in discussions and consultations before any decision is made to transfer the responsibility for reviewing co-operatives' offering statements to the OSC – or any change to FSCO's mandate is made - to ensure that the views and concerns of the co-operative sector are communicated to government. We see no reason why changes to the *Co-operative Corporations Act* cannot continue to be made while these discussions continue.

No.	OUTSTANDING CHANGES TO ONTARIO CO-OPERATIVE CORPORATIONS ACT & REGULATIONS Document Updated: June 4, 2018 *Presented to FSCO: September 7, 2018*	STATUS
1	**50% Rule (conducting 50% or more business with members)** **– LEGISLATIVE CHANGE - ACT, Section 144 (1)** **BACKGROUND:** 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 **RECOMMENDATION TO GOVERNMENT:** ➔ **A recommendation has been made to FSCO and MoF to remove this provision entirely from the Act. 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.** **BACKGROUND:** The request was proposed to FSCO in 2010 by the OCA Regulations and Legislation Committee (now called the Regulatory Affairs Committee). An extensive province-wide consultation was undertaken by OCA 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 OCA board of directors and confirmed by the OCA 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.	Inclusion in March 2018 Ontario budget. *"As part of the review, the government will consider key policy issues, including restrictions on non-member business…"*

2a	**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. **RECOMMENDATION TO GOVERNMENT:** ➔ **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.	
2b	**CLARIFICATION OF "MATERIAL CHANGE" AND UPDATING OF THE TRIGGERS** **– REGULATORY CHANGE: REGULATION 178, section 12.1** **BACKGROUND:** 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." The Regulatory Affairs Committee is recommending an increase to these criteria of 'material change'.	

	RECOMMENDATION TO GOVERNMENT: ➔ **No recommendation has been submitted to FSCO or MoF pending sector consultation.** ➔ Discussions will be undertaken with FSCO to determine if there are other items that may be considered a "material change".	
2c	**A STREAMLINING OF THE OFFERING STATEMENT RENEWAL PROCESS WHEN MINOR CHANGES DO NOT AFFECT MATERIALITY** **– REGULATORY CHANGE: REGULATION 178** **BACKGROUND:** 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 **when the minor changes do not affect materiality and the offering statement is otherwise exactly the same**. **RECOMMENDATION TO GOVERNMENT:** ➔ **No recommendation has been submitted to FSCO or MoF pending sector consultation and further discussion with FSCO.** ➔ Discussions continue with FSCO on the processes surrounding Offering Statements.	

2d	**TO CHANGE THE THRESHOLD NUMBER OF MEMBERS WHERE AN OFFERING STATEMENT IS REQUIRED FROM 35 TO 50** **– REGULATORY CHANGE: REGULATION 178, 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." The Regulatory Affairs Committee is recommending an increase in the prescribed number (i.e. exemption limit) to 50 security holders. **RECOMMENDATION TO GOVERNMENT:** ➔ **No recommendation on an increase in the exemption limit to 50 has been submitted to FSCO or MoF pending sector consultation.**	
2e	**TO CREATE AN EXEMPTION FROM OFFERING STATEMENT REQUIREMENTS FOR ACCREDITED INVESTORS SIMILAR TO THAT CONTAINED IN ONTARIO'S SECURITIES LAW** **BACKGROUND:** 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. **RECOMMENDATION TO GOVERNMENT:** ➔ **No recommendation has been submitted to FSCO or MoF pending sector consultation and further discussion with FSCO.**	

3a	**INCREASE THE EXEMPTION FROM AUDIT PROVISIONS FOR A CO-OP THAT HAS NEVER ISSUED SECURITIES – LEGISLATIVE CHANGE: -ACT, Section 123 (2)** **BACKGROUND:** 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…" A series of sector consultations is required to determine if these limits should be increased. **RECOMMENDATION TO GOVERNMENT:** ➔ **A co-operative is exempt, in respect of a financial year, from sections 124 and 125, subsections 126 (1) and (2), section 127, clause 128 (1) (b) and subsection 128 (3) if,** ○ the co-operative is not required to have filed an offering statement under subsection 34 (1); ○ no government grant or subsidy that the co-operative receives during the financial year has a condition requiring the co-operative to be audited; and ○ a special resolution not to appoint an auditor is confirmed at the most recent annual meeting before the beginning of the financial year. **Non-profit housing co-operatives** (2) Subsection (1) does not apply to a non-profit housing co-operative in respect of a financial year if at the end of the financial year the co-operative has more than $50,000 in capital or more than $50,000 in assets. **Interpretation of capital** (3) For the purposes of this section, capital shall be computed by adding together the sums represented by the amounts of, (a) member and patronage loans made to the co-operative that are outstanding; (b) unsecured long-term debt; and (c) surplus, as shown on the financial statement of the co-operative for the preceding year.	Inclusion in March 2018 Ontario budget. *"As part of the review, the government will consider key policy issues, including restrictions on non-member business, **exemptions from audit requirements**…"*
3b	**INCREASE THE PRESCRIBED MAXIMUMS FOR AUDIT EXEMPTION**	

	– REGULATORY CHANGE: REGULATION 178, section 13.1 **BACKGROUND:** 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." **RECOMMENDATION TO GOVERNMENT:** ➔ **No recommendation has been submitted to FSCO or MoF pending sector consultation.**	
4	**QUORUM - CLARIFICATION OF WORDING** **- LEGISLATIVE CHANGE: ACT Section 93** **BACKGROUND:** 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. 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: 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	Sector drafted language and forwarded to FSCO in May 2010, FSCO reviewed and had no objections and agreed to forward to Ministry of Finance. Sector-drafted language was corrected and then sent to FSCO again in September 2012.

	member are not to be counted in the numerator or denominator for the purpose of constituting a quorum. **RECOMMENDATION TO GOVERNMENT:** ➔ **Clarifying wording has been submitted to FSCO and MoF.**	
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." 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.**	FSCO staff have identified that the specific changes we are requesting related to the OCBA have since been changed twice in that act (2002 & 2007). The sector briefly reviewed and the language proposed here (modeled on 2000 version of the OCBA) is most appropriate based on the original intent of the amendment, rather than the alternative of removing section 17 entirely, as would be analogous to the current version of the OCBA.

6	**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." ➔ **NO CURRENT SECTOR ACTION REQUIRED:** This issue is dependent on the outcome of changes to the 50% Rule and will be revisited once that issue has been resolved.	On hold pending decision of the 50% Rule.
7	**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. ➔ **NO CURRENT SECTOR ACTION REQUIRED:** This issue is dependent on the outcome of changes to the 50% Rule and will be revisited once that issue has been resolved.	On hold pending decision of the 50% Rule.