

2009 CHANGES TO ONTARIO'S CO-OPERATIVE CORPORATIONS ACT



Background

Over the past several years, a working group of co-op sector experts have met regularly with representatives of the sector's regulating body, the Financial Services Commission of Ontario (FSCO) and with representatives of the Ministry of Finance. These meetings are used to discuss operational and regulatory issues for co-operatives, and the co-op sector brings forward proposed changes to the *Co-operative Corporations Act* ("the Act") to try and improve the regulatory environment for co-ops.

Since 2006, the working group under the guidance of the Ontario Co-operative Association (On Co-op) has been advocating for a number of specific changes to the Act.

The introduction of the HST bill (called **Bill 218: Ontario Tax Plan for More Jobs and Growth Act, 2009**) also included a number of associated changes to other Acts, including several changes to the *Co-operative Corporations Act* that the co-op sector has been requesting. Bill 218 received royal assent and became law on December 17, 2009 which means that the changes to the *Co-operative Corporations Act* also went into effect.

2009 Changes to the Act

Several of these changes are significant and offer a number of improvements for co-ops to make use of in their operations. Significant changes to the Act include:

Co-operatives, with the exception of non-profit housing co-ops, now have the option of holding members meetings using electronic means (such as teleconferencing, web conferencing or email) or allowing voting by mail. Electronic meetings were previously restricted to meetings of the board of directors, and members meetings could only be held in person. In order to make use of electronic means or mail balloting for members meetings, the co-op's bylaws must be changed to explicitly allow it. This change should make it easier for co-operatives with lots of members or members over a great geographic distance to

have a higher degree of participation at their members meetings.

Co-operatives, with the exception of non-profit housing co-ops, can now have up to 1/5 (20%) of the board of directors be non-members. Previously, only members were permitted to be directors and officers of the co-op (with the exception of the secretary officer position). This change allows the co-op to appoint or elect outsiders to the co-op board that have a particular expertise or skill-set that the co-op requires. The co-op's bylaws must be changed to explicitly allow for the election/appointment of non-members to the board. These non-members also do not count towards the determination of quorum, either at the board or at member meetings, which means that the majority control still rests with the member-directors of the board.

Co-operatives now have the ability to allow the president to designate a non-member to act as the chair of a members meeting. This can be useful in the case of a difficult meeting where an impartial outside person chairing the members meeting would be beneficial. Previously, the Act only permitted the appointment of a chair from within the membership, and only if the president and vice-president were absent from the meeting.

The requirement for multi-stakeholder co-operatives to have one director present from each stakeholder group in order to have quorum has been removed. Previously, the requirement for multi-stakeholder co-ops to have at least one director present from each stakeholder group at board meetings was a barrier to many groups that were considering using it because of the potential logistical and governance challenges with this requirement. The removal of this requirement should make the multi-stakeholder co-op model more attractive for groups considering using it.

Co-operatives now have the ability to declare director candidates as acclaimed when there is a situation where the number of people standing for election is the same

or fewer as the number of seats available. This removes the need to carry out a full election process in this case, which was the previous situation. Again, the co-op's by-laws must explicitly be changed to allow for director candidates to be acclaimed.

In addition to these significant changes, some other changes were made to the Act:

The board of directors of a co-operative can now specify a meeting place for members meetings to be anywhere in Ontario, unless the bylaws or articles stipulate that meetings happen at a particular location. Previously, the default position of the Act was for the place of member meetings to be the head office of the co-operative unless the bylaws indicated another place.

The requirement for co-ops to use a corporate seal was removed in 2001, and the recent changes to the Act remove a reference to a corporate seal that was present in section 76(3).

Resources

A full list of General FACTSsheets and Changes to the Act regarding the Ontario *Co-operative Corporations Act*,

showing the full list of changes to the Act, can be viewed as part of Bill 218, available in a PDF from:

http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b218ra.pdf

All amendments to the *Co-operative Corporations Act*, which was proclaimed on December 31, 1991, can also be viewed at:

http://www.e-laws.gov.on.ca/html/tables/publicstatutesannotations/elaws_t_pu_st_an_t90c35.htm



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More resources are available at:
CoopZone Network
www.coopzone.coop

This is one of a series of FACTSsheets created by On Co-op providing general knowledge, best practices and sector-specific information. *ACT01*

Get the full list of FACTSsheets online at:
<http://s.coop/factsheets>

Quick Facts About Co-operatives in Ontario:

- There are over 1300 co-operatives, credit unions and *caisse populaires* incorporated and operating in Ontario, with 1900 locations in 400 communities.
- The co-operative sector in Ontario represents a very conservative \$30 billion in assets (2007). Non-financial co-ops had revenues that totaled more than \$2.1 billion in 2004.
- 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)
- Over 10,000 board members are actively involved in governing and leading co-ops, credit unions and *caisse populaires* in Ontario.
- There are some 49,000 co-operative volunteers across Ontario, including 10,000 board members.
- 50% of Ontario's co-ops are located in central Ontario.
- Housing is Ontario's largest co-op sector (45%), followed by Financial Services (17%), Child care (17%), and Agriculture (6%).
- Over 2,000 students at various post-secondary institutions live in Ontario student co-op housing, including Waterloo Region which is home to the second largest student housing co-operative in North America.