

## Co-operative Corporations Act

### R.S.O. 1990, CHAPTER C.35

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## Interpretation

**1** (1) In this Act,

“articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a co-operative is incorporated, and includes any amendments thereto; (“statuts constitutifs”, “statuts”)

“authorized capital” means the authorized capital as determined under section 25; (“capital social autorisé”)

“certificate of incorporation” includes letters patent, a special Act or any other instrument by which a co-operative is incorporated; (“certificat de constitution”)

“certified copy” means,

- (a) in relation to a document of a co-operative, a copy of the document certified to be a true copy signed by an officer,
- (b) in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
- (c) in relation to a document in the custody of the Minister, a copy of the document certified to be a true copy by the Minister or by a public servant employed under Part III of the *Public Service of Ontario Act, 2006* and designated by the regulations; (“copie certifiée conforme”)

“co-operative” means a corporation carrying on an enterprise on a co-operative basis and to which this Act applies; (“coopérative”)

“co-operative basis” means organized, operated and administered upon the following principles and methods,

- (a) each member or delegate has only one vote,
- (b) no member or delegate may vote by proxy,
- (c) interest on loan capital and dividends on share capital are limited to a percentage fixed by this Act or the articles of incorporation, and
- (d) the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, after providing for such reasonable reserves and interest or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members,
  - (i) in accordance with the by-laws of the co-operative if the corporation is a renewable energy co-operative, or
  - (ii) in proportion to the volume of business the members have done with or through the organization if the corporation is not a renewable energy co-operative; (“mode coopératif”)

“corporation” means a corporation with or without share capital whether or not it is a co-operative to which this Act applies; (“personne morale”)

“court” means the Superior Court of Justice; (“tribunal”)

“debt obligation” means a bond, debenture, note or other similar obligation of a corporation, whether secured or unsecured; (“titre de créance”)

“direct charge co-operative” means a co-operative that deals with its members and prospective members only in products or services on a cost basis and that directly charges its members a fee to cover the operating expenses of the co-operative; (“coopérative de contribution directe”)

“Director” means the Director appointed under section 278 of the *Business Corporations Act*; (“directeur”)

“electronic signature” has the same meaning as in the *Business Corporations Act*; (“signature électronique”)

“financial statement” means a financial statement referred to in section 128; (“état financier”)

“housing charges” means the charges a non-profit housing co-operative charges its members and includes charges unrelated to housing; (“frais de logement”)

“issued capital” means the issued capital as determined under section 29; (“capital social émis”)

“member” means a person who is a member of a co-operative pursuant to the provisions of this Act or the articles and by-laws of the co-operative governing membership; (“membre”)

“member unit” means a housing unit of a non-profit housing co-operative other than a non-member unit; (“logement réservé aux membres”)

“Minister” means the Minister of Government and Consumer Services or such other member of the Executive Council to whom the administration of this Act may be assigned; (“ministre”)

“Ministry” means the Ministry of the Minister; (“ministère”)

“multi-stakeholder co-operative” means a co-operative,

- (a) the articles of which provide that it is a multi-stakeholder co-operative for the purposes of this Act,
- (b) the articles of which provide for the division of its members into two or more stakeholder groups,
- (c) the articles of which set out the method of determining the number of directors each stakeholder group may elect, and
- (d) for which the requirements set out in subsection 1 (1.3) are satisfied; (“coopérative composée de partenaires multiples”)

“non-member unit” means a housing unit of a non-profit housing co-operative designated under section 171.5 as a non-member unit; (“logement réservé aux personnes qui ne sont pas membres”)

“non-profit housing co-operative” means a co-operative, without share capital, the articles of which provide that the co-operative is a non-profit housing co-operative for the purposes of this Act; (“coopérative de logement sans but lucratif”)

“officer” means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office; (“dirigeant”)

“personal representative”, where used with reference to the holding of shares or loans or the exercise of a member’s rights in that capacity, means,

- (a) an executor, administrator, guardian, tutor, committee, trustee, receiver or liquidator of the member, shareholder or lender, or
- (b) in the case of a member, shareholder or lender who is incapable of managing property within the meaning of the *Substitute Decisions Act, 1992*, the guardian of property, attorney under a continuing power of attorney for property with authority, committee or curator for the member, shareholder or lender; (“ayant droit”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“related person”, where used to indicate a relationship with any person, means,

- (a) any spouse, son or daughter of that person, or
- (b) any relative of such person or of such person’s spouse, other than an individual referred to in clause (a), who has the same home as such person; (“personne liée”)

“resident Canadian” means a Canadian citizen or person lawfully admitted to Canada for permanent residence, who is ordinarily resident in Canada; (“résident canadien”)

“security” means any share of any class or series of shares or any debt obligation of a corporation; (“valeur mobilière”)

“senior officer” means,

- (a) the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a co-operative or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office, and
- (b) each of the five highest paid employees of a co-operative, including any individual referred to in clause (a); (“cadre dirigeant”)

“series”, in relation to shares, means a division of a class of shares; (“série”)

“special resolution” means a resolution that is not effective until it is,

- (a) passed by the directors of a co-operative, and
- (b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide; (“résolution spéciale”)

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage; (“conjoint”)

“stakeholder group” means a group of members of a multi-stakeholder co-operative,

- (a) with a common interest, or
- (b) residing within a defined geographical area; (“groupement de partenaires”)

“telephonic or electronic means” means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, voice mail, fax, email, an automated touch-tone telephone system, computer or computer networks; (“moyen de communication téléphonique ou électronique”)

“term loan” means a loan having a fixed date of maturity and includes member and patronage loans having a fixed date of maturity; (“prêt à terme”)

“worker co-operative” means a co-operative,

- (a) the articles of which provide that the co-operative’s primary object is to provide employment to its members,

- (b) the articles of which provide that it is a condition of membership that, except in circumstances prescribed by the regulations, a member must be employed by the co-operative, and
- (c) for which subsection (1.1) is satisfied. (“coopérative de travail”) R.S.O. 1990, c. C.35, s. 1 (1); 1992, c. 19, s. 1 (1); 1994, c. 17, s. 1 (1); 1997, c. 28, s. 34; 1999, c. 6, s. 14 (1, 2); 2001, c. 8, s. 6; 2004, c. 31, Sched. 8, s. 1; 2005, c. 5, s. 14 (1-3); 2006, c. 19, Sched. C, s. 1 (1); 2009, c. 12, Sched. I, s. 1; 2009, c. 33, Sched. 2, s. 19 (1); 2016, c. 23, s. 43; 2017, c. 34, Sched. 9, s. 1; 2019, c. 15, Sched. 8, s. 1; 2020, c. 7, Sched. 6, s. 1; 2020, c. 36, Sched. 14, s. 5 (1); 2023, c. 9, Sched. 8, s. 1.

### **Employment requirements**

- (1.1) For the purposes of the definition of “worker co-operative” in subsection (1), this subsection is satisfied if,
- (a) at least 75 per cent of the permanent full-time employees are members of the co-operative;
  - (b) at least 75 per cent of all employees are members of the co-operative; or
  - (c) the alternative requirements prescribed by the regulations for the purposes of this clause, relating to the proportion of employees that must be members of the co-operative are satisfied. 1992, c. 19, s. 1 (2).

### **Permanent full-time employees**

- (1.2) For the purposes of clause (1.1) (a), an employee is not a permanent full-time employee if,
- (a) the employee is employed for a probationary period of one year or less;
  - (b) the employee is employed under a contract for a term of two years or less; or
  - (c) the employee’s regular hours of work are less than fifteen hours per week. 1992, c. 19, s. 1 (2).

### **Multi-stakeholder co-operative**

- (1.3) For the purposes of the definition of “multi-stakeholder co-operative”, the requirements of this subsection are satisfied if,
- (a) each member of the co-operative belongs to a stakeholder group; and
  - (b) no member of a co-operative belongs to more than one stakeholder group at the same time. 1994, c. 17, s. 1 (2).

### **Special resolution of multi-stakeholder co-operative**

- (1.4) For a multi-stakeholder co-operative, any reference in this Act to a special resolution means a resolution that is not effective until it is,
- (a) passed by the directors of a multi-stakeholder co-operative; and
  - (b) confirmed, with or without variation, by at least two-thirds, or such greater proportion as the articles provide, of the votes cast by the members of each stakeholder group at,
    - (i) a general meeting of the members of the co-operative duly called for that purpose, or
    - (ii) separate meetings of each of the stakeholder groups duly called for that purpose. 1994, c. 17, s. 1 (2).

### **Determining directors**

- (1.5) For a multi-stakeholder co-operative, the value invested in the co-operative by the members of any stakeholder group shall not be used as the sole basis for determining the number of directors that may be elected by that stakeholder group. 1994, c. 17, s. 1 (2).

### **Interpretation: subsidiary**

- (2) For the purposes of this Act, a corporation shall be deemed to be a subsidiary of a co-operative if, but only if, it is controlled by that co-operative. R.S.O. 1990, c. C.35, s. 1 (2).

### **Holding co-operative**

- (3) For the purposes of this Act, a co-operative shall be deemed to be a corporation’s holding co-operative if, but only if, that corporation is its subsidiary. R.S.O. 1990, c. C.35, s. 1 (3).

### **Control**

- (4) For the purposes of this Act, a subsidiary shall be deemed to be controlled by one or more other corporations if, but only if,



- (a) shares of the subsidiary carrying more than 50 per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such one or more other corporations; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the subsidiary. R.S.O. 1990, c. C.35, s. 1 (4).

### **Insolvency**

(5) For the purposes of this Act, a co-operative is insolvent if its liabilities exceed the realizable value of its assets or if the co-operative is unable to pay its debts as they become due. R.S.O. 1990, c. C.35, s. 1 (5).

### **Number of members**

(6) In determining the number of members of a co-operative, for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one member. R.S.O. 1990, c. C.35, s. 1 (6).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 1 (1, 2) - 24/08/1992; 1994, c. 17, s. 1 (1, 2) - 23/06/1994; 1997, c. 28, s. 34 (1, 2) - 1/01/1998; 1997, c. 28, s. 34 (3) - 1/07/1998; 1999, c. 6, s. 14 (1, 2) - 1/03/2000

2001, c. 8, s. 6 - 29/06/2001

2004, c. 31, Sched. 8, s. 1 (1, 2) - 31/08/2007

2005, c. 5, s. 14 (1-3) - 9/03/2005

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2009, c. 12, Sched. I, s. 1 - 9/09/2009; 2009, c. 33, Sched. 2, s. 19 (1) - 15/12/2009

2016, c. 23, s. 43 - 05/12/2016

2017, c. 34, Sched. 9, s. 1 - 29/10/2018

2019, c. 15, Sched. 8, s. 1 - 01/04/2020

2020, c. 7, Sched. 6, s. 1 - 12/05/2020; 2020, c. 36, Sched. 14, s. 5 (1) - 08/12/2020

2023, c. 9, Sched. 8, s. 1 - 01/10/2023

### **Delegation by Minister**

**1.1** (1) The Minister may delegate in writing any or all of the Minister's duties and powers under this Act to any person, subject to any restrictions set out in the delegation. 2017, c. 34, Sched. 9, s. 2.

### **Same, Director**

(2) The Director may delegate in writing any or all of the Director's duties and powers under this Act to any person, subject to any restrictions set out in the delegation. 2020, c. 7, Sched. 6, s. 2.

### **Section Amendments with date in force (d/m/y)**

2017, c. 34, Sched. 9, s. 2 - 29/10/2018

2020, c. 7, Sched. 6, s. 2 - 12/05/2020

### **Designation by Lieutenant Governor in Council**

**1.2** The Lieutenant Governor in Council may designate a person to exercise any powers or perform any duties of the Minister under this Act, subject to any restrictions set out in the designation. 2018, c. 17, Sched. 9, s. 1.

### **Section Amendments with date in force (d/m/y)**

2018, c. 17, Sched. 9, s. 1 - 08/06/2019

### **Renewable energy co-operative**

**2** (1) For the purposes of this Act, a renewable energy co-operative is a co-operative whose articles restrict the business of the co-operative to,

- (a) generating, within the meaning of the *Electricity Act, 1998*, electricity produced from one or more sources that are renewable energy sources for the purposes of that Act; and

- (b) selling, as a generator within the meaning of that Act, electricity it produces from one or more renewable energy sources. 2009, c. 12, Sched. I, s. 2.

#### **Ancillary powers**

(2) As part of its business of generating and selling electricity produced from one or more renewable energy sources, a renewable energy co-operative,

- (a) may establish or develop one or more generation facilities, within the meaning of the *Electricity Act, 1998*, to generate electricity produced from one or more renewable energy sources; and
- (b) may promote the purchase by electricity users of electricity produced from renewable energy sources. 2009, c. 12, Sched. I, s. 2.

#### **Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. I, s. 1 (1) - 22/12/1999

2009, c. 12, Sched. I, s. 2 - 9/09/2009

#### **Application**

**3** This Act, except where it is otherwise expressly provided, applies,

- (a) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated as a co-operative by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation to which the *Credit Unions and Caisses Populaires Act, 2020* applies. R.S.O. 1990, c. C.35, s. 3; 2015, c. 20, Sched. 7, s. 1; 2020, c. 36, Sched. 7, s. 304 (1).

#### **Section Amendments with date in force (d/m/y)**

2020, c. 36, Sched. 7, s. 304 (1) - 01/03/2022

### **INCORPORATION**

#### **Incorporation**

**4** (1) A co-operative may be incorporated under this Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act.

#### **Professions**

(2) Where the practice of a profession is governed by an Act, a co-operative may be incorporated to practise the profession only if such Act expressly permits the practice of the profession by a corporation and subject to the provisions of such Act. R.S.O. 1990, c. C.35, s. 4.

#### **Articles of incorporation**

**5** (1) Five or more persons, being,

- (a) corporations; or
- (b) natural persons who are of the age of eighteen years or more,

and who intend to be members of the co-operative, may incorporate a co-operative with or without share capital by signing and delivering to the Minister in duplicate articles of incorporation and such other information as may be prescribed. R.S.O. 1990, c. C.35, s. 5 (1); 1994, c. 17, s. 3 (1).

#### **Articles for worker co-operatives**

(1.1) Three or more natural persons who are of the age of eighteen years or more and who intend to be members of a worker co-operative may incorporate such a co-operative with or without share capital by signing and delivering articles of incorporation to the Minister in duplicate. 1992, c. 19, s. 2 (1).

