Changes to Ontario's Act: Electronic Member Meetings

FACT SHEET

Introduction

Until recently, co-operatives in Ontario could only hold member meetings in the form of in-person meetings. There was no option to hold meetings in any other fashion, such as teleconference or internet-based communications. The rationale for this was related to the requirement in the *Co-operative Corporations Act* (the "Act") that co-operatives could not allow voting by proxy at their meetings. The requirement for members to exercise their voting rights in person is related to the one member, one vote principle of co-operatives, which recognizes the social aspect of co-operatives: they are social associations organized around member needs, not merely a business unit organized around capital.

The Act, even though it has been amended several times recently, did not recognize that changes in technology would make it possible to hold member meetings in other ways that would not compromise the ban on proxy voting. The Act was changed several years ago to allow for board of directors meetings by teleconference or web conference, provided the bylaws did not prohibit this, the board members could all hear each other and they all agreed to use this method. Until now, member meetings could not be held in this manner.

For smaller co-operatives that have members in a small geographic area, the requirement to hold member meetings in person did not often pose a problem. However, for large co-operatives with members spread across a wide geographic area, many found it difficult or expensive to hold meetings in person. Co-operative sector representatives in Ontario had been advocating for several years for improvements to the Act that would make it easier for co-operatives to hold member meetings.

Key Facts

Co-operatives, other than non-profit housing co-operatives, can now use electronic means to hold member meetings, either in conjunction with a meeting held in person or to replace a meeting held in person.

A co-operative can make use of a variety of electronic or telephone methods (email, teleconferences, web conferences) for meetings. They can also choose to limit the use of these methods to one or two different acceptable methods.

Co-operatives have to amend their bylaws to make use of these changes, which will take time and effort on the part of the board and input from the membership.

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

What are the Changes?

Recent changes to the Act in December 2009 have made it possible for co-operatives, other than non-profit housing co-operatives, to use "electronic means" for their member meetings. This provides the option to co-operatives to use newer technologies like teleconferencing and internet methods to connect their

- **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).**

members to a meeting. In order to make use of these changes, co-operatives need to amend their bylaws, and make sure they follow guidelines prescribed by the Act. The new sections in the Act are set out below.

- *Section 74(3):* If the by-laws of a co-operative (other than a non-profit housing co-operative) so provide, a meeting of the members of the co-operative may be held by telephonic or electronic means and a member who, through those means, votes at the meeting or establishes a communications link to the meeting is deemed for the purposes of this Act to be present at the meeting.
- *Section 74(4):* A meeting held under subsection (3) is deemed to be held at the place where the head office of the co-operative is located.
- *Section 74(5):* For the purposes of this section and section 76, "telephonic or electronic means" means telephone calls or messages, facsimile messages, electronic mail, transmission of data or information through automated touch-tone telephone systems, transmission of data or information through computer networks, any other similar means or any other prescribed means.
- *Section 76(4):* Subject to subsection (5), the members of a co-operative shall vote in person.
- *Section 76(5):* The by-laws of a co-operative, other than a non-profit housing co-operative, may provide for voting by mail or by telephonic or electronic means.

What Does This Really Mean?

Co-operatives now have the option, unless they are a non-profit housing co-operative, to use electronic means (as defined above) to hold a member meeting, provided the co-operative's bylaws permit this. Co-operatives can amend their bylaws to permit any or all of the different meeting or voting methods listed in sections 74 and 76 of the Act, and they can use them in place of an in-person member meeting or in conjunction with an in-person member meeting. This is an option. If a co-operative's bylaws allow for a member meeting to be run using electronic means, it does not mean the co-operative is always obligated to use electronic means, and if the bylaws provide for several different electronic methods of communication, the co-operative does not always have to use the same methods for running meetings.

Since the prohibition on proxy voting still exists (other than for corporate members) in the Act, co-operatives also have to exercise care in using any new methods in order that the co-operative can ensure the person voting is actually the member. This would mean that the co-operative has to have some way of controlling who can connect electronically or be able to tell who is on the other end of the connection.

The notice provisions for member meetings in the Act remain unchanged. A co-operative's board of directors must still formally call a member meeting and provide members with at least 10 days notice, but no more than 50 days notice. The notice must be made individually to each member. Co-operatives also have to ensure that quorum is present for the meeting to be considered a duly constituted and proper member meeting, even if electronic methods are used.

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.

- **Three recent studies demonstrate that co-operative enterprises have significantly higher survival rates than other business corporations. In fact, a co-operative is twice as likely to be in operation after 10 years.**
- **Ontario co-ops employ and provide benefits to 15,500 people (greater than the total number of Ontarians employed in production of goods).**
- **1.4 million Ontarians are members of a co-operative, credit union or caisse populaire (more than 10% of the population).**

Changes to Ontario's Act: Electronic Member Meetings

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.

