

Changes to Ontario's Act: Acclamation of Directors



Introduction

Until recently, co-operatives always had to undergo a full election process, even if the number of candidates standing for director seats was the same or fewer than the number of open seats. For some co-operatives, this added a level of administration to a process that could otherwise happen in one or two steps — instead of allowing a motion that acclaimed the standing directors to the board in these cases.

What Are the Changes?

Recent changes to the *Co-operative Corporations Act* (the “Act”) have made it possible for co-operatives to allow for an acclamation of directors to the board instead of a full election where the number of candidates is the same (or fewer) as the number of open seats. The new sections in the Act are set out below.

Section 91(1) Every member entitled to vote at an election of directors, shall cast at the election a number of votes equal to the number of directors to be elected,

Key Facts

In the case of a proposed director election where the number of candidates is the same as or fewer than the number of open seats, co-operatives can now allow for a slate of candidates to be acclaimed to the board instead of carrying out a full election. This can save time at members' meetings.

Co-operatives have to change their bylaws to make use of this change, which will take time and effort on the part of the board and requires approval from the membership.

Co-operatives do not have to make use of this new provision if they do not want to, in which case, no change to their governing documents or processes is required.

and the member shall distribute the votes among the candidates in such manner as the member sees fit, but no candidate shall receive more than one vote from each member.

Section 91(2) Despite subsection (1) and subject to the by-laws, if the number of candidates for election as directors of a co-operative at a general meeting is the same or fewer than the number to be elected at that meeting, the chair may declare the candidates to have been elected by acclamation.

What Does this Really Mean?

It means that if a co-operative has a certain number of open seats on the board, and the exact number of candidates stand for election, or fewer, then the co-operative can simply have those candidates acclaimed to the board instead of having to go through a full election. This needs to be present in the co-operative's bylaws, otherwise the requirement of holding a full election using secret ballots still applies in all cases. This is slightly different for co-operatives that specify a range for the number of directors in their Articles of Incorporation than it is for co-operatives that specify one set number of director seats.

Take for example a co-operative where the number of directors is specified as

- There are over 1,300 co-operatives, credit unions and caisse populaires incorporated and operating in Ontario, with 1,900 locations in 400 communities.
- In 2012 alone, 73 new co-ops incorporated in Ontario.
- Housing is Ontario's largest co-op sector (45%), followed by Financial Services (17%), Child care (17%) and Agriculture (6%).
- The co-operative sector in Ontario represents a very conservative \$30 billion in assets (2007).

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being seven (7), and in a given year there are three open spots on the board. In this case, if the number of candidates standing for the board is exactly three (3), then the co-operative can have the option to have those candidates seated on the board through acclamation. This is generally done by the election chair or returning officer asking the membership for a motion to acclaim the standing candidates.

Another example would be a co-operative that has a range of directors specified in its Articles of Incorporation. If a co-operative has specified between seven (7) and eleven (11) directors for the board, then determining whether or not acclamation can occur depends on the number of sitting directors heading into the AGM. Say that the co-operative has five (5) directors that are going to be continuing to sit on the board because their terms are not yet over, and there are another four (4) directors on this board that are retiring. To fill the needed spots, the co-operative can elect a minimum of two directors (which would put the total number of board members at seven) and a maximum of six directors (which would put the total number of board members at eleven). Therefore, if there are between two and six candidates standing for the board in this year, the co-operative could have them elected to the board through acclamation. If there were more than six candidates standing for the board, the co-operative would have to carry out a full election process.

There is an appendix at the end of this document that has a sample script for handling director elections at the AGM that covers the different scenarios.

How Do We Change Our Bylaws?

In order to change the bylaws of a co-operative, a special resolution is required. A special resolution 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 bylaws) and (2) 2/3 of those present at a member meeting then confirm the resolution to change the bylaws, 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 bylaws to become effective.

The board of directors may find it useful to strike a committee or empower staff to work on the bylaw changes, as it may involve research into the logistics and costs of different services to support running meetings using electronic means as well as drafting language for the bylaws. Staff may also need time to develop new processes or provide comments to the board on the impact of the changes. Although it is not required to have a lawyer review the

proposed bylaw changes or have a lawyer draft bylaw text, the board of a co-operative may wish to seek legal advice or review of the new bylaws before passing a board resolution or taking the bylaws to the membership for approval.

By-law changes can be handled at any member meeting, but the co-operative will have to comply with the legislation in the Act and the co-operative's by-laws with respect to the notice and documentation to be given to members in advance of the meeting. It is recommended in any event that the text of the proposed new by-laws be given to members in advance of a member meeting where the changes will be voted on. This provides time for the members to review and consider the proposed changes.

Conclusion

This change to allow for acclamation in board elections is one that provides an opportunity for co-operatives to shorten the director election process and streamline the AGM.

References

For further instruction, refer to the *Appendix: Sample Script for Running Elections for Directors* at ontario.coop/documents_downloads

FOR MORE INFORMATION, CONTACT

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More resources are available at:
CoopZone Network
coopzone.coop

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