#### **Contents of articles**

(2) Subject to subsection (3), articles of incorporation shall set out the following particulars:

1. The name of the co-operative to be incorporated.
2. All restrictions on the business that the co-operative may carry on or on the powers that the co-operative may exercise.
3. The place in Ontario where the head office of the co-operative is to be located, giving the municipality and the upper-tier municipality or, where the head office is to be located in territory without municipal organization, the geographic township and district, and the address giving the street and number, if any.
4. The number of directors or the minimum and maximum numbers of directors of the co-operative and the names in full and the residence addresses, giving the street and number, if any, of each person who is to be a first director of the co-operative.
5. The name in full, and the residence address, giving the street and number, if any, of each of the incorporators. R.S.O. 1990, c. C.35, s. 5 (2); 1992, c. 19, s. 2 (2); 1994, c. 17, s. 3 (2); 2002, c. 17, Sched. F, Table.

**Limit on non-member business in articles**

(2.1) For greater certainty, the articles of incorporation are not required to set out the percentage of business that a co-operative is authorized to conduct with non-members, except if necessary for the purposes of subsection 144 (1). 2019, c. 15, Sched. 8, s. 2.

**Idem**

- (3) In addition to the particulars required to be set out in subsection (2), articles of incorporation shall state,
- (a) where there is to be share capital,
    - (i) the authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class and the par value of each share,
    - (ii) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them,
    - (iii) the restrictions to be placed on the transfer of its shares or any class thereof,
    - (iv) the class and number of shares to be taken by each incorporator and the amount to be paid therefore,
    - (v) the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership, and
    - (vi) the authority of the directors to fix the number of shares in, and to determine the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to, a class of shares that may be issued in series;
  - (b) where there is to be no share capital,
    - (i) the amount of the membership fee,
    - (ii) the restrictions to be placed on the transfer of member loans,
    - (iii) the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership, and
    - (iv) the amount of a minimum member loan, if any,

and any other matter required by this Act or the regulations to be set out in the articles. R.S.O. 1990, c. C.35, s. 5 (3); 2001, c. 8, s. 7; 2004, c. 31, Sched. 8, s. 2.

**Non-profit housing co-operatives**

- (3.1) In addition to the particulars required to be set out in subsections (2) and (3), the articles of a non-profit housing co-operative shall be deemed to provide that,
- (a) the primary object of the co-operative is to provide housing to its members;
  - (b) the co-operative's activities shall be carried on without the purpose of gain for its members; and
  - (c) on the dissolution of the co-operative and after the payment of its debts and liabilities, the remaining property of the co-operative be transferred to or distributed among one or more non-profit housing co-operatives or charitable organizations. 1992, c. 19, s. 2 (3).

### **Articles: general**

(4) The articles may set out any provision that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative. R.S.O. 1990, c. C.35, s. 5 (4).

### **Consent of first director**

(5) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his or her written and signed consent to act as a first director. R.S.O. 1990, c. C.35, s. 5 (5).

(6) REPEALED: 1997, c. 19, s. 3 (1).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 2 (1-3) - 24/08/1992; 1994, c. 17, s. 3 (1, 2) - 23/06/1994; 1997, c. 19, s. 3 (1) - 10/10/1997

2001, c. 8, s. 7 - 29/06/2001

2002, c. 17, Sched. F, Table - 1/01/2003

2004, c. 31, Sched. 8, s. 2 - 31/08/2007

2019, c. 15, Sched. 8, s. 2 - 10/12/2019

### **Certificate of incorporation**

**6** (1) If the articles conform to law, the approvals to incorporate that are required by statute have been given, all prescribed information has been delivered to the Minister and all fees established by the Minister have been paid, the Minister shall,

- (a) endorse on each duplicate of the articles the words “Filed/déposé” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in the Minister’s office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which the Minister shall affix the other duplicate. R.S.O. 1990, c. C.35, s. 6 (1); 1994, c. 17, s. 4; 1997, c. 19, s. 3 (2).

### **Idem**

(2) A co-operative comes into existence upon the date set forth in its certificate of incorporation.

### **Idem**

(3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the co-operative has been incorporated under this Act, except in a proceeding under section 166 to cancel the certificate for cause. R.S.O. 1990, c. C.35, s. 6 (2, 3).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 4 - 23/06/1994; 1997, c. 19, s. 3 (2) - 10/10/1997

NAME

### **Use of “co-operative” or “coopérative”, etc.**

**7** (1) The corporate name of a co-operative shall include the word “co-operative” in English or “coopérative” in French as part thereof. R.S.O. 1990, c. C.35, s. 7 (1).

### **Idem**

(2) Where a co-operative or any director, officer, employee or member uses the name of the co-operative, the word “co-operative” or «coopérative» may be abbreviated to “co-op” in English or “coop” in French. R.S.O. 1990, c. C.35, s. 7 (2).

### **Idem**

(3) No corporation, association, partnership or individual not being a co-operative to which this Act applies shall use in Ontario a name that includes the word “co-operative” or “coopérative” or any abbreviation or derivation thereof whether or not the word, abbreviation or derivation is used in or in connection with the name. R.S.O. 1990, c. C.35, s. 7 (3).

### **Idem**

(4) Subsection (3) does not apply to a corporation incorporated by or under the authority of the Parliament of Canada, to a corporation granted an extra-provincial licence, to a corporation incorporated under the laws of Ontario before the 12th day of April, 1917 or to a corporation to which the *Credit Unions and Caisses Populaires Act, 2020* applies. R.S.O. 1990, c. C.35, s. 7 (4); 2015, c. 20, Sched. 7, s. 1; 2020, c. 36, Sched. 7, s. 304 (2).

### **Use of “Incorporated”, “Incorporée”, etc.**

(5) Subject to subsection (6), the name of a co-operative incorporated after the 31st day of March, 1974 shall have the word “Incorporated”, “Incorporée” or “Corporation” or its corresponding abbreviation “Inc.” or “Corp.” as the last word thereof. R.S.O. 1990, c. C.35, s. 7 (5).

### **Use of “Limited” or “Limitée”**

(6) Where a co-operative has share capital, the name of the co-operative may have the word “Limited” or “Limitée” or its corresponding abbreviation “Ltd.” or “Ltée” as the last word thereof. R.S.O. 1990, c. C.35, s. 7 (6).

### **Section Amendments with date in force (d/m/y)**

2020, c. 36, Sched. 7, s. 304 (2) - 01/03/2022

### **Use of name**

**8** Despite section 7, a co-operative may use its name in such form and in such language as the articles provide and as the Minister approves. R.S.O. 1990, c. C.35, s. 8.

### **Co-operative name**

**9** (1) The name of a co-operative shall not,

- (a) be the same as or similar to the name of a known corporation, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the corporation, association, partnership or individual signifies its, his or her consent in writing to the use of the name in whole or in part, and, if required by the Minister,
  - (i) in the case of a corporation, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or
  - (ii) in the case of an association, partnership or individual, undertakes to cease to carry on its, his or her business or activities, or change its, his or her name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;
- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) suggest or imply a connection with a political party or a leader of a political party;
- (d) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (e) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (f) in the opinion of the Minister, be objectionable on any public grounds.

### **Change of name if objectionable**

(2) If a co-operative through inadvertence or otherwise has acquired a name contrary to subsection (1), the Minister may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

### **Failure to perform undertaking**

(3) Where an undertaking referred to in clause (1) (a) is given by a co-operative and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

### **Idem**

(4) Where an undertaking referred to in clause (1) (a) is given by a corporation to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly. R.S.O. 1990, c. C.35, s. 9.

**Change not to affect rights, etc.**

10 A change in the name of a co-operative does not affect its rights or obligations. R.S.O. 1990, c. C.35, s. 10.

**Unauthorized use of “Limited”, etc.**

11 Where a co-operative carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word “Limited”, “Limitée”, “Incorporated”, “Incorporée” or “Corporation” or any abbreviation thereof. R.S.O. 1990, c. C.35, s. 11.

**Reservation of name**

12 (1) Any person may, on application in writing and on the payment of the fee established by the Minister, reserve a corporate name for the use and benefit of the applicant or the applicant’s nominee for a period of ninety days or such lesser period as the applicant specifies, if the name is at the time not contrary to section 9. R.S.O. 1990, c. C.35, s. 12 (1); 1997, c. 19, s. 3 (3).

**Idem**

(2) During the period for which the name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved. R.S.O. 1990, c. C.35, s. 12 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (3) - 10/10/1997

HEAD OFFICE

13 REPEALED: 2001, c. 8, s. 8.

**Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 8 - 29/06/2001

**Head office**

14 (1) Subject to subsection (2), a co-operative shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located. R.S.O. 1990, c. C.35, s. 14 (1).

**Change of head office**

(2) A co-operative may by by-law change the municipality or geographic township in which its head office is located to another place in Ontario. R.S.O. 1990, c. C.35, s. 14 (2).

**Where municipality annexed or amalgamated**

(3) Where the location of the head office of a co-operative is changed by reason only of the annexation or amalgamation of the place in which the head office is located to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection (2). R.S.O. 1990, c. C.35, s. 14 (3).

**Filing of by-law**

(4) The co-operative shall, within ten days after a by-law passed under subsection (2) has been confirmed by the members, file a certified copy of the by-law with the Minister. R.S.O. 1990, c. C.35, s. 14 (4); 1997, c. 28, s. 35; 2017, c. 34, Sched. 9, s. 3.

**Change of street address**

(5) A co-operative may by resolution of the directors change the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location. R.S.O. 1990, c. C.35, s. 14 (5); 1997, c. 28, s. 35; 2017, c. 34, Sched. 9, s. 3.

**Validity**

(6) Failure to comply with subsection (4) or (5) does not affect the validity of the by-law or resolution. R.S.O. 1990, c. C.35, s. 14 (6).

**Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 35 - 1/07/1998

2017, c. 34, Sched. 9, s. 3 - 29/10/2018

## POWERS

### **Corporate powers**

**15** (1) A co-operative has the capacity and the rights, powers and privileges of a natural person.

### **Limitation in articles**

(2) The capacity or powers of a co-operative may be limited by the articles. 1992, c. 19, s. 3.

(3) REPEALED: 1992, c. 19, s. 3.

### **Powers to act outside of Ontario**

(4) Every co-operative may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. R.S.O. 1990, c. C.35, s. 15 (4).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 3 - 24/08/1992

### **Acting outside powers**

**16** (1) No act of a co-operative and no transfer of real or personal property to or by a co-operative, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the co-operative was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted,

- (a) in a proceeding against the co-operative by a member under subsection (2);
- (b) in a proceeding by the co-operative, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through members in a representative capacity, against a director or officer or former director or officer of the co-operative; or
- (c) as cause for the cancellation of the certificate of incorporation of the co-operative under section 166.

### **Restraining order**

(2) A member of a co-operative may apply to a court of competent jurisdiction for an order to restrain the co-operative from doing any act or transferring or receiving the transfer of real or personal property on the ground that the co-operative lacks capacity or power for the purpose, and the court may, if it considers it to be just and equitable, grant an order prohibiting the co-operative from doing the act or transferring or receiving the transfer of the real or personal property, but, where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the co-operative is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the co-operative or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract. R.S.O. 1990, c. C.35, s. 16.

### **Loans to members, directors, etc.**

**17** (1) A co-operative shall not make loans to any of its members, directors or employees or give directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance to any member, director or employee, except in the course of transactions of a type available to all members of the co-operative.

### **Liability of directors and officers**

(2) Those directors and officers of a co-operative who authorize or consent to making a loan or giving financial assistance in contravention of subsection (1) are jointly and severally liable to the co-operative and to its creditors for any actual loss to the co-operative together with interest at the rate of 6 per cent a year. R.S.O. 1990, c. C.35, s. 17.

### **Contracts**

**18** (1) REPEALED: 2001, c. 8, s. 9.

### **Contracts**

(2) A contract that if entered into by an individual person would by law be required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a co-operative in writing signed by any person acting under its authority, express or implied. R.S.O. 1990, c. C.35, s. 18 (2).

## **Parol contracts**

(3) A contract that if entered into by an individual person would by law be valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a co-operative by any person acting under its authority, express or implied. R.S.O. 1990, c. C.35, s. 18 (3).

### **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 9 - 29/06/2001

## **Power of attorney**

**19** A co-operative may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the co-operative acting within the scope of the attorney's authority, express or implied, and under the seal of the attorney binds the co-operative and has the same effect as if it were under the seal of the co-operative. R.S.O. 1990, c. C.35, s. 19.

## **Preincorporation contracts**

### **Definitions**

**20** (1) In this section,

“contractor” means a person who enters into a preincorporation contract in the name of or on behalf of a co-operative before its incorporation; (“contractant”)

“other party” means a person with whom a contractor enters into a preincorporation contract; (“autre partie”)

“preincorporation contract” means a contract entered into by a contractor in the name of or on behalf of a co-operative before its incorporation. (“contrat préconstitutif”)

### **Adoption of preincorporation contracts**

(2) A co-operative may adopt a preincorporation contract entered into in its name or on its behalf, and thereupon the co-operative is entitled to the benefits and is subject to the liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

### **Non-adoption of preincorporation contracts**

(3) Where a preincorporation contract is not adopted by a co-operative, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the co-operative the value of any benefit received by the co-operative under the contract.

### **Application to court for relief**

(4) Whether or not a preincorporation contract is adopted by the co-operative, the other party may apply to the court which may, despite subsections (2) and (3), make an order fixing or apportioning liability as between the contractor and the co-operative in any manner the court considers just and equitable under the circumstances. R.S.O. 1990, c. C.35, s. 20.

## **By-laws**

**21** Subject to this Act and the articles, the directors may pass by-laws that regulate the business and affairs of the co-operative. 1992, c. 19, s. 4.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 4 - 24/08/1992

## **Renewable energy co-operative**

**21.1** The directors of a renewable energy co-operative shall pass one or more by-laws governing how the surplus arising from the business of the co-operative is to be allocated, credited or paid to the members of the co-operative. 2009, c. 12, Sched. I, s. 3.

