

[Co-operative's letterhead]

CCA Legislative Review  
c/o Financial Services Policy Division  
Ministry of Finance  
95 Grosvenor Street, Frost Building North, 4th Floor  
Toronto, ON M7A 1Z1

## **Submission to the Consultation on the 2018 legislative review of the Co-operative Corporations Act**

Attention: Jessica Harper

Thank you for the opportunity to comment on the consultation document for the purpose of modernizing the 44-year-old Co-operative Corporations Act.

Co-operatives are community-focused businesses that balance the needs of people, planet and profit. Co-operatives are democratic, values-based and member focused.

Co-operative businesses in Ontario, including financial co-operatives, create \$6 billion in economic value for the province. Ontario co-operative businesses employ 57,000 people full time. More than 3 million people, one quarter of Ontarians, are the members of our businesses.

[Please insert background on your co-operative business here]

The consultation document and the questions therein are quite comprehensive. As a member of the Ontario Co-operative Association (OCA), we support the three priorities of the co-operative sector that are critical to address before commenting on the other questions within the document.

The top three priorities that should be considered as part of the CCA legislative review are:

1. Elimination of the 50% Rule
2. Audit requirement parity with other co-operatives incorporated 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% Rule:**

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 required by their individual co-operative businesses.

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 their members who 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 50% of business with 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 so that percentage makes sense for the structure and competitiveness of their business. 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.**

We recommend that the members choose the percentage of business with members to be included in their bylaws that make sense for the structure and competitiveness of their business.

### **Audit Requirements:**

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 co-operative sector 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, 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.

### **Raising Capital:**

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 allow prospective purchasers to make informed investment decisions while also ensuring that co-ops can raise their capital from their members and other supporters without undue cost.

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 – in fact, all indications point to expanding upon the exemptions.

As per the current limits contained in the Regulations, a co-operative 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.
- The number of security holders is below 35.

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.

OCA is recommending a change to the Offering Statement Regulations 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.**

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, in the hundreds of thousands of dollars, is significantly beyond of the reach 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.

In addition to these top three priorities of the co-operative sector, our co-operative recommends...

[Here the co-operative can add specific changes to the CCA or to interactions with government that are important to their co-operative. OCA is very

interested to learn what is important to your co-operative so please share this section of the letter with our organization if possible.

Specific questions from the consultation document to consider are:

- In what ways do you currently interact with government and what do you think could be improved with respect to those interactions?
- What is your vision for co-ops in Ontario?
- What are the benefits of the co-op model, compared to other business models?]

### **Governance Related Questions:**

The questions about co-operative governance and the comparison to other Acts are interesting and require much consideration and consultation within our sector.

At this time, a deadline of January 31, 2019 is not sufficient to complete the internal discussions, proposed sectoral response as well as other association 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 Conseil de la coopération de l'Ontario (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.

Thank you for the opportunity to submit a response to the consultation on the CCA. Our co-operative looks forward to a modernized legislative framework and a positive ongoing relationship with government.

Signed,