



2009 Changes to the Co-operative Corporations Act

Overview Prepared: December 21st, 2009

Background

Over the past several years, a working group of co-op sector experts have met regularly with representatives of our 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* 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 recent 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 17th, 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. The significant changes to the Act include:

1. **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.
2. **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.

3. **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.
4. **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 multistakeholder 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.
5. **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 bylaws 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:

1. **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.
2. **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).**

The full list of changes to the *Co-operative Corporations Act* can be viewed as part of Bill 218, available in PDF from: http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b218ra.pdf. The electronic version of the Act itself now reflects the changes that have been made, and is available at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c35_e.htm.

On Co-op will be creating additional guides to help co-ops make the needed changes to their bylaws and operational procedures in order to help them take advantage of the new provisions in the legislation. These materials should be available early in 2010. If you have questions about how these changes may affect your co-operative or how regulatory changes occur, please contact Jen Heneberry, Co-operative Development Manager at On Co-op for information, advice or referrals at jheneberry@ontario.coop or 1.888.745.5521 x23.