### **Section Amendments with date in force (d/m/y)**

2009, c. 12, Sched. I, s. 3 - 9/09/2009

## **Remuneration of directors**

**22** A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid. R.S.O. 1990, c. C.35, s. 22.



### **Passing of by-laws**

**23** No by-law is effective until it is,

- (a) passed by the directors of a co-operative; and
- (b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide. R.S.O. 1990, c. C.35, s. 23.

### **By-laws re delegates**

**24** (1) The directors may pass by-laws providing for,

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of its directors,
  - (i) by such groups on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both, or
  - (ii) for the groups in a defined geographical area, by the delegates of such groups meeting together;
- (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both;
- (d) where a member is a co-operative, the election or appointment of delegates and alternate delegates to represent the member co-operative on the basis of the number of members in the member co-operative or the volume of business done with the co-operative, or both;
- (e) the method of electing or appointing delegates and the number of delegates;
- (f) the holding of meetings of delegates;
- (g) the authority of delegates at meetings or providing that a meeting of delegates shall for all purposes be deemed to be and to have all the powers of a meeting of the members;
- (h) the holding of meetings of members or delegates territorially or on the basis of common interest;
- (i) the payment of remuneration and expenses of delegates attending meetings.

### **Voting**

(2) A delegate has only one vote and shall not vote by proxy.

### **Qualification of delegates**

(3) No person shall be elected or appointed a delegate who is not a member, officer or director of the co-operative or of a member co-operative.

### **Saving**

(4) No by-law under subsection (1) shall prohibit members from attending meetings of delegates and participating in the discussions at such meetings. R.S.O. 1990, c. C.35, s. 24.

## **CAPITAL**

### **Shares**

**25** (1) The authorized capital of a co-operative shall be divided into shares with par value and may consist of shares of more than one class or series. R.S.O. 1990, c. C.35, s. 25 (1); 2004, c. 31, Sched. 8, s. 3 (1).

### **Par value**

(2) Each class or series of shares shall have a minimum par value of \$1 or any multiple of \$1 that results in a par value expressed in dollars without cents. 2001, c. 8, s. 10; 2004, c. 31, Sched. 8, s. 3 (2).

### **Authorized capital**

(3) The authorized capital of the co-operative shall be expressed in Canadian currency in its articles and is an amount equal to the total of the products of the number of shares of each class or series multiplied by the par value thereof. R.S.O. 1990, c. C.35, s. 25 (3); 2004, c. 31, Sched. 8, s. 3 (3).

### **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 10 - 29/06/2001

2004, c. 31, Sched. 8, s. 3 (1-3) - 31/08/2007

### **Membership shares**

**26** (1) The membership shares of a co-operative shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the co-operative other than the restriction on the allotment, issue or transfer. R.S.O. 1990, c. C.35, s. 26 (1); 1994, c. 17, s. 2.

### **Classes of shares**

(2) Where a co-operative has only one class of shares, that class shall be membership shares and designated as co-operative or co-op membership shares. R.S.O. 1990, c. C.35, s. 26 (2); 1994, c. 17, s. 2.

### **Idem**

(3) Where a co-operative has more than one class of shares, one class shall be membership shares, designated as provided in subsection (2), and the other shares shall consist of one or more classes of preference shares and shall have attached thereto the designation co-operative or co-op preference shares and such other designation as set out in the articles. R.S.O. 1990, c. C.35, s. 26 (3); 1994, c. 17, ss. 2, 5 (1).

### **Preference shares**

(4) No class of preference shares shall be designated as preference shares or by words of like import, unless the class has attached thereto a preference or right over the membership shares. R.S.O. 1990, c. C.35, s. 26 (4); 1994, c. 17, s. 2.

### **Transition, common shares**

(5) Common shares of a co-operative that are authorized or issued at the time that this subsection comes into force shall be deemed to be membership shares. 1994, c. 17, s. 5 (2).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 2, s. 5 (1, 2) - 23/06/1994

### **Preference shares**

**27** (1) Articles that provide for preference shares must set out,

- (a) the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to any class of preference shares; and
- (b) the maximum number of shares of any class of preference shares that the co-operative is authorized to issue.

### **Same**

(2) Preference shares do not confer on their holder the right to vote except as permitted under this Act or the right to receive any of the remaining property of the co-operative on dissolution. 1994, c. 17, s. 6.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 6 - 23/06/1994

### **Preference shares in series**

**27.1** (1) The articles, subject to such conditions and restrictions as may be prescribed and subject to the limitations set out in the articles,

- (a) may authorize the issue of any class of preference shares in one or more series and may fix the number of shares in, and determine the designations, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the shares of, each series; and
- (b) may, where the articles authorize the issue of any class of preference shares in one or more series, authorize the directors to fix the number of shares in, and to determine the designations, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the shares of each series. 2004, c. 31, Sched. 8, s. 4.

### **Proportionate abatement**

(2) If any amount,

- (a) of cumulative dividends, whether or not declared, or declared non-cumulative dividends; or
- (b) payable on return of capital in the event of the liquidation, dissolution or winding-up of a co-operative,

in respect of shares of a series is not paid in full, the shares of the series shall participate rateably with the shares of all other series of the same class in respect of,

(c) all accumulated cumulative dividends, whether or not declared, and all declared non-cumulative dividends; or

(d) all amounts payable on return of capital in the event of the liquidation, dissolution or winding-up of the co-operative, as the case may be. 2004, c. 31, Sched. 8, s. 4.

#### **No priority of shares of same class**

(3) No preferences, rights, conditions, restrictions, limitations or prohibitions attached to a series of preference shares authorized under this section shall confer upon the shares of a series a priority in respect of,

(a) dividends; or

(b) return of capital in the event of the liquidation, dissolution or winding-up of the co-operative,

over the shares of any other series of the same class. 2004, c. 31, Sched. 8, s. 4.

#### **Articles designating special shares**

(4) Where, in respect of a series of preference shares, the directors exercise the authority conferred on them, before the issue of shares of that series, the directors shall file with the Minister articles of amendment, in a form approved by the Minister, designating the series. 2004, c. 31, Sched. 8, s. 4; 2017, c. 34, Sched. 9, s. 4.

#### **Certificate of amendment**

(5) Section 154 applies with respect to the articles of amendment referred to in subsection (4). 2004, c. 31, Sched. 8, s. 4.

#### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 4 - 31/08/2007

2017, c. 34, Sched. 9, s. 4 - 29/10/2018

#### **Equality of shares of a class**

**28** Each share of a class shall be the same in all respects as every other share of that class, except as otherwise permitted by section 27.1. 2004, c. 31, Sched. 8, s. 5.

#### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 5 - 31/08/2007

### ISSUED CAPITAL

#### **Issued capital**

**29** The issued capital of a co-operative shall be expressed in Canadian currency and is an amount equal to the total of the products of the number of issued shares of each class or series multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the co-operative in accordance with this Act. R.S.O. 1990, c. C.35, s. 29; 2004, c. 31, Sched. 8, s. 6.

#### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 6 - 31/08/2007

#### **Cancellation of par share**

**30** (1) If an issued share of a class or series is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class or series. 2004, c. 31, Sched. 8, s. 7.

#### **Cancellation of fractions of shares**

(2) If a fraction of an issued share of a class or series is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection (1) that the fraction bears to a whole share of that class or series. 2004, c. 31, Sched. 8, s. 7.

#### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 7 - 31/08/2007

## REDEMPTION, PURCHASE AND SURRENDER

### **Purchase and redemption of shares**

**30.1** (1) A co-operative may purchase or redeem its shares only in accordance with this Act and the regulations and in accordance with its articles. 2004, c. 31, Sched. 8, s. 8 (1).

### **Price for purchase and redemption**

(2) A co-operative may purchase, for cancellation, any of its shares or redeem any of its redeemable shares at a price not exceeding the par value of the shares and any premium and unpaid dividends. 1994, c. 17, s. 7.

### **Interpretation**

(3) For the purposes of this Act,

- (a) “premium”, when used with respect to shares, means an amount payable on the purchase for cancellation or redemption of shares of a class or series of preference shares of a co-operative in addition to the par value of the shares, which amount is calculated according to a formula stated in the articles and does not exceed a prescribed amount; and
- (b) “unpaid dividends” includes cumulative dividends that are due but not declared and dividends that are declared but unpaid. 1994, c. 17, s. 7; 2004, c. 31, Sched. 8, s. 8 (2).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 7 - 23/06/1994

2004, c. 31, Sched. 8, s. 8 (1, 2) - 31/08/2007

### **Redemption of shares of a class of preference shares**

**31** (1) If the articles provide that the shares of a class of preference shares are redeemable without the consent of the holders of the shares and if only part of the preference shares are to be redeemed, the shares to be redeemed shall be selected,

- (a) by lot in the manner determined by the board of directors;
- (b) as nearly as may be in proportion to the number of preference shares of the class that are registered in the name of each holder of shares of that class;
- (c) in such other manner as the board of directors determines with the consent of the holders of preference shares of the class, obtained in the manner set out in subsection (3); or
- (d) in such manner as may be authorized by regulation,

but the articles may confine the manner of selection to one or more of the methods referred to in clause (a), (b), (c) or (d). 2004, c. 31, Sched. 8, s. 9.

### **Redemption of shares of a series of preference shares**

(1.1) If the articles provide that the shares of a series of preference shares are redeemable without the consent of the holders of the shares and if only part of the series of preference shares are to be redeemed, the shares to be redeemed shall be selected in such manner as may be prescribed by regulation. 2004, c. 31, Sched. 8, s. 9.

### **Insolvency**

(2) A co-operative shall not redeem shares under subsection (1) if the co-operative is insolvent or if the redemption would render the co-operative insolvent. R.S.O. 1990, c. C.35, s. 31 (2).

### **Method of redemption**

(3) Where shares of a class of preference shares are selected in the manner referred to in clause (1) (c), the selection shall be consented to in writing by,

- (a) all the holders of the preference shares of the class; or
- (b) at least 95 per cent of the holders of the preference shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to the holder at the holder’s latest address as shown on the records of the co-operative, none of the holders of shares of that class dissents in writing to the co-operative. R.S.O. 1990, c. C.35, s. 31 (3).

## **Idem**

(4) Where a holder of redeemable preference shares of a co-operative dies or leaves its employment, despite subsection (1), it may within one year of such event redeem all or any of the preference shares held by the holder. R.S.O. 1990, c. C.35, s. 31 (4).

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 9 - 31/08/2007

### **Purchase of preference and membership shares**

**32** (1) Subject to subsection (2),

- (a) a co-operative may, with a person's consent, purchase all or a part of the shares in the co-operative held by the person on payment to the person of such amount as they have agreed that does not exceed the sum of the par value of the shares and any premium and unpaid dividends; and
- (b) a co-operative may redeem a member's shares, without the consent of the member, on payment to the member of an amount equal to the lesser of the book value of the shares and the sum of the par value of the shares and any premium and unpaid dividends if,
  - (i) the member has not transacted any business with the co-operative for two years and the co-operative is not a renewable energy co-operative, or
  - (ii) the member, if it is a corporation, is about to be dissolved. 2009, c. 12, Sched. I, s. 4.

### **Insolvency**

(2) A co-operative shall not purchase or redeem shares under subsection (1) if the co-operative is insolvent or if the purchase would render the co-operative insolvent. R.S.O. 1990, c. C.35, s. 32 (2).

### **Method**

(3) Where shares are purchased or redeemed by a co-operative under subsection (1) or where preference shares are redeemed pursuant to the articles,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
  - (i) the board of directors may at the time of the purchase or redemption cancel the shares in which case the authorized and issued capital of the co-operative are thereby decreased and the articles are amended accordingly, or
  - (ii) the co-operative may resell the shares at such price and on such terms as the directors determine. R.S.O. 1990, c. C.35, s. 32 (3); 1994, c. 17, s. 8 (3).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 8 (1-3) - 23/06/1994

2009, c. 12, Sched. I, s. 4 - 9/09/2009

### **Reduced redemption price**

**32.1** (1) The articles of a co-operative may provide for any class of shares that the co-operative may purchase for cancellation or may redeem shares of the class at a price determined in accordance with a formula set out in the articles that is less than the price for purchase for cancellation or redemption price otherwise determined if,

- (a) the co-operative is otherwise required to purchase for cancellation or to redeem the shares; and
- (b) the board of directors determines, by resolution, that it is necessary for the long-term financial well-being of the co-operative.

### **Notice of reduced redemption price**

(2) A co-operative that resolves to purchase for cancellation or redeem shares under subsection (1) shall deliver written notice to the holder of the shares within seven days following the date of the resolution.

### **Right to dissent or retain shares**

(3) A holder of shares who receives notice under subsection (2) may, by written notice delivered to the co-operative within 15 days after receiving the notice,

- (a) dissent as to price; or
- (b) retain the shares by waiving the redemption or purchase for cancellation of the shares.

### **Limitation on right to dissent**

(4) A shareholder may dissent under this section only with respect to all of the shares held by the shareholder that are to be purchased for cancellation or redeemed.

### **Arbitration**

(5) If the shareholder dissents, the appropriate price to be paid by the co-operative for the purchase for cancellation or redemption of the shares in accordance with the requirements for the long-term well-being of the co-operative and with the articles shall be determined by arbitration as prescribed. 1994, c. 17, s. 9.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 9 - 23/06/1994

### **Donation of shares**

**33** (1) A co-operative may accept from any member a donation of any of its shares without any repayment of capital in respect thereof. R.S.O. 1990, c. C.35, s. 33 (1).

### **Sale of donated shares**

(2) Shares accepted under subsection (1) are not thereby cancelled and the co-operative may sell the shares at such price and on such terms as the directors determine. 1994, c. 17, s. 10.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 10 - 23/06/1994

## OFFERING STATEMENT

### **Offering statement**

**34** (1) No co-operative or person shall sell, dispose of or accept directly or indirectly any consideration for securities of the co-operative where the co-operative has more than the prescribed number of security holders, or where the sale or disposition of or acceptance of consideration for the securities would have the effect of increasing the number of security holders in the co-operative to more than the prescribed number, unless the co-operative has filed with the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario an offering statement and has obtained a receipt for it. 2004, c. 31, Sched. 8, s. 10; 2018, c. 17, Sched. 9, s. 13; 2019, c. 15, Sched. 8, s. 3.

