



Ministry of Government and Consumer Services
56 Wellesley St. W
Toronto, ON M5S 2S3

January 20, 2022

Re: Draft Proposed Permanent Changes to Enable Digital and Virtual Processes under the Ministry of Government and Consumer Services' Business Law Statutes

The Ontario Co-operative Association appreciates the opportunity to comment on the proposed amendments to the Co-operative Corporations Act. Please see below for our comments on the proposed amendments on behalf of the Ontario co-operative sector:

1. Subsection 1 (1) of the Co-operative Corporations Act
The members of the Ontario Co-operative Association (OCA) are supportive of the amendment to support virtual or hybrid meetings as written in 1. Subsection 1 (1).
2. Sections 21 and 23 of the Act
The members of the Ontario Co-operative Association do not support any of the proposed the amendments to Section 21 or the repeal of Section 23.

Co-operative enterprises are member-owned, democratic businesses. Democracy is foundational to the co-operative business structure. Only the members of the co-operative through a 2/3 majority should have the authority to change the by-laws of the corporation, not the directors.

Although, the proposed amended Section 21 provides for co-operative businesses to opt-out with the language, "Unless the articles or by-laws otherwise provide...", it is not a practical solution for the majority of co-operative businesses in Ontario that are not in support of this amendment to be forced to amend their by-laws.

To address one specific change to co-operative bylaws to allow for electronic voting, OCA proposes there be a "carve out" in section 23 that would allow for directors to pass a by-law allowing any and all references relating to mail delivery of meeting notices change to allow for electronic meeting notice delivery with immediate effect. This will allow co-operatives to send notices of meetings electronically (thereby saving a considerable amount of money) to members for the purpose of amending their by-laws to allow for delivery and service of documents

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electronically. Without this, the notice of members meeting to approve the delivery of notice by electronic means would have to be sent by mail, which seems counter-intuitive.

4. Subsection 37 (2)

OCA supports a co-operative's option to share a copy of a statement for which a receipt has been issued via technology.

5. Subsection 74 (1)

This change is supported.

Subsection 74 (3) to (5)

These changes are wholly supported by the co-operative sector. Our organization appreciates the government's proactive approach to permanently changing the Act to recognize the advantages to business efficiency and member engagement that have resulted from the option to conduct member business through electronic and telephonic means.

6. Clause 75 (1) (e)

By changing the wording from "poll" to "ballot", it allows for one member to require a secret ballot. The result of this change could be delay and obstruction of business through repeated requests for secret ballots. OCA recommends this change, and all additions to this section as a result of the change, be removed from the amendments to the CCA.

OCA does not understand the recommended change from "poll" to "ballot". Our understanding of the word "poll" is "an oral vote where the name of each member is called and the member states their vote orally." This will be slower than show of hands, but much faster than a ballot.

OCA is in agreement with the proposed amendments to Subsection 75 (2.0.1), (2.0.2) and (4).

7. Subsections 76 (4) and (5)

(4) See Clause 75 (1) (e) above – OCA does not support the change to the word "ballot" in the language

(5) Suggested wording:

"Subject to the articles or by-laws of a co-operative, a member, or a director or officer on behalf of a member under subsection (3), may demand a poll either before or after any vote by show of hands."

(6) Supported with the word "poll" substituted for "ballot"

(7) New subsection 76 (7) allows for voting by mail. Given the proximity of housing co-operative members, OCA suggests the addition of the words "or by delivery" to the end of the sentence.

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8. The changes to Subsection 90 (1) are supported.
9. The changes to Subsection 94 (2) are supported.
For consideration, the amendments do not respond to the request for email votes separate from a meeting. The following excerpt from the Not-for-profit Corporations Act would partially address email votes:

Resolutions

35 (1) A resolution, signed by all the directors entitled to vote on that resolution at a meeting of directors or of a committee of directors is as valid as if it had been passed at a meeting of directors or of a committee of directors. 2010, c. 15, s. 35 (1).

Copy to be kept

(2) The corporation shall keep a copy of every resolution referred to in subsection (1) with the minutes of the meetings of the directors or of a committee of directors. 2010, c. 15, s. 35 (2).

10. The changes to Section 95 are supported.
11. The changes to Subsection 113 are supported.
12. The changes to the specified subparagraphs of Section 114 are supported.
13. The changes to Section 118 are supported.
14. Section 119 (1) OCA suggests the section wording: "Subject to the articles and bylaws of the co-operative, subsection (3) and section 120".

Subsection (3) suggested to read: "under no circumstances shall members and creditors or their agents or personal representatives be entitled to review any addresses of members or any other personal information of members other than email addresses."

Section 119 (2) should read: also subject to 119 (3)

Section 120 (1) OCA suggests begin: "Subject to the articles and by-laws of the co-operative"

Section 120 (1) edited to read: "Any member ~~or creditor~~, upon filing with the co-operative or its agent..."

And

"...a list setting out the names alphabetically arranged of all or any members or security holders or both of the co-operative and the email addresses of each..."

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The changes to Section 119 (2) will allow for the by-laws to supersede the Act. By requiring addresses of co-operative members to be kept on file, and not listing member addresses in the exemptions in Section 119 (1), co-operative members may not feel safe sharing their personal information with the co-operative and it may prevent people from joining co-operative businesses. An amendment to allow co-operatives to enact by-laws to protect member information or to prevent member information from being shared electronically due to privacy concerns would solve this issue as would providing email addresses rather than addresses.

15. The changes to Clause 149 are supported.
16. The changes to Section 171.8 (2) and (5) are supported.
17. The changes to Subsection 172 are supported.
18. When amending Section 186, and inspection of statements within Section 37 (3), OCA would like the government to considering having this apply to FSRA as well. FSCO formerly provided digital copies of receipts offering statements. FSRA has told co-operatives to come to Toronto and copy the content they want.

For the Minister's regulation, what would be regulations governing the inspections of statements? Will there be a fee? OCA requests the opportunity to review and comment on any proposed fee schedules.

19. When reviewing the Co-operative Regulations, OCA has two considerations for government. The current Offering Statement exemption limits have not been reviewed since 1995 and are inadequate for co-operatives to raise the money they need in order to capitalize their businesses. The members of the Ontario Co-operative Association are asking for a fivefold increase to the exemption limits to account for inflation and the countless changes to business capitalization over the past twenty five years.

OCA recommends a fivefold increase in offering exemption limits:

1. An increase in the exemption cap on individual member purchased securities of \$1,000 per year or \$10,000 total to **\$5,000** per year and **\$50,000** in total.
2. An increase of total securities issued to members from an exemption cap of \$200,000 to a cap of **\$1,000,000**.
3. An increase in the cap on the number of security holders for an exemption from 35 to 50.

Additionally, in light of the amendments the current co-op notice provisions in RRO 1990/178 are obsolete and should be repealed:

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Restrictions on Electronic Notice

21. The following circumstances are prescribed under clause 172 (1) (b) of the Act as circumstances in which a notice or other document cannot be sent electronically by a co-operative to a member or director:

1. If the co-operative is a non-profit housing co-operative. O. Reg. 414/07, s. 3.

22. The following circumstances are prescribed under clause 172 (2.1) (b) of the Act as circumstances in which a notice or other document cannot be sent electronically by a member or director of a co-operative to the co-operative:

1. If the co-operative is a non-profit housing co-operative. O. Reg. 414/07, s. 3.

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