Scenarios for Running Member Meetings

The following are some options for co-operatives to consider in deciding whether or not to change their bylaws to allow for member meetings by electronic means:

Scenario One: No Changes

Summary: A co-operative chooses to continue to hold member meetings the way they always have — only in person. If a co-operative board does nothing, then the way that member meetings are held do not change the co-operative. They will be run the same way they always have. However, the board of directors may wish to have a discussion about this change at a meeting to decide whether or not to make use of the new provisions. It is also possible that a co-operative board would decide to alter the bylaws to allow electronic means to be used, but the membership would vote against the new bylaws, in which case the original bylaws remain in place.

Scenario Two: Using Electronic Means in Conjunction with In-Person Meeting

Summary: A co-operative chooses to use the ability to hold electronic meetings in conjunction with an in-person meeting. This would mean calling a member meeting to be held at a particular location, and allow for members to attend in person at the location or to connect via electronic means as prescribed by the co-operative's bylaws. The meeting would be run and chaired as it normally would. The people connecting to the meeting virtually would have the opportunity to participate and vote as though they were sitting in the room with the rest of the participants, assuming the bylaws are amended to provide for electronic voting.

Members could be connected electronically by whatever means is permitted by the co-operative's by-laws. The key consideration is that the co-operative's by-laws permit the use of the telephonic or electronic means that is in fact being used by the co-operative.

Administrative and operational considerations: The use of a service to support electronic connections will need to ensure that the co-operative have some way of verifying the people connecting are actually members. The co-operative could also control the distribution of the information needed to connect in order to ensure that only members received the connection information – for example, distributing it with the agenda and supporting material in advance of the meeting, or providing it as part of a registration process done in advance of the meeting, where members receive the call-in numbers or internet address only after they

- **There are some 49,000 co-operative volunteers across Ontario, including over 10,000 board members who are actively involved in governing and leading co-ops, credit unions and caisse populaires in Ontario.**
- **World-wide, co-operatives operate in over 90 countries, employ over 100 million people and are supported by over 1 billion members.**

Changes to Ontario's Act: Electronic Member Meetings

register for the meeting and provide their name, which can then be checked against the member roles to confirm that the person registering or participating is a member in good standing. There are other features available with some services that would allow the co-operative to control access to the call in an effort to ensure that only members connect and participate.

Using electronic meetings will require additional setup and administration. It may also mean that co-operative staff or directors will have to provide assistance or support to individuals that have technical challenges in accessing or using the service. This should be a consideration when making the decision about whether or not to use electronic meetings and which particular methods of connection are used.

Scenario Three: Using Electronic Means Alone for Member Meetings

Summary: A co-operative chooses to hold a members meeting only using electronic means — there would be no in person meeting location where members could congregate. The only option for participating in the meeting would be by electronic methods. There would be no in-person location for the meeting.

Administrative and operational considerations: The considerations would be largely the same as outlined in Scenario Two above. This may be slightly easier because the co-operative would not have to plan both in-person and virtual components to the meeting and handle two different attendance lists and management of two different parts of the meeting. Even if it is a co-operative's intention to only hold member meetings by electronic means, the co-operative board should give consideration to allowing for the possibility of meetings being held in person or a combination of in person and by electronic means. This provides for greater flexibility should circumstances change and it is deemed appropriate, for whatever reason, to have a members meeting where members must attend personally.

Voting Considerations

No matter what type of meetings co-operatives ultimately decide to permit, consideration also needs to be given to the means by which votes will be counted. Section 76 of the Act now states that the by-laws of a co-operative, other than a non-profit housing co-operative, may provide for voting by mail, telephone or electronic means. If a co-operative intends to host meeting through any of the above methods, then the bylaws will have to be amended to accommodate this decision.

If voting electronically is permitted, it is envisioned that co-operative boards will have to craft whole motions in advance for members to vote on. The co-operative will have to consider what is to happen if there are changes in the wording of the motion as a result of discussion that occurs at the meeting. This may be a particular problem where voting is permitted by mail ballot.

Conclusion

The ability for co-operatives to use electronic means for their member meetings offers opportunities for co-operatives that want to use technology to increase attendance at their meetings or to facilitate participation for those members that are some distance away. However, there are governance and operational concerns that co-operative boards and staff will need to carefully consider the implications of when deciding whether or not to make use of the new provisions.

FOR MORE INFORMATION, CONTACT

Ontario Co-operative Association
450 Speedvale Ave W
Suite 101
Guelph, ON N1H 7Y6
Phone: 519.763.8271
info@ontario.coop
ontario.coop

More resources are available at:
CoopZone Network
coopzone.coop

This is one of a series of FACTSheets created by On Co-op providing general knowledge, best practices, and sector-specific information.

Get the full list of FACTSheets online at **ontario.coop/documents_downloads**

This fact sheet was produced by the Ontario Co-operative Association, and made possible through a grant from the Ontario Trillium Foundation (an agency of the Government of Ontario).
Updated July 2013.