### **Exception**

- (2) Subsection (1) does not apply to,
- (a) the issue of shares under subsection 56 (1) or of debt obligations under subsection 56 (4);
  - (b) a co-operative that has filed with the Ontario Securities Commission both a preliminary prospectus and a prospectus in respect of the offering of its securities, and receipts therefor have been obtained from the Director of the Ontario Securities Commission and copies thereof have been filed with the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario; or
  - (c) such issues of shares or debt obligations as may be prescribed. 1994, c. 17, s. 11 (2); 1997, c. 28, s. 35; 2018, c. 17, Sched. 9, s. 13; 2019, c. 15, Sched. 8, s. 3.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 11 (1, 2) - 23/06/1994; 1997, c. 28, s. 35 - 1/07/1998

2004, c. 31, Sched. 8, s. 10 - 31/08/2007

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 3 - 01/04/2020

### **Standard of disclosure**

**35** (1) An offering statement shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued.

### **Form and content**

(2) An offering statement shall comply as to form and content with the requirements of this Act and the regulations.

### **Supporting material**

(3) There shall be filed with an offering statement such documents, reports and other material as are required by this Act and the regulations. R.S.O. 1990, c. C.35, s. 35 (1-3).

### **Material changes**

(4) Where there is a material change in the facts set forth in an offering statement, whether before or after the issuance of a receipt therefor, the co-operative shall, within thirty days of that change, file with the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario a statement of such change. R.S.O. 1990, c. C.35, s. 35 (4); 1997, c. 28, s. 35; 2018, c. 17, Sched. 9, s. 13; 2019, c. 15, Sched. 8, s. 3.

### **Further statements**

(5) A co-operative may, and shall if required by the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, file a further offering statement revised to give effect to all previous material changes in place of the statement of material change mentioned in subsection (4). R.S.O. 1990, c. C.35, s. 35 (5); 1997, c. 28, s. 35; 2018, c. 17, Sched. 9, s. 13; 2019, c. 15, Sched. 8, s. 3.

### **Definition of “material change”**

(6) In this section,

“material change” means a change in the business, operations, assets or liabilities of the co-operative that would reasonably be expected to have a significant adverse impact on the financial position of the co-operative or that might prevent the co-operative from achieving the purpose of an offering but does not include a change that is prescribed by the regulations as not a material change. 1999, c. 12, Sched. I, s. 1 (2).

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 35 - 1/07/1998; 1999, c. 12, Sched. I, s. 1 (2) - 22/12/1999

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 3 - 01/04/2020

### **Issue of receipts**

**36** (1) The Chief Executive Officer of the Financial Services Regulatory Authority of Ontario may in his or her discretion issue a receipt for any statement filed under section 34 or subsection 35 (4) or (5) unless it appears to the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario that,

- (a) the statement or any document required to be filed therewith,
  - (i) fails to comply in any substantial respect with any of the requirements of this Act or the regulations,
  - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or
  - (iii) conceals or omits to state any material facts necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or
- (b) the proceeds from the sale of the securities to which the statement relates that are to be paid into the treasury of the co-operative, together with other resources of the co-operative, are insufficient to accomplish the purpose of the issue stated in the statement. R.S.O. 1990, c. C.35, s. 36 (1); 1997, c. 28, s. 35; 2018, c. 17, Sched. 9, s. 13; 2019, c. 15, Sched. 8, s. 3.

### **Idem**

(2) The Chief Executive Officer of the Financial Services Regulatory Authority of Ontario shall not make any determination under subsection (1) without making an order or ruling in writing and without giving the co-operative that filed the statement a prior opportunity to be heard. R.S.O. 1990, c. C.35, s. 36 (2); 1997, c. 28, s. 35; 2018, c. 17, Sched. 9, s. 13; 2019, c. 15, Sched. 8, s. 3.

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 35 - 1/07/1998

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 3 - 01/04/2020

### **Inspection of statement**

**37** (1) A copy of a statement for which a receipt has been issued under section 36 shall be open to inspection,

- (a) at the offices of the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario; and
- (b) during normal business hours, at the head office of the co-operative. R.S.O. 1990, c. C.35, s. 37 (1); 1997, c. 28, s. 36; 2018, c. 17, Sched. 9, s. 2, 13; 2019, c. 15, Sched. 8, s. 3.

### **Same**

(2) No person shall refuse to permit a person to inspect a statement in accordance with subsection (1) or to make extracts from them. 2023, c. 9, Sched. 8, s. 2.

### **Inspection by remote means**

(3) The co-operative may, but is not required to, permit a person to inspect a copy of a statement mentioned in subsection (1) remotely at any time by means of any technology and may permit the person to make extracts by such means. 2023, c. 9, Sched. 8, s. 2.

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 36 (1, 2) - 1/07/1998

2018, c. 17, Sched. 9, s. 2, 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 3 - 01/04/2020

2023, c. 9, Sched. 8, s. 2 - 01/10/2023

## **ALLOTMENT, ISSUE AND TRANSFER**

### **Issue of shares**

**38** Shares shall not be allotted or issued except for a consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof. R.S.O. 1990, c. C.35, s. 38; 1994, c. 17, s. 12.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 12 - 23/06/1994

### **Consideration for shares**

**39** (1) No share shall be issued until it is fully paid and a share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the co-operative.

### **Idem**

(2) For the purposes of subsection (1) and paragraph 21 of subsection 15 (2), a document evidencing indebtedness of the allottee does not constitute property, and services shall be past services actually performed for the co-operative, and the value of property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value. R.S.O. 1990, c. C.35, s. 39.

### **Restriction on transfer of membership shares**

**40** No transfer of membership shares in a co-operative with share capital, unless made by sale under execution or under the decree, order or judgment of a court of competent jurisdiction or by transmission to the personal representative of a member, is valid for any purpose unless,

- (a) the transfer has been authorized by resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such transfers;
- (b) the transferee is admitted to membership in the co-operative as required by its articles and by-laws; and
- (c) the entry thereof has been duly made in the register of transfers of the co-operative or in a branch register of transfers, except only as evidence of the rights of the parties thereto towards each other. R.S.O. 1990, c. C.35, s. 40; 1994, c. 17, s. 2.

### **Section Amendments with date in force (d/m/y)**



1994, c. 17, s. 2 - 23/06/1994

### **Commission on sale of shares**

**41** (1) A co-operative may provide by by-law for the payment of commissions to persons in consideration of their procuring subscriptions for shares in the co-operative, but no such commission shall exceed 10 per cent of the par value of the shares.

### **No unauthorized commission**

(2) Except as provided in subsection (1), no co-operative shall apply any of its shares or capital, either directly or indirectly, in payment of any commission to any person in consideration of the person's procuring subscriptions for shares of the co-operative, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the co-operative or to the contract price of any work to be executed for the co-operative, or is paid out of the nominal purchase money or contract price or otherwise. R.S.O. 1990, c. C.35, s. 41.

### **Shares personal property**

**42** The shares of a co-operative are personal property and are transferable in such manner and subject to such conditions and restrictions as are prescribed by this Act and the articles of the co-operative. R.S.O. 1990, c. C.35, s. 42.

### **Lien on shares**

**43** Where a member is indebted to the co-operative for goods or services, and where the articles or by-laws so provide, the co-operative has a lien to the extent of the debt on the shares registered in the name of the member. R.S.O. 1990, c. C.35, s. 43.

### **Share and loan certificates**

**44** (1) Every member is entitled to a share or loan certificate in respect of the shares held or loans made by the member, signed by the proper officers in such form as the by-laws of the co-operative provide, but in no case is the co-operative bound to issue more than one share or loan certificate in respect of a share or shares held or a loan made jointly by several persons, and delivery of a share or loan certificate to one of several joint holders or lenders is sufficient delivery to all.

### **Fee**

(2) A co-operative may charge a fee of not more than \$1 for every share certificate issued, except that in the case of the allotment and issue of shares, no fee shall be charged. R.S.O. 1990, c. C.35, s. 44.

### **Signing of certificate**

**45** Unless the by-laws provide otherwise, a share or loan certificate must be signed by an officer of the co-operative or by or on behalf of a transfer agent of the co-operative. 1992, c. 19, s. 6; 2023, c. 9, Sched. 8, s. 3.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 6 - 24/08/1992

2023, c. 9, Sched. 8, s. 3 - 01/10/2023

### **Contents of certificates**

**46** (1) Every share or loan certificate shall state upon its face,

- (a) the name of the co-operative and a statement in English or in French that it is a co-operative incorporated under the law of the Province of Ontario;
- (b) the name of the person to whom the share or loan certificate is issued as holder;
- (c) the amount, maturity date and annual rate of interest where the certificate represents a loan;
- (d) if the certificate represents shares, the number and the class of shares, and the designation of any series, represented by the certificate and the par value of the shares;
- (e) a statement of the dividend rate, where applicable. R.S.O. 1990, c. C.35, s. 46 (1); 2004, c. 31, Sched. 8, s. 11.

### **Restrictions to be noted**

(2) Every share certificate shall have noted conspicuously thereon a statement in English or in French that the transfer of shares is restricted. R.S.O. 1990, c. C.35, s. 46 (2).

### **Notice of lien**

(3) Where the articles or by-laws provide that a co-operative has a lien on shares as authorized by section 43, the right of the co-operative to the lien shall be noted conspicuously on every share certificate issued by the co-operative. R.S.O. 1990, c. C.35, s. 46 (3).

### **Definition**

(4) In this section,

“noted conspicuously” means written in such a way that the person against whom words so noted or appearing are to operate ought reasonably to notice them. R.S.O. 1990, c. C.35, s. 46 (4).

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 11 - 31/08/2007

### **Contents of preference share certificate**

**47** (1) A share certificate issued for a share of a class or series of preference shares shall,

- (a) legibly state on the certificate or have attached to it a legible statement setting out,
  - (i) the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to that class or to that series, and
  - (ii) the authority of the directors to fix the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to subsequent series, if applicable; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, limitations or prohibitions attaching to that class or series and that the co-operative will furnish to a shareholder, on demand and without charge, a full copy of the text of,
  - (i) the preferences, rights, conditions, restrictions, limitations and prohibitions attached to that share and to each class authorized to be issued and to each series in so far as the same have been fixed by the directors, and
  - (ii) the authority of the directors to fix the preferences, rights, conditions, restrictions, limitations and prohibitions of subsequent series, if applicable. 2004, c. 31, Sched. 8, s. 12 (1).

### **Idem**

(2) Where a share certificate contains a statement as provided in clause (1) (b), the co-operative shall furnish to the holder of the shares on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share. R.S.O. 1990, c. C.35, s. 47 (2).

### **Where rights must be stated**

(3) The option provided in clause (1) (b) does not apply if the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to a class or series of preference shares include,

- (a) the right to the payment of a premium on the purchase for cancellation or redemption of the shares; or
- (b) the right of the co-operative under section 32.1 to purchase for cancellation or redeem the shares at a price that is less than the price for purchase for cancellation or redemption price otherwise determined. 1994, c. 17, s. 13; 2004, c. 31, Sched. 8, s. 12 (2).

### **Same**

(4) The option provided in clause (1) (b) does not apply to a share certificate for a class of preference shares that are prescribed shares under clause 64 (3) (a) or 64 (5) (a) or subsection 66 (6). 1994, c. 17, s. 13.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 13 - 23/06/1994

2004, c. 31, Sched. 8, s. 12 (1, 2) - 31/08/2007

### **Fractional shares**

**48** Where, as a result of a change in authorized capital of a co-operative, a person becomes entitled to a fraction of a share, the person is not entitled to be registered on the records of the co-operative in respect thereof or to receive a share certificate therefor, but the person is entitled to receive a bearer fractional certificate in respect of such fraction, and on presentation at the head office of the co-operative or at a place designated by the co-operative of bearer fractional certificates for fractions

that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor. R.S.O. 1990, c. C.35, s. 48.

## LOAN CAPITAL

### Member loans

**49** (1) The capital of co-operatives without share capital may be in the form of loans from members, called member loans, and such loans may be in such amounts, payable on demand or at such times and without interest or at interest not exceeding the prescribed maximum annual percentage or, if authorized by by-law of the co-operative, at such a lesser rate as the board of directors may by resolution determine. R.S.O. 1990, c. C.35, s. 49 (1); 1992, c. 19, s. 7.

### Borrowing from members

(2) A co-operative may borrow money from its members not being loans made as a condition of membership or as compulsory loans of patronage returns, in such amounts payable on demand or at such times and either without interest or with interest at such rate as the by-laws provide or, if authorized by by-law, at such rate as the directors may by resolution determine. R.S.O. 1990, c. C.35, s. 49 (2).

### Termination of membership

(3) The directors of a co-operative without share capital may, by resolution passed by a majority of the board, terminate the membership of a member of the co-operative and, subject to section 67, repay to the member the amount outstanding on any loans to the co-operative that are repayable to the member on demand, together with any accrued interest, if,

- (a) the member has not transacted any business with the co-operative for two years and the co-operative is not a renewable energy co-operative; or
- (b) the member, if it is a corporation, is about to be dissolved. 2009, c. 12, Sched. I, s. 5.

### Section Amendments with date in force (d/m/y)

1992, c. 19, s. 7 - 24/08/1992

2009, c. 12, Sched. I, s. 5 - 9/09/2009

## BORROWING POWERS

### Borrowing powers

**50** (1) Where authorized by by-law, the directors may,

- (a) borrow money on the credit of the co-operative;
- (b) issue, sell or pledge debt obligations of the co-operative; or
- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal movable or immovable property of the co-operative, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed or other debt or liability of the co-operative. R.S.O. 1990, c. C.35, s. 50 (1); 2013, c. 3, s. 1.

### Contents of by-law

(2) Any by-law referred to in subsection (1) may,

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the co-operative and to such extent and manner as is set out in the by-law. R.S.O. 1990, c. C.35, s. 50 (2).

### Section Amendments with date in force (d/m/y)

2013, c. 3, s. 1 - 1/06/2014

### Bearer debt obligations

**51** Nothing in this Act prohibits the issue of debt obligations in bearer form. R.S.O. 1990, c. C.35, s. 51.

### Irredeemable debt obligations

**52** A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long. R.S.O. 1990, c. C.35, s. 52.

**53 REPEALED:** 2019, c. 15, Sched. 8, s. 4.

**Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (4) - 10/10/1997; 1997, c. 28, s. 37 - 1/07/1998

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 4 - 10/12/2019

**DIVIDENDS AND SURPLUS**

**Reserve fund and dividends**

**54** A co-operative may by by-law provide that, before any distribution of surplus arising from the business of the co-operative in each fiscal year is made, the co-operative may,

- (a) set aside reserve funds;
- (b) provide for the payment of dividends on the share capital. R.S.O. 1990, c. C.35, s. 54; 1994, c. 17, s. 14.

**Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 14 - 23/06/1994

**Distribution of net surplus**

**55** (1) Subject to subsections (4) and (6), the surplus arising from the business of a co-operative, other than a direct charge co-operative, in each fiscal year shall be allocated, credited or paid to the members in proportion to the business done by each member with or through the co-operative, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold or services rendered by the member or by the co-operative from or on behalf of or to the member, or the co-operative whether as principal or as agent of the member or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof. R.S.O. 1990, c. C.35, s. 55 (1); 2009, c. 12, Sched. I, s. 6 (1).

**Worker co-operatives**

(1.1) Subject to subsection (4), the surplus arising from the business of a worker co-operative in each fiscal year shall be allocated, credited or paid to the members in proportion to either the compensation paid to or on behalf of each member in the year or the hours worked by each member in the year, as set out in the by-laws. 1992, c. 19, s. 9.

**Non-profit housing co-operatives**

(1.2) In the application of this section with respect to a non-profit housing co-operative, the surplus arising from the business of the co-operative is the surplus arising from the operations of the co-operative excluding the proceeds from the sale of any assets not sold in the ordinary course of operations. 1992, c. 19, s. 9.

**Distribution, non-members**

(2) The co-operative may by by-law provide that part of the surplus may be allocated, credited or paid to non-members at the same or at lesser rates than to members. R.S.O. 1990, c. C.35, s. 55 (2).

**Patronage return**

(3) The amount that is allocated, credited or paid in each fiscal year to members or non-members of a co-operative other than a renewable energy co-operative is known as the patronage return. 2009, c. 12, Sched. I, s. 6 (2).

**Limitation of patronage return**

(4) The co-operative may by by-law provide that, if the value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the co-operative from or on behalf of or to any member or non-member in any year does not exceed an amount specified in the by-law, no patronage return shall be allocated, credited or paid to such member or non-member. 2001, c. 8, s. 11.

**Marketing boards**

(5) Where members of a co-operative are required by a marketing plan established under an Act of the Legislature, or of the Parliament of Canada, to sell or deliver products or goods or render services to or for a marketing board, then for the purposes of making a patronage return to the members of the co-operative, the members shall be deemed to have sold, delivered or rendered those goods, products or services to the co-operative. R.S.O. 1990, c. C.35, s. 55 (5).

### **Renewable energy co-operative**

(6) The surplus arising from the business of a renewable energy co-operative in each fiscal year shall be allocated, credited or paid to the members in accordance with the by-laws of the co-operative. 2009, c. 12, Sched. I, s. 6 (3).

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 9 - 24/08/1992

2001, c. 8, s. 11 - 29/06/2001

2009, c. 12, Sched. I, s. 6 (1-3) - 9/09/2009

### **Investment of patronage return**

**56** (1) A co-operative may by by-law provide that in each fiscal year the whole, or such part as the directors may by resolution determine, of the patronage return of each member shall be applied to the purchase for the member of a stated number of unissued shares of the co-operative or a stated number of issued shares of the co-operative, if obtainable. R.S.O. 1990, c. C.35, s. 56 (1).

#### **Notice**

(2) Where a co-operative has enacted a by-law under subsection (1) and the whole or part of the patronage return of a member is required to be invested in issued shares, the co-operative shall send a written notice to each member stating the number of shares to be purchased by the member. R.S.O. 1990, c. C.35, s. 56 (2); 2004, c. 31, Sched. 8, s. 13 (1).

#### **Purchase of shares on behalf of member**

(3) Unless within 30 days after the date on which the notice is sent, the member required to purchase issued shares has presented for transfer to the member the number of shares that the member is required to purchase, the co-operative may on behalf of such member,

- (a) purchase the required number of shares from members who are willing to sell such shares;
- (b) pay out of the patronage return of such member the purchase price;
- (c) transfer such shares to the member; and
- (d) issue and forward to such member a certificate representing such shares. R.S.O. 1990, c. C.35, s. 56 (3); 2004, c. 31, Sched. 8, s. 13 (2).

#### **Compulsory borrowing**

(4) A co-operative may enact by-laws requiring its members to lend to it the whole, or such part as the directors may determine, of the patronage returns to which they may become entitled in each fiscal year upon such terms and at such rate of interest as the directors, if authorized by by-law, may by resolution determine, but in no case at a rate of interest greater than the prescribed maximum annual percentage. R.S.O. 1990, c. C.35, s. 56 (4); 1992, c. 19, s. 10.

#### **Same**

(5) No member shall be required to purchase issued shares at a price in excess of their fair market value, as defined in the regulations. 1994, c. 17, s. 15.

#### **Idem**

(6) Where the co-operative is insolvent, no member shall be required under this section to lend the member's patronage return or to purchase shares of the co-operative. R.S.O. 1990, c. C.35, s. 56 (6).

#### **Idem**

(7) This section does not prevent a member from receiving so much of the member's patronage return as has not been appropriated to loans to the co-operative in accordance with a resolution of the board of directors or the by-laws. R.S.O. 1990, c. C.35, s. 56 (7).

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 10 - 24/08/1992; 1994, c. 17, s. 15 - 23/06/1994

2004, c. 31, Sched. 8, s. 13 (1, 2) - 31/08/2007

### **Percentage deductions by co-operative**

**57** (1) A co-operative may, when authorized by by-law, deduct a percentage amount from the money received by the co-operative on the goods, products or services marketed, handled or dealt in by the co-operative for or on behalf of any member. R.S.O. 1990, c. C.35, s. 57 (1).

### **Idem**

- (2) An amount retained by a co-operative under subsection (1) shall be applied by the co-operative,
- (a) as a loan on the terms provided in the by-law and at the rate of interest provided in the by-law not exceeding the prescribed maximum annual percentage; or
  - (b) as an investment by the member in shares of the co-operative, but no member shall be required to purchase membership shares for more than the par value of the shares or purchase preference shares for more than the par value plus any premium. R.S.O. 1990, c. C.35, s. 57 (2); 1992, c. 19, s. 11; 1994, c. 17, s. 2; 2001, c. 8, s. 12.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 11 - 24/08/1992

2001, c. 8, s. 12 - 29/06/2001

### **Dividends**

**58** (1) Subject to subsection (2) and the articles of the co-operative, the directors may declare and the co-operative may pay dividends on its issued shares. R.S.O. 1990, c. C.35, s. 58 (1).

### **Maximum dividends**

- (2) Dividends on a membership share shall not exceed the prescribed rate. 1994, c. 17, s. 16.

### **Manner of payment**

- (3) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend.

### **When dividend not to be declared**

(4) The directors shall not declare and the co-operative shall not pay any dividend when the co-operative is insolvent, or any dividend the payment of which renders the co-operative insolvent or that diminishes its capital. R.S.O. 1990, c. C.35, s. 58 (3, 4).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 16 - 23/06/1994

### **Stock dividends**

**59** For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the co-operative as fully paid. R.S.O. 1990, c. C.35, s. 59.

## **MEMBERS**

### **Membership**

**60** (1) Subject to the provisions of this Act and the articles of the co-operative, membership therein is governed by the by-laws of the co-operative.

### **Classes of membership**

(2) The articles of a co-operative may provide for more than one class of membership and in that case shall set forth the designation of and the terms and conditions attaching to each class. R.S.O. 1990, c. C.35, s. 60.

### **Becoming a member**

**61** (1) Each incorporator of a co-operative who has subscribed for a membership share in the co-operative or who has paid a membership fee, if any, shall upon the effective date of incorporation be entered upon the register of members. R.S.O. 1990, c. C.35, s. 61 (1); 1994, c. 17, s. 2.

### **Applicants for membership**

(2) No person shall become a member of a co-operative until the person's application for membership has been approved by the directors and the applicant has complied fully with the by-laws governing admission of members. R.S.O. 1990, c. C.35, s. 61 (2).

### **Membership in multi-stakeholder co-operative**

(2.1) Despite subsection (2), the by-laws governing admission of members of a multi-stakeholder co-operative may provide that no person shall become a member of the co-operative until the person's application for membership has been approved by the directors elected by the appropriate stakeholder group and the person has complied fully with the by-laws governing admission of members. 1994, c. 17, s. 17.

### **Membership**

(3) A subscription for membership shares in a co-operative with share capital constitutes an application for membership and the allotment of the minimum number of membership shares required for membership to the applicant constitutes admission to membership. 2001, c. 8, s. 13 (1).

### **Idem**

(4) An application for authorization of the transfer of membership shares in a co-operative with share capital constitutes an application for membership and the passing of the resolution authorizing the transfer constitutes admission to membership. R.S.O. 1990, c. C.35, s. 61 (4); 1994, c. 17, s. 2.

### **Jointly held membership**

(5) Two or more persons may jointly hold a membership if the by-laws of the co-operative provide for joint membership and, in determining the number of members for the purposes of this Act, those persons shall count as one member. 2001, c. 8, s. 13 (2).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 2, 17 - 23/06/1994

2001, c. 8, s. 13 (1, 2) - 29/06/2001

### **Restrictions on transfer of memberships**

**62** No transfer of a membership in a co-operative without share capital is valid for any purpose whatever,

- (a) unless a written application for membership by the transferee has been approved by a resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such applications; and
- (b) until notification of the approval under clause (a) has been sent the transferee and the transferee's name has been entered on a register of members,

except only as evidence of the rights of the parties thereto towards each other. R.S.O. 1990, c. C.35, s. 62.

### **Eligible age for members**

**63** (1) Subject to the by-laws of the co-operative, a person of the full age of sixteen years or more may become a member thereof.

### **Members competent**

(2) Any person under the full age of eighteen years admitted to membership in the co-operative is competent to enter into any contract with the co-operative, and with respect to contracts with the co-operative shall be deemed to be of full age and capacity. R.S.O. 1990, c. C.35, s. 63.

### **Withdrawal from membership**

**64** (1) Subject to section 67, a member may withdraw from a co-operative by giving to the secretary of the co-operative six months notice of the member's intention to withdraw or such shorter notice as is established by by-law. 2001, c. 8, c. 14.

### **Idem**

(2) A deceased member shall be deemed to have given notice to the co-operative on the day of his or her death of his or her intention to withdraw. R.S.O. 1990, c. C.35, s. 64 (2).

### **Repayment to members on withdrawal**

(3) Subject to subsection (4), where notice of intention to withdraw has been given to a co-operative under subsection (1), or is deemed to have been given under subsection (2), the co-operative shall, within six months of the receipt thereof,

- (a) purchase, for an amount equal to par value together with any premium and unpaid dividends or for a lesser amount agreed to by the co-operative and the member or the member's personal representative, all shares in the co-operative held by the member, other than prescribed shares; and

- (b) pay to the member or the member's personal representative all amounts held to the member's credit, excluding term loans, together with any interest accrued thereon and the amount outstanding on loans made to the co-operative by the member that are repayable on demand by the member together with any interest accrued thereon. R.S.O. 1990, c. C.35, s. 64 (3); 1994, c. 17, s. 18 (1).

#### **Election by member**

(4) Despite subsection (3), a member who has given notice under subsection (1) may elect in such notice to retain all or some of the member's shares or loans in the co-operative, but such election shall not entitle the member to remain a member of the co-operative. R.S.O. 1990, c. C.35, s. 64 (4).

#### **Idem**

(5) Where an election is made under subsection (4), the person may later withdraw some or all of the person's shares or loans from the co-operative by giving notice to the co-operative in the manner prescribed by subsection (1), and the co-operative shall, within six months of the receipt thereof,

- (a) purchase the shares, other than prescribed shares, at their par value together with any premium and unpaid dividends, or for a lesser amount agreed to by the co-operative and the person;
- (b) pay to the person the amounts held to the person's credit together with any interest accrued thereon; and
- (c) pay to the person the amount outstanding on loans repayable on demand together with any interest accrued thereon,

that are referred to in the notice. R.S.O. 1990, c. C.35, s. 64 (5); 1994, c. 17, s. 18 (2).

#### **Extension of time for repayment**

(6) Where, in the opinion of the directors of the co-operative, payments in accordance with subsection (3) or (5) would not be in the best interests of the co-operative, the directors may by resolution extend such payments over a period of not more than five years and pay in each year not less than 20 per cent of the amount to be repaid under subsection (3) or (5). R.S.O. 1990, c. C.35, s. 64 (6).

#### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 18 (1, 2) - 23/06/1994

2001, c. 8, s. 14 - 29/06/2001

#### **Dealing by co-operative with personal representatives**

**65** (1) Where a person is shown on the records of a co-operative as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the co-operative for any payment or other distribution made in respect of the share whether notice of any trust has been given to the co-operative or not, and the co-operative is not bound to see to the application of such payment or other distribution.

#### **Co-operative not to vote, etc.**

(2) Where shares are purchased by a co-operative under subsection 32 (1), 64 (3) or section 66 or accepted under subsection 33 (1) and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of members or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. R.S.O. 1990, c. C.35, s. 65.

#### **Expulsion of member**

**66** (1) A member may be expelled from membership in a co-operative by resolution passed by a majority of the board of directors at a meeting duly called for the purpose not later than thirty days before the date set for the annual meeting of the co-operative. R.S.O. 1990, c. C.35, s. 66 (1).

#### **Validity**

(2) A resolution under subsection (1) is not valid unless,

- (a) prior written notice is given to the member setting forth the grounds upon which it is sought to expel the member;
- (b) the notice is given the member ten days or more before the date of the meeting of the board of directors called to consider the resolution expelling that member; and
- (c) an opportunity is given the member to appear, either personally or by a person authorized under the *Law Society Act* to represent the member, to make submissions at the meeting of the board of directors called to consider the resolution expelling that member. R.S.O. 1990, c. C.35, s. 66 (2); 2006, c. 21, Sched. C, s. 103 (1).



