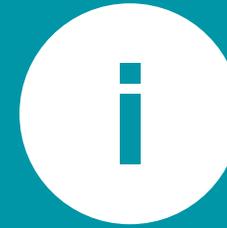


2019 Changes to Ontario's Act: Limit on Non-member Business and Exemption from Audit Provisions



Introduction

Until recently, co-operatives have had to conduct a minimum of 50% of their business with their members, thereby limiting the amount of business they are permitted to do with non-members to 50%. Similarly, co-operatives had to produce and provide audited financial statements (statements that have been examined by an independent third party, generally a chartered accountant), to the membership of the co-op on a yearly basis. In the November 6, 2019 Fall Economic Statement, the Provincial Government announced a commitment to review the Act (Bill 138) and modernize co-operative legislation.

What Are the Changes?

The resulting improvements in legislation effectively eliminated the requirement to do 50% of business with members, allowing co-operatives to pass a By-law authorizing what, if any percentage of business they wish to do with their members. The updates to the audit exemptions, will no longer require qualifying co-operatives to produce and provide audited financial statements to the membership at the annual general meeting. Thus reducing administrative burdens on smaller, community-owned co-operatives allowing their income to fund increased services.

Elimination of the 50% Rule

The new sections of the Act are set out below:

Limit on non-member business

144(1) A co-operative shall not conduct 50 per cent or more of its business with non-members of that co-operative unless its articles or By-laws authorize it to do so.

Membership requirements for co-operatives for workers

144.1 (1) If a co-operative's articles provide that the co-operatives primary objective is to provide employment to its members, at least 75 per cent of its permanent full-time employees and 75 per cent of all employees, or such other proportions of employees as may be prescribed, must be members of the co-operative.

Permanent full-time employees

(2) For the purposes of subsection (1), an employee is not a permanent full-time employee if,

- (a) the employee is employed for a probationary period of a year or less;*
- (b) the employee is employed under a contract for a term of two years or less; or*
- (c) the employee's regular hours of work are less than fifteen hours per week.*

Limit on non-member business in articles

For greater certainty, the articles of incorporation are not required to set out the percentage of business that a co-operative is authorized to conduct with non-members, except if necessary for the purposes of subsection 144 (1).

What Does this Mean?

It means that in the case of a co-operative where members are consumers or producers (including Renewable Energy Co-operatives), the co-operative is now able to choose the percentage of business it must conduct with the members. **If a co-operative would like to conduct less than 50% of its business with members moving forward, they must pass a By-law with the new percentage indicated.**

The explanation of how to change By-laws is on page 2.

Exemption from Audit Provisions

The new sections of the Act are set out below:

123 (1) A co-operative that meets the conditions in subsection (2) 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 1128 (3) if, before the beginning of the financial year, one of the following conditions is satisfied:

1. Each member of the co-operative and each stakeholder of the co-operative, if any, or his or her attorney authorized in writing, consents in writing to the exemption.
2. The exemption is authorized by,
 - i. a special resolution of the members of the co-operative, and
 - ii. a resolution of the co-operative's shareholders of every class of shares and every series of shares, if any, passed by the directors of the co-operative and submitted to a special meeting of the shareholders of every class of shares and every series of shares duly called for the purpose of considering the resolution and confirmed, with or without variation, by at least two-thirds of the votes cast, whether or not such shareholders or series-holders are otherwise entitled to vote, or such greater proportion of the votes cast as the articles provide.

Conditions for exemption:

(2) Subsection (1) only applies to a co-operative that,

- (a) has never issued securities or, if it has issued securities, it was exempt from the requirement to file an offering statement under section 34 in respect of the securities;
- (b) has not received a grant or similar financial assistance from the federal government or a provincial municipal government or an agency of any such government that has a condition requiring the co-operative be audited in the financial year; and
- (c) satisfies any prescribed conditions.

Exemption for certain non-profit housing co-operatives:

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

What does this mean?

It means that co-operatives no longer have to provide annual audited financial statements if they meet the new exemption requirements. This will significantly alleviate the cost and administrative burden associated with undergoing an annual audit. In the past, this was particularly challenging for co-operatives with low levels of capital, assets, or revenue. This amendment effectively puts the Ontario Co-operative Corporations Act in harmony with the Canadian Co-operative Corporations Act, and makes co-op audit requirements and exemptions similar to those of other types of business corporations in Ontario.

How Do We Change our Bylaws?

In order to change the By-laws of a co-operative, a special resolution is required. This is one where (1) the board of a co-operative makes and votes on a resolution (in this case, to approve the changes to the By-laws) and (2) 2/3 of those present at a member meeting then confirms the resolution to change the By-laws, unless the co-operative's Articles of Incorporation provide a greater proportion of votes are required, in which case the special resolution would need to be confirmed by such greater proportion. Both of these steps need to be followed in order for a change in the By-laws to become effective.