

Choosing Federal or Provincial Incorporation



Introduction

Incorporating your organization as a co-operative provides some formality and protection to the organization.

Incorporation is a process that grants your organization legal rights and recognition under the law — the same rights and privileges that are granted to a person. This gives the co-operative the ability to purchase assets, take on debt and raise capital for projects and operations. It also means that the co-op is now an entity that is subject to any restrictions or rules that are outlined in the legislation they incorporated under.

There is special legislation, both in Ontario and at the federal level, which dictates how co-ops can operate and what is required in order to be considered a co-operative under the law. In Ontario, this legislation is called the *Co-operative Corporations Act*, and at the national level it is the *Canada Co-operatives Act*.

Co-operatives can either incorporate at a provincial level or at a federal level, depending on how your organization meets different criteria about how and where you operate.

The Canada Co-operatives Act

The *Canada Co-operatives Act* is responsible for setting out the appropriate rules and procedures for federally-incorporated co-operatives. Regulatory duties and matters that relate to this piece of legislation are administered by the Corporations Branch of Industry Canada. However, in many cases, individual co-ops are bound by and responsible to other government agencies as part of their operations – like Revenue Canada for tax issues (or other government agencies that provide permits or regulation on specific parts of a co-op's operation).

The Ontario Co-operative Corporations Act

The *Co-operative Corporations Act* outlines the rules and procedures for co-operatives that incorporate and are operating in the Province of Ontario. This legislation and the co-op sector in Ontario are regulated by the Financial Services Commission of Ontario, a division of the Ontario Ministry of Finance. As with the federal act, co-ops incorporated in Ontario are subject to this legislation, but

may also be subject to other provincial or federal ministries for various aspects of their operations.

Similarities between the Acts

Both pieces of legislation share the general definition of what constitutes a co-operative and what it means to be organized and operate co-operatively. Both Acts define a co-operative as an organization that:

- Operates on a one-member, one-vote system;
- Has open and voluntary membership;
- Has limited interest paid out on member loans and limited dividends paid out on member shares; and
- Any surplus generated goes to further the objects of the co-op and/or is distributed to the membership based on their use of the service (referred to as patronage dividends or rebates).

No matter which Act you incorporate under, the same definitions and general commitment to co-operative principles apply.

- There are over 9,000 co-operatives operating in Canada. The Canadian co-operative movement has over \$330 billion in assets and more than 18 million members.
- A federal study has shown that health care co-ops have lower per-capita health care costs than private practice models.
- Canadian co-operatives employ more than 150,000 employees.
- Canada has the world's largest per-capita credit union membership: about one-third of all Canadians are members of a credit union or caisse populaire.

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In addition, both *Acts* require the inclusion of a name search report that shows that the desired name of the co-operative has not been taken by (or is not too similar to) another existing co-op or corporation.

Primary Differences

Geographical Requirements

The main difference between the provincial and federal *Acts* is related to the geography of where a co-op operates.

In order to incorporate federally, a co-op must carry out operations in at least two provinces and have fixed offices in more than one province. In comparison, incorporating in Ontario only requires a head office located somewhere in Ontario, with operations centered in Ontario.

It is not necessary for co-ops to incorporate federally just because they meet this requirement. However, incorporating federally may provide additional protection from liability, or more opportunities to raise capital and take on debts in more than one jurisdiction.

Founder Requirements

Although both *Acts* are similar in that they have restrictions about who can act as a founder when incorporating a

co-operative, there are slight differences in the restrictions:

- **The Canada Co-operatives Act (CAN):**
Requires a minimum of three people or corporations.
- **The Co-operative Corporations Act (ON):**
Requires a minimum of five people or corporations.

Fees

The fees to incorporate in the two jurisdictions are also different. In Ontario, the fees are different depending on the form of the co-operative you are creating (with share capital vs. without share capital). The fees are determined by the regulating bodies for each act and are examined yearly and may be subject to change.

Initial Paperwork

There are also differences in the forms required in order to incorporate. For example, the federal incorporation process requires a declaration that the incorporators will agree to carry on operations as a co-op (the Ontario process does not require this).

References:

Federal information kit and guidelines:
corporationscanada.ic.gc.ca/epic/internet/incd-dgc.nsf/en/h_cs02151e.html

Ontario guidelines and information:
fSCO.gov.on.ca/english/regulate/co-ops/register_co-ops.asp

OCA has created a *Guide to the Ontario Co-operative Corporations Act*. Contact our office to learn more.

FOR MORE INFORMATION, CONTACT

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More resources are available at:
CoopZone Network
coopzone.coop

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