### **Notice of decision**

(3) The secretary of the co-operative shall, within five days of the date of the meeting of the board of directors referred to in subsection (1), notify the member of the decision of the board by registered letter addressed to the member at the member's latest known address. R.S.O. 1990, c. C.35, s. 66 (3).

### **Appeal by member**

(4) Where a resolution expelling a member is passed under subsections (1) and (2), the member may appeal the decision of the board of directors at the next annual or general meeting of members and the members by majority vote may confirm, vary or set aside the resolution. R.S.O. 1990, c. C.35, s. 66 (4).

### **Idem**

(5) A member who wishes to appeal the member's expulsion to a meeting of members shall give notice of the member's intention to appeal within twenty-one days of receipt of the notice of expulsion mentioned in subsection (3), and the directors shall, if written representations are received seven or more days before notice of the meeting is sent, at the expense of the co-operative, forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting. R.S.O. 1990, c. C.35, s. 66 (5); 2004, c. 31, Sched. 8, s. 14.

### **Effect of expulsion**

(6) The co-operative shall purchase from an expelled member, within one year after the member's expulsion becomes final, all the member's shares, other than prescribed shares, in the capital of the co-operative at par value together with any premium and unpaid dividends and shall pay out,

- (a) all amounts held to the member's credit together with any interest accrued thereon; and
- (b) any amount outstanding on loans made to the co-operative by the member that are repayable on demand by the member together with interest accrued thereon. 1994, c. 17, s. 19.

### **Whereabouts of member unknown**

(7) If the whereabouts of a member is unknown to the co-operative after all reasonable efforts have been made to ascertain the member's address for the purpose of making payment to the member under subsection (6), amounts payable thereunder to the member shall be transferred to a reserve fund of the co-operative; and any amounts so transferred shall, if claimed within thirty years after being so transferred by a person who produces evidence to the satisfaction of the directors of the co-operative that the person is entitled thereto, be paid over to such person and, after the expiration of such thirty-year period, any amount so transferred shall be forfeited to the co-operative and transferred out of the reserve fund to it. R.S.O. 1990, c. C.35, s. 66 (7).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 19 - 23/06/1994

2004, c. 31, Sched. 8, s. 14 - 31/08/2007

2006, c. 21, Sched. C, s. 103 (1) - 1/05/2007

### **Where repayment not to be made**

**67** (1) A co-operative shall not exercise its powers under subsection 49 (3) or section 64 or 66,

- (a) if the co-operative is insolvent or if the exercise of its powers under that section would render the co-operative insolvent; or
- (b) if such exercise of its powers would in the opinion of the board of directors be detrimental to the financial stability of the co-operative. R.S.O. 1990, c. C.35, s. 67 (1).

### **Shares to be cancelled or resold**

(2) Where the shares of a member are acquired under section 64 or 66,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
  - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the co-operative are thereby decreased and the articles are amended accordingly, or

- (ii) the co-operative may re-sell the shares at such price and on such terms as the directors determine. R.S.O. 1990, c. C.35, s. 67 (2); 1994, c. 17, s. 20.

**Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 20 - 23/06/1994

**MEMBER'S RIGHTS**

**Derivative action**

**68** (1) Subject to subsection (2), a member of a co-operative may maintain an action in a representative capacity for the member and all other members of the co-operative suing for and on behalf of the co-operative to enforce any right, duty or obligation owed to the co-operative under this Act or under any other statute or rule of law or equity that could be enforced by the co-operative itself, or to obtain damages for any breach of any such right, duty or obligation.

**Leave**

(2) An action under subsection (1) shall not be commenced until the member has obtained an order of the court permitting the member to commence the action.

**Application for order to commence action**

(3) A member may, upon at least seven days notice to the co-operative, apply to the court for an order referred to in subsection (2), and, if the court is satisfied that,

- (a) the member was a member of the co-operative at the time of the transaction or other event giving rise to the cause of action;
- (b) the member has made reasonable efforts to cause the co-operative to commence or prosecute diligently the action on its own behalf; and
- (c) the member is acting in good faith and it appears to be in the interests of the co-operative or its members that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the member to give security for costs.

**Application for order for interim costs**

(4) At any time or from time to time while the action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the co-operative of reasonable interim costs including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the co-operative if the action is dismissed with costs on final disposition at the trial or on appeal.

**Trial and judgment**

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the co-operative or other defendants assessed as between a solicitor and the solicitor's own client.

**Discontinuance and settlement**

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the members may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the co-operative or any other party to the action as the court directs, to the members thereof whose interests the court determines will be so affected. R.S.O. 1990, c. C.35, s. 68.

**Sale of property**

**68.1** A sale, lease, exchange or other disposition of all or substantially all of the property of a co-operative must be authorized by a special resolution and by such additional authorization as the articles provide. 1994, c. 17, s. 21.

**Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 21 - 23/06/1994

**Rights of dissenting members**

**69** (1) If, at a meeting of members of a co-operative,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of all or substantially all the property of the co-operative is confirmed with or without variation by the members;
- (b) a resolution approving an agreement for the amalgamation of the co-operative with one or more other co-operatives is passed by the members;
- (c) a resolution passed by the directors approving the conversion of the co-operative into a corporation to which the *Business Corporations Act* applies is confirmed with or without variation by the members;
- (d) a resolution passed by the directors approving the conversion of the co-operative into one with or without share capital is confirmed with or without variation by the members; or
- (e) a resolution passed by the directors under section 159 is confirmed with or without variation by the members,

any member who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the co-operative requiring it to purchase the member's shares or refund the amount outstanding on loans made to the co-operative by the member together with any interest accrued thereon.

**Co-operative bound to purchase shares**

(2) Within ninety days from,

- (a) the date of the completion of the sale, lease, exchange or other disposition;
- (b) the date set forth in the certificate of amendment or amalgamation; or
- (c) the date of delivery to the Minister of a request in writing for the Minister's authorization under section 159,

the co-operative, or amalgamated co-operative, shall purchase the shares of, or refund the amount outstanding on loans made to the co-operative by, every member who has given notice under subsection (1), and every such member shall sell or deliver up the member's securities to the co-operative. R.S.O. 1990, c. C.35, s. 69 (1, 2).

**Purchase price**

(3) The amount and terms of the purchase of a member's shares shall be at their fair value, as determined by regulation, or at a lesser amount agreed to by the co-operative and the member, together with the payment of all amounts held to the member's credit together with interest accrued thereon. 1994, c. 17, s. 22.

**Idem**

(4) The amount and terms of the repayment of any loans made by the member to the co-operative shall be at the full amount outstanding together with any interest accrued thereon and unpaid.

**Saving**

(5) The co-operative shall not purchase any shares or repay any member's loans under subsection (2) or (3) if it is insolvent or if the purchase or repayment would render it insolvent.

**Idem**

(6) If the sale, lease, exchange or other disposition is not completed, the certificate of amendment or amalgamation is not issued, or the authorization of the Minister is not given, the rights of the dissenting member under this section cease and the co-operative shall not purchase the shares of the member nor refund the amount outstanding on loans made to the co-operative by the member under this section.

**Idem**

(7) Nothing in this section shall be construed to require a co-operative to repay a member's term loan before the date of maturity. R.S.O. 1990, c. C.35, s. 69 (4-7).

**Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 22 - 23/06/1994

**Requisition for by-law or resolution**

**70** (1) Ten per cent of the members of a co-operative may requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose.

### **Form of requisition**

(2) The requisition shall set out the by-law or resolution, as the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative, and may consist of several documents in like form, each signed by one or more requisitionists.

### **Meeting of directors**

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.

### **Meeting of members**

(4) Where the directors do not, within twenty-one days from the date of the deposit of the requisition,

- (a) call and hold such a meeting and pass such a by-law or resolution; and
- (b) call a general meeting of the members for the purpose of confirming the by-law or resolution if the resolution requires confirmation at a general meeting of the members before it is effective,

any of the requisitionists may call a general meeting of the members for the purpose of passing such a by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.

### **Notice**

(5) A meeting of the members called under subsection (4) shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

### **Validity of by-law or resolution**

(6) Where a by-law or resolution is passed at a meeting of the members called under subsection (4), either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the members duly called, constituted and held for that purpose, and if the resolution or by-law is passed by at least two-thirds of the votes cast at a meeting of the members called under subsection (4), it shall be conclusively deemed to be a special resolution or a by-law, as the case may be, for the purposes of this Act.

### **Repayment of expenses**

(7) The co-operative shall,

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections (3) and (4); and
- (b) retain out of any money due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection (4), the members, by a majority of the votes cast, reject the reimbursement of the requisitionists.

### **New requisition on same subject**

(8) Where a by-law or resolution in respect of which a meeting of directors is requisitioned under this section is not passed or confirmed at a meeting of the members, no requisition for a meeting of directors in respect of a similar by-law or resolution shall be made for a period of at least two years. R.S.O. 1990, c. C.35, s. 70.

### **Circulation of members' resolutions, etc.**

**71** (1) On the requisition in writing of 5 per cent of the members of the co-operative, the directors shall,

- (a) give to the members entitled to notice of the next meeting of members notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the members entitled to vote at the next meeting of members a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

### **Notice**

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each member entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of members.

### **Idem**

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

### **Deposit of requisition, etc.**

- (4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,
- (a) the requisition, signed by the requisitionists, is deposited at the head office of the co-operative,
    - (i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting,
    - (ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting; and
  - (b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the co-operative in giving effect thereto.

### **Where directors not bound to circulate statement**

(5) The directors are not bound under this section to circulate any statement if, on the application of the co-operative or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the co-operative to be paid in whole or in part by the requisitionists even if they are not parties to the application.

### **Where no liability**

(6) No co-operative or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

### **Duty to deal with requisitioned matter**

(7) Despite anything in the by-laws of the co-operative, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

### **Repayment of expenses**

(8) The co-operative shall pay to the requisitionists the sum deposited under clause (4) (b) unless at the meeting to which the requisition relates the members by a majority of the votes cast reject the repayment to the requisitionists. R.S.O. 1990, c. C.35, s. 71.

## **LIABILITIES OF MEMBERS**

### **Liability on decrease of issued capital**

**72** (1) Where the issued loan or share capital of a co-operative is decreased by an amendment to the articles, each person who was a member on the effective date of the amendment is individually liable to the creditors of the co-operative for the debts due on that date to an amount not exceeding the amount of the repayment to the person. R.S.O. 1990, c. C.35, s. 72 (1).

### **Limitation of liability**

(2) A person is not liable under subsection (1) unless the co-operative has been sued for the debt and execution has been returned unsatisfied in whole or in part. 2002, c. 24, Sched. B, s. 30 (1).

### **Idem**

(3) After execution has been so returned, the amount due on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person. R.S.O. 1990, c. C.35, s. 72 (3).

### **Class actions**

(4) Where it is made to appear that there are numerous members who may be liable under this section, the court of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes the plaintiff's claim as creditor, may make an order of reference and add as parties in the referee's

office all such members as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sum so determined. R.S.O. 1990, c. C.35, s. 72 (4).

#### **Member in fiduciary capacity**

(5) No person holding shares or loans in the capacity of a personal representative and registered on the records of the co-operative as a member and therein described as representing in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section. R.S.O. 1990, c. C.35, s. 72 (5).

#### **Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 30 (1) - 1/01/2004

#### **Member's liability limited**

**73** A member of a co-operative as such is not answerable or responsible for any act, default, obligation or liability of the co-operative or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the co-operative. R.S.O. 1990, c. C.35, s. 73.

### MEETINGS OF MEMBERS

#### **Place of meetings**

**74** (1) Unless the articles or by-laws of a co-operative require that meetings of the members be held at a particular Ontario location, the meetings of the members of the co-operative are to be held at such place in Ontario as the board of directors stipulates. 2009, c. 34, Sched. F, s. 1; 2023, c. 9, Sched. 8, s. 4 (1).

#### **Same**

(2) If the articles of a co-operative so provide, the meetings of the members of the co-operative may be held at one or more places outside Ontario specified in the articles. 2009, c. 34, Sched. F, s. 1.

#### **Meeting by telephonic or electronic means**

(3) Subject to the articles or by-laws and subsection (5), a meeting of the members of the co-operative may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means. 2023, c. 9, Sched. 8, s. 4 (2).

#### **Same, articles, etc.**

(4) In addition to any other matters that the articles or by-laws may provide for with respect to the holding of meetings of the members of the co-operative in accordance with subsection (3), the articles or by-laws may,

- (a) limit the manner or manners by which a meeting of the members of the co-operative may be held in accordance with subsection (3); and
- (b) specify requirements that apply with respect to the holding of a meeting of the members of the co-operative in a manner described in subsection (3) or in such manner as described by the articles or by-laws made under clause (a). 2023, c. 9, Sched. 8, s. 4 (2).

#### **Same, reasonable participation**

(5) A meeting of the members of the co-operative held in any manner described in subsection (3) or in such manner as described by the articles or by-laws made under subsection (4) must enable all persons entitled to attend the meeting to reasonably participate. 2023, c. 9, Sched. 8, s. 4 (2).

#### **Same, persons deemed present at meeting**

(6) A person who, through telephonic or electronic means, votes at or attends a meeting of the members of the co-operative is deemed for the purposes of this Act to be present in person at the meeting. 2023, c. 9, Sched. 8, s. 4 (2).

#### **Same, deemed place of meeting**

(7) A meeting of the members of the co-operative held in any manner described in subsection (3) or in such manner as described by the articles or by-laws made under subsection (4) is deemed to be held at the place where the head office of the co-operative is located. 2023, c. 9, Sched. 8, s. 4 (2).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. F, s. 1 - 15/12/2009

### **Members' meetings**

**75** (1) Subject to subsection (2) and in the absence of other provisions in that behalf in the articles or by-laws of the co-operative,

- (a) notice of the time and place for holding a meeting of the members shall be given to each person who is entitled to notice of meetings and who on the record date for notice appears on the records of the co-operative as a member by sending the notice to the person's latest address as shown on the records of the co-operative ten days or more before the date of the meeting but in no case more than fifty days before the date of the meeting;
- (b) all questions proposed for the consideration of the members at a meeting of members are to be determined by the majority of the votes cast, and the chair presiding at the meeting, other than a chair chosen under clause (d.1), has a second or casting vote in case of an equality of votes;
- (c) the chair presiding at a meeting of members may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;
- (d) the president or, in his or her absence, a vice-president who is a director shall preside as chair at a meeting of members, but, if there is no president or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose a person from their number to be the chair;
- (d.1) the president, if present at the meeting of members, may choose a non-member instead of himself or herself to be the chair presiding at the meeting;
- (e) unless a poll is demanded, an entry in the minutes of a meeting of members to the effect that the chair declared a motion to be carried is admissible in evidence as proof, in the absence of evidence to the contrary, of the fact without proof of the number or proportion of votes recorded in favour of or against the motion. R.S.O. 1990, c. C.35, s. 75 (1); 2004, c. 31, Sched. 8, s. 15; 2009, c. 34, Sched. F, s. 2 (1, 2); 2023, c. 9, Sched. 8, s. 5 (1).

### **Notice**

(2) The articles or by-laws of the co-operative shall not provide for fewer than ten days notice for meetings of members and in no case shall notice be given fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually. R.S.O. 1990, c. C.35, s. 75 (2).

### **When notice is not required to specify place of meeting**

(2.0.1) Despite clause (1) (a), the notice of a meeting of members is not required to specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. 2023, c. 9, Sched. 8, s. 5 (2).

### **Instructions re attending meeting by telephonic, etc. means**

(2.0.2) If a person may attend a meeting of members by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting. 2023, c. 9, Sched. 8, s. 5 (2).

### **Waiver of notice**

(2.1) A member, shareholder and any other person entitled to attend a meeting of members or shareholders may, in any manner and at any time, waive notice of the meeting. 2001, c. 8, s. 15.

### **Deemed waiver**

(2.2) Attendance of a member, shareholder and any other person entitled to attend a meeting of members or shareholders constitutes a waiver of notice of the meeting unless the person attends the meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not lawfully called. 2001, c. 8, s. 15.

### **Poll**

(3) If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chair directs. R.S.O. 1990, c. C.35, s. 75 (3).

### **Transition**

(4) For clarity, this section, as it read immediately before the day subsection 5 (3) of Schedule 8 to the *Less Red Tape, Stronger Economy Act, 2023* comes into force, continues to apply to a notice that was given before that day in respect of a meeting of members to be held on or after that day. 2023, c. 9, Sched. 8, s. 5 (3).

#### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 23 - 23/06/1994

2001, c. 8, s. 15 - 29/06/2001

2004, c. 31, Sched. 8, s. 15 - 31/08/2007

2009, c. 34, Sched. F, s. 2 (1, 2) - 15/12/2009

2023, c. 9, Sched. 8, s. 5 (1-3) - 01/10/2023

#### **Meetings of members of multi-stakeholder co-operatives**

**75.1** Meetings of the members of a stakeholder group of a multi-stakeholder co-operative shall be called as nearly as possible in the same manner as meetings of members generally. 1994, c. 17, s. 23.

#### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 23 - 23/06/1994

#### **Voting**

**76** (1) A member of a co-operative has only one vote. R.S.O. 1990, c. C.35, s. 76 (1).

#### **Proxies prohibited**

(2) Subject to subsection (3), no member of a co-operative shall vote by proxy. R.S.O. 1990, c. C.35, s. 76 (2).

#### **Voting by corporation**

(3) A corporate member may appoint one of its directors or officers to attend and vote on its behalf at meetings of members and such director or officer has only one vote. R.S.O. 1990, c. C.35, s. 76 (3); 2009, c. 34, Sched. F, s. 3 (1).

#### **Manner of voting**

(4) Subject to the articles or by-laws of a co-operative, voting at a meeting of members shall be by show of hands unless a poll is demanded by a member, or by a director or officer on behalf of a member under subsection (3), entitled to vote at the meeting. 2023, c. 9, Sched. 8, s. 6.

#### **Demand for poll**

(5) 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. 2023, c. 9, Sched. 8, s. 6.

#### **Voting by telephonic or electronic means**

(6) Unless the articles or by-laws of a co-operative expressly provide otherwise, a vote cast before or at a meeting of members may be conducted entirely by one or more telephonic or electronic means or by a combination of one or more telephonic or electronic means and voting in person. 2023, c. 9, Sched. 8, s. 6.

#### **Voting by mail, etc.**

(7) The by-laws of a co-operative that is not a non-profit housing co-operative may permit voting to be cast by either or both of the following methods:

1. Sending the vote by mail.
2. Delivering the vote personally to,
  - i. the head office of the co-operative as shown on the records of the Ministry, or
  - ii. the co-operative's business office. 2023, c. 9, Sched. 8, s. 6.

#### **Same, non-profit housing co-operative**

(8) The by-laws of a co-operative that is a non-profit housing co-operative may permit voting to be cast by one or more of the following methods:

1. Sending the vote by mail.
2. Delivering the vote personally to,
  - i. the head office of the co-operative as shown on the records of the Ministry, or
  - ii. the co-operative's business office.



3. Handing the vote to a returning officer or other individual designated by the co-operative for the purpose of receiving the vote. 2023, c. 9, Sched. 8, s. 6.

#### **Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. F, s. 3 (1, 2) - 15/12/2009

2023, c. 9, Sched. 8, s. 6 - 01/10/2023

#### **Annual meetings**

**77** A co-operative shall hold an annual meeting of its members not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any member shall have an opportunity to raise any matter relevant to the affairs and business of the co-operative. R.S.O. 1990, c. C.35, s. 77.

#### **General meetings**

**78** The directors may at any time call a general meeting of the members for the transaction of any business, the general nature of which is specified in the notice calling the meeting. R.S.O. 1990, c. C.35, s. 78.

#### **Requisition for members' meeting**

**79** (1) Five per cent of the members of a co-operative may requisition the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act.

#### **Requisition**

(2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative and may consist of several documents in like form, each signed by one or more requisitionists.

#### **Duty of directors to call meeting**

(3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the members for the transaction of the business stated in the requisition.

#### **When requisitionists may call meeting**

(4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition.

#### **Calling of meeting**

(5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

#### **Repayment of expenses**

(6) The co-operative shall,

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection (4); and
- (b) retain out of any money due or to become due, by way of fees or other remuneration for their services, to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting, the members by a majority of the votes cast reject the reimbursement of the requisitionists. R.S.O. 1990, c. C.35, s. 79.

#### **Requisition by court order**

**80** Despite section 79, upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it appears to be in the interests of the co-operative or its members that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seems fit, requiring the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act. R.S.O. 1990, c. C.35, s. 80.

#### **Court may direct method of holding meetings**

**81** If for any reason it is impracticable to call a meeting of members of a co-operative in any manner in which meetings of members may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may,

on the application of a director or a member who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of members of the co-operative duly called, held and conducted. R.S.O. 1990, c. C.35, s. 81.

#### **Record dates**

**82** The by-laws may provide for the fixing in advance of a date as the record date,

- (a) for the determination of the members entitled to notice of meetings of the members, which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and
- (b) for the determination of the members entitled to vote at meetings of the members which record date for voting shall not be more than two days, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed, the record date for voting shall be the time of the taking of the vote. R.S.O. 1990, c. C.35, s. 82.

#### **Personal representative may vote**

**83** Where a person holds shares or a member loan as a personal representative of a member, the personal representative is entitled to vote at all meetings of members. R.S.O. 1990, c. C.35, s. 83.

#### **Joint shareholders**

**84** If two or more persons jointly hold a membership, any one of them present at a meeting of members has the right to vote in the absence of the other or others but if more than one of them are present and vote, they shall vote together as one on the membership jointly held by them. 2001, c. 8, s. 16.

#### **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 16 - 29/06/2001

### **DIRECTORS AND OFFICERS**

#### **Board of directors**

**85** (1) Every co-operative shall have a board of directors however designated. R.S.O. 1990, c. C.35, s. 85 (1).

#### **Minimum number**

(2) There shall be at least three directors. 1992, c. 19, s. 13.

#### **Resident Canadians**

(3) A majority of directors on the board of directors of every co-operative shall be resident Canadians. R.S.O. 1990, c. C.35, s. 85 (3).

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 13 - 24/08/1992

#### **First directors**

**86** (1) Each of the persons named as first directors in the articles of a co-operative is a director of the co-operative until replaced by a person duly elected or appointed in his or her stead.

#### **Idem**

(2) The first directors of a co-operative have all the powers and duties and are subject to all the liabilities of directors. R.S.O. 1990, c. C.35, s. 86.

#### **Directors to be members**

**87** (1) Subject to subsection (2), no person shall be a director of a co-operative unless he or she is a member thereof or a director, officer, shareholder or member of a corporate member thereof, and, where a director or a corporation of which he or she is an officer, director, shareholder or member ceases to be a member, he or she thereupon ceases to be a director. R.S.O. 1990, c. C.35, s. 87; 2009, c. 34, Sched. F, s. 4 (1).

### **Exception**

(2) Subject to subsection (3), the by-laws of a co-operative, other than a non-profit housing co-operative, may provide for the appointment or election of directors who are non-members or who are not directors, officers, shareholders or members of a corporate member. 2009, c. 34, Sched. F, s. 4 (2).

### **Same**

(3) The number of directors appointed or elected who are non-members or who are not directors, officers, shareholders or members of a corporate member must not exceed one-fifth of the total number of directors. 2009, c. 34, Sched. F, s. 4 (2).

### **Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. F, s. 4 (1, 2) - 15/12/2009

### **Change in number of directors**

**88** (1) Subject to subsection 85 (2), a co-operative may by by-law increase or decrease the number, or the minimum or maximum number, of directors as set out in its articles. 1992, c. 19, s. 14 (1).

### **Filing of by-law**

(2) A co-operative shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the members. R.S.O. 1990, c. C.35, s. 88 (2); 1997, c. 28, s. 37; 2017, c. 34, Sched. 9, s. 5.

### **Validity**

(3) Failure to comply with subsection (2) does not affect the validity of the by-law. R.S.O. 1990, c. C.35, s. 88 (3).

### **No director's term shortened**

(4) No decrease in the number or maximum number of directors shall shorten the term of an incumbent director. 1992, c. 19, s. 14 (2).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 14 (1, 2) - 24/08/1992; 1997, c. 28, s. 37 - 1/07/1998

2017, c. 34, Sched. 9, s. 5 - 29/10/2018

### **Number of directors if articles provide a range**

**88.1** If the articles of a co-operative set out minimum and maximum number of directors, the exact number of directors shall be determined by a special resolution or, if authorized by a special resolution, by a resolution of the directors. 1992, c. 19, s. 15.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 15 - 24/08/1992

### **Age and qualification of directors**

#### **Age**

**89** (1) No person under eighteen years of age shall be a director of a co-operative. R.S.O. 1990, c. C.35, s. 89 (1).

#### **Qualifications**

(2) No undischarged bankrupt or person who is incapable of managing property within the meaning of the *Substitute Decisions Act, 1992* shall be a director, and a director who becomes bankrupt or incapable of managing property ceases to be a director. 2009, c. 33, Sched. 2, s. 19 (2).

#### **Consent**

(3) A person who is elected or appointed a director is not a director unless,

- (a) the person was present at the meeting when he or she was elected or appointed and did not refuse at the meeting to act as director;
- (b) where the person was not present at the meeting when he or she was elected or appointed, the person consented to act as director in writing before his or her election or appointment or within ten days thereafter. R.S.O. 1990, c. C.35, s. 89 (3).

**Idem**

(4) For the purposes of subsection (3), a person who is elected or appointed as director and refuses under clause (3) (a) or fails to consent under clause (3) (b) shall be deemed not to have been elected or appointed as a director. R.S.O. 1990, c. C.35, s. 89 (4).

**Section Amendments with date in force (d/m/y)**

2009, c. 33, Sched. 2, s. 19 (2) - 15/12/2009

**Election of directors**

**90** (1) The directors shall be elected by the members at a general meeting, and the election shall be conducted in the manner prescribed by section 91. 2023, c. 9, Sched. 8, s. 7.

**Idem**

(2) The election of directors shall take place yearly or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but are eligible for re-election. R.S.O. 1990, c. C.35, s. 90 (2).

**Continuance in office**

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected. R.S.O. 1990, c. C.35, s. 90 (3).

**Rotation**

(4) The articles or by-laws may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least two directors shall retire from office in each year. R.S.O. 1990, c. C.35, s. 90 (4).

**Idem**

(5) It shall not be necessary for all directors to hold office for the same term. R.S.O. 1990, c. C.35, s. 90 (5).

**Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 7 - 01/10/2023

**Voting for directors**

**91** (1) Every member entitled to vote at an election of directors, if the member votes, shall cast at or before a general meeting a number of votes equal to the number of directors to be elected, and the member shall distribute the votes among the candidates in such manner as the member sees fit, but no candidate shall receive more than one vote from each member. R.S.O. 1990, c. C.35, s. 91; 2023, c. 9, Sched. 8, s. 8.

**Directors may be acclaimed**

(2) Despite subsection (1) and subject to the by-laws, if the number of candidates for election as directors of a co-operative at a general meeting is the same or fewer than the number to be elected at that meeting, the chair may declare the candidates to have been elected by acclamation. 2009, c. 34, Sched. F, s. 5.

**Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. F, s. 5 - 15/12/2009

2023, c. 9, Sched. 8, s. 8 - 01/10/2023

**Vacancies**

**92** (1) Subject to subsection (2), where a vacancy occurs in the board, and a quorum of directors remains, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term, but the articles may provide that such vacancy may only be filled by election at a general meeting of the members duly called for that purpose.

**Idem**

(2) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a general meeting of the members duly called for that purpose.

**Idem, where no quorum**

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the members to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any member. R.S.O. 1990, c. C.35, s. 92.

### **Quorum of directors**

**93** (1) Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors. R.S.O. 1990, c. C.35, s. 93.

### **Counting**

(2) Directors who are non-members or who are not directors, officers, shareholders or members of a corporate member are not to be counted for the purpose of constituting a quorum. 2009, c. 34, Sched. F, s. 6.

### **Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. F, s. 6 - 15/12/2009

**93.1** REPEALED: 2009, c. 34, Sched. F, s. 7.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 24 - 23/06/1994

2009, c. 34, Sched. F, s. 7 - 15/12/2009

### **Place of meeting**

**94** (1) Subject to subsections (2) and (3), a meeting of directors shall be held at the place where the head office of the co-operative is located. 2023, c. 9, Sched. 8, s. 9.

### **Exception**

(2) Where the articles or by-laws of the co-operative so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario, but in any financial year of the co-operative a majority of the meetings of the board of directors and a majority of the meetings of the executive committee shall be held at a place within Canada. 2023, c. 9, Sched. 8, s. 9.

### **Meeting by telephonic or electronic means**

(3) Subject to the articles or by-laws and subsection (5), a meeting of directors may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means. 2023, c. 9, Sched. 8, s. 9.

### **Same, articles, etc.**

(4) In addition to any other matters that the articles or by-laws may provide for with respect to the holding of meetings of directors in accordance with subsection (3), the articles or by-laws may,

- (a) limit the manner or manners by which a meeting of directors may be held in accordance with subsection (3); and
- (b) specify requirements that apply with respect to the holding of a meeting of directors in a manner described in subsection (3) or in such manner as described by the articles or by-laws made under clause (a). 2023, c. 9, Sched. 8, s. 9.

### **Same, ability to communicate at meeting**

(5) A meeting of directors held in any manner described in subsection (3) or in such manner as described by the articles or by-laws made under subsection (4) must provide that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously. 2023, c. 9, Sched. 8, s. 9.

### **Same, persons deemed present at meeting**

(6) A person who, through telephonic or electronic means, attends a meeting of directors is deemed for the purposes of this Act to be present in person at the meeting. 2023, c. 9, Sched. 8, s. 9.

### **Same, deemed place of meeting**

(7) If a majority of the directors attending a meeting held in a manner described in subsection (3) or in such manner as described by the articles or by-laws made under subsection (4) are in Canada during the meeting, the meeting is deemed to have been held in Canada. 2023, c. 9, Sched. 8, s. 9.

### **Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 9 - 01/10/2023

### **Calling meetings of directors**

**95** (1) In addition to any other provision in the articles or by-laws of a co-operative for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting. R.S.O. 1990, c. C.35, s. 95 (1).

### **Notice**

(2) In the absence of any other provision in that behalf in the by-laws of the co-operative, notice of the time and place for the holding of the meeting called under subsection (1) shall be given to every director of the co-operative by sending the notice ten days or more before the date of the meeting to his or her latest address as shown on the records of the co-operative. R.S.O. 1990, c. C.35, s. 95 (2); 2004, c. 31, Sched. 8, s. 16.

### **When notice is not required to specify place of meeting**

(3) Despite subsection (2) and any other provision in the articles or by-laws of a co-operative, a notice of a meeting of directors is not required to specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. 2023, c. 9, Sched. 8, s. 10.

### **Instructions re attending meeting by telephonic, etc. means**

(4) If the directors may attend a meeting by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting. 2023, c. 9, Sched. 8, s. 10.

### **Waiver of notice**

(5) A director may in any manner and at any time waive a notice of a meeting of directors and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. 2023, c. 9, Sched. 8, s. 10.

### **Transition**

(6) For clarity, this section, as it read immediately before the day section 10 of Schedule 8 to the *Less Red Tape, Stronger Economy Act, 2023* comes into force, continues to apply to a notice that was given before that day in respect of a meeting of directors or to be held on or after that day. 2023, c. 9, Sched. 8, s. 10.

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 16 - 31/08/2007

2023, c. 9, Sched. 8, s. 10 - 01/10/2023

### **Meetings of directors of multi-stakeholder co-operatives**

**95.1** A meeting of the directors elected by a stakeholder group of a multi-stakeholder co-operative shall be called as nearly as possible in the same manner as meetings of directors generally. 1994, c. 17, s. 25.

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 25 - 23/06/1994

### **Resolutions in writing**

**95.2** (1) A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of the board of directors or of the executive committee, is as valid as if it had been passed at a meeting of the board of directors or of the executive committee. 2023, c. 9, Sched. 8, s. 11.

### **Exception**

(2) Subsection (1) does not apply to a resolution referred to in subsection 49 (3) or section 66 or 171.8. 2023, c. 9, Sched. 8, s. 11.

### **Copy to be kept**

(3) A copy of every resolution passed under subsection (1) shall be kept with the minutes of the proceedings of the board of directors or of the executive committee. 2023, c. 9, Sched. 8, s. 11.

### **Evidence**

(4) Unless a poll is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 2023, c. 9, Sched. 8, s. 11.

#### **Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 11 - 01/10/2023

#### **Duties of board**

**96** (1) The board of directors shall manage or supervise the management of the affairs and business of the co-operative.

#### **Conduct of business**

(2) Subject to section 97, no business of a co-operative shall be transacted by its board of directors except at a meeting of directors at which a quorum of the board is present and at which a majority of the directors present are resident Canadians.

#### **Idem**

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. R.S.O. 1990, c. C.35, s. 96.

#### **Executive committee**

**97** (1) Where the number of directors of a co-operative is more than six, and if authorized by a by-law, the directors may elect from among their number an executive committee consisting of not fewer than three of whom a majority shall be resident Canadians and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors. R.S.O. 1990, c. C.35, s. 97 (1).

#### **Proportion of non-members**

(1.1) The proportion of directors on the executive committee who are non-members or who are not directors, officers, shareholders or members of a corporate member must not be greater than the proportion of directors on the board of directors of the co-operative who are non-members or who are not directors, officers, shareholders or members of a corporate member. 2010, c. 1, Sched. 4, s. 1.

#### **Quorum**

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members. R.S.O. 1990, c. C.35, s. 97 (2).

#### **Conduct of business**

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present and at which a majority of the members present are resident Canadians. R.S.O. 1990, c. C.35, s. 97 (3).

#### **Counting**

(4) Directors on the executive committee who are non-members or who are not directors, officers, shareholders or members of a corporate member must not be counted for the purpose of constituting a quorum. 2009, c. 34, Sched. F, s. 8.

#### **Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. F, s. 8 - 15/12/2009

2010, c. 1, Sched. 4, s. 1 - 18/05/2010

#### **Disclosure by directors of interests in contracts**

**98** (1) Every director of a co-operative who has, directly or indirectly, any interest in any contract or transaction to which the co-operative or a subsidiary thereof is or is to be a party, other than a contract or transaction in which the director's interest is limited solely to his or her remuneration as a director, officer or employee, shall declare his or her interest in such contract or transaction at a meeting of the directors of the co-operative and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the co-operative or a subsidiary thereof, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within the director's knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum.

#### **Interest to be material**

(2) Subsection (1) does not require the disclosure of any interest in any contract or transaction unless,

- (a) the interest and the contract or transaction are both material; or
- (b) the subject of the contract or transaction is of a type not available to all members of the co-operative.

### **When declaration of interest to be made**

(3) The declaration required by this section shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he or she becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he or she becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the co-operative's business, would not require approval by the directors or shareholders, at the first meeting of the directors held after the director becomes aware of it.

### **Effect of declaration**

(4) If a director has made a declaration and disclosure of his or her interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the co-operative, the director, if he or she was acting honestly and in good faith at the time the contract or transaction was entered into, is not by reason only of holding the office of director accountable to the co-operative or to its members for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interests of the co-operative at the time the contract or transaction was entered into, is not voidable by reason only of the director's interest therein.

### **Confirmation by members**

(5) Despite anything in this section, a director, if he or she was acting honestly and in good faith, is not accountable to the co-operative or to its members for any profit or gain realized from any such contract or transaction by reason only of holding the office of director, and the contract or transaction, if it was in the best interests of the co-operative at the time it was entered into, is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

### **General notice of interest**

(6) For the purposes of this section, a general notice to the directors by a director declaring that he or she is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the co-operative is a sufficient declaration of interest in relation to any contract so made. R.S.O. 1990, c. C.35, s. 98.

### **Liability of directors re purchase of shares**

**99** (1) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing the acquisition or repayment are jointly and severally liable to the co-operative to the extent of the amount paid out. R.S.O. 1990, c. C.35, s. 99 (1).

### **Application to court**

(2) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, any member of the co-operative or, where the acquisition or repayment is in contravention of subsection 32 (2), 67 (1) or section 69, any creditor of the co-operative who was a creditor at the time of the acquisition or repayment, may apply to the court and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member whose shares were acquired liable to the co-operative jointly and severally with the directors, to the extent of the amount paid to the member. 2002, c. 24, Sched. B, s. 30 (2).

### **Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 30 (2) - 1/01/2004

### **Liability of directors re dividends**

**100** Where any dividend is declared and paid in contravention of section 58,

- (a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the co-operative to the extent of the amount of the dividend so declared and paid or such part thereof as renders the co-operative insolvent or diminishes its capital; and
- (b) any member of the co-operative or any creditor of the co-operative who was a creditor at the time of the declaration of the dividend may apply to the court, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member to whom the dividend is paid jointly and severally liable with the



directors to the extent of the amount of the dividend paid to the member. R.S.O. 1990, c. C.35, s. 100; 2002, c. 24, Sched. B, s. 30 (3).

**Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 30 (3) - 1/01/2004

**Consent of director**

**101** (1) A director who was present at a meeting of the board of directors or an executive committee thereof when,

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) his or her dissent is entered in the minutes of the meeting;
- (e) the director files his or her written dissent with the person acting as secretary of the meeting before its adjournment; or
- (f) the director delivers or sends his or her dissent by registered mail to the co-operative immediately after the adjournment of the meeting,

and within seven days after complying with clause (d), (e) or (f) the director sends a copy of his or her dissent by registered mail to the Minister. R.S.O. 1990, c. C.35, s. 101 (1); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

**Idem**

(2) A director who voted in favour of a matter referred to in subsection (1) is not entitled to dissent under subsection (1). R.S.O. 1990, c. C.35, s. 101 (2).

**Consent of director not at meeting**

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when,

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) the director delivers or sends to the co-operative by registered mail his or her dissent; or
- (e) the director causes his or her dissent to be filed with the minutes of the meeting,

within seven days after the director becomes aware of the authorization referred to in clause (a), (b) or (c) and unless, within seven days after complying with clause (d) or (e), the director sends a copy of his or her dissent by registered mail to the Minister. R.S.O. 1990, c. C.35, s. 101 (3); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

**Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 37 - 1/07/1998

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

**Rules re liability**

**102** (1) A director is not liable under section 99 or 100 if, in the circumstances, the director discharged his or her duty to the co-operative in accordance with section 108.

**Liability not excluded**

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him or her. R.S.O. 1990, c. C.35, s. 102.

**Liability of directors for wages**

**103** (1) The directors of a co-operative are jointly and severally liable to the employees of the co-operative for all debts that become due while they are directors for services performed for the co-operative, not exceeding six months wages, and for the

vacation pay accrued for not more than twelve months under the *Employment Standards Act* and the regulations thereunder or under any collective agreement made by the co-operative. R.S.O. 1990, c. C.35, s. 103 (1); 2017, c. 20, Sched. 3, s. 2.

#### **Limitation of liability**

(2) A director is liable under subsection (1) only if,

- (a) the co-operative is sued in the action against the director and execution against the co-operative is returned unsatisfied in whole or in part; or
- (b) before or after the action is commenced, the co-operative goes into liquidation, is ordered to be wound up or makes an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada), or a receiving order under that Act is made against it, and, in any such case, the claim for the debt has been proved. 2002, c. 24, Sched. B, s. 30 (4).

#### **Idem**

(3) After execution has been so returned against the co-operative, the amount recoverable against the director is the amount remaining unsatisfied on the execution. R.S.O. 1990, c. C.35, s. 103 (3).

#### **Rights of director who pays the debt**

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy and Insolvency Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. R.S.O. 1990, c. C.35, s. 103 (4).

#### **Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 30 (4) - 01/01/2004

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2017, c. 20, Sched. 3, s. 2 - 14/11/2017

#### **Removal of directors**

**104** The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of his or her term of office and may, by a majority of the votes cast at the meeting, elect any qualified person in his or her stead for the remainder of his term. R.S.O. 1990, c. C.35, s. 104.

#### **Removal of directors of multi-stakeholder co-operative**

**104.1** Despite section 104, for a multi-stakeholder co-operative, the members of a stakeholder group may, by resolution passed by a majority of the votes of the stakeholder group cast at a meeting of the stakeholder group duly called for that purpose, remove any director elected by the stakeholder group before the expiration of his or her term of office and may, by a majority of the votes cast at the meeting, elect any qualified person in his or her stead for the remainder of the term. 1994, c. 17, s. 26.

#### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 26 - 23/06/1994

#### **Officers**

**105** (1) A co-operative shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors.

#### **Election and appointment**

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors,

- (a) shall elect the president from among themselves;
- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1990, c. C.35, s. 105.

#### **Chair of the board**

**106** A co-operative may by by-law,

- (a) provide for the election or appointment by the directors from among themselves of a chair of the board;
- (b) define the duties of the chair;

(c) assign to the chair all or any of the duties of the president or of any other officer of the co-operative, and, if the by-law assigns to the chair any of the duties of the president, it shall also fix and prescribe the duties of the president. R.S.O. 1990, c. C.35, s. 106.

#### **Qualifications of chair and president**

**107** Unless the articles or by-laws otherwise provide, no person shall be the president of a co-operative unless he or she is a director of the co-operative, but no other officer except the chair of the board need be a director. R.S.O. 1990, c. C.35, s. 107.

#### **Standard of care of directors and officers**

**108** Every director and officer of a co-operative shall exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the co-operative, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. R.S.O. 1990, c. C.35, s. 108.

#### **Validity of acts of directors and officers**

**109** An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his or her appointment, election or qualification. R.S.O. 1990, c. C.35, s. 109.

#### **Indemnification of directors, officers, etc.**

##### **Definition of entity**

**110** (1) In this section,

“entity” means a corporation, a trust, a partnership, a fund or an unincorporated organization. 2004, c. 31, Sched. 8, s. 17.

##### **Conditions for indemnification**

(2) A co-operative may indemnify a director or officer of the co-operative, a former director or officer of the co-operative or a person who acts or acted at the co-operative’s request as a director or officer or a person acting in a similar capacity, of another entity, and his or her heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a director or officer of the co-operative or of being or having been a director or officer, or acting or having acted in a similar capacity, of another entity, if,

- (a) he or she acted honestly and in good faith with a view to the best interests of the co-operative or, as the case may be, to the best interests of the entity for which he or she acted as a director or officer or in a similar capacity at the co-operative’s request; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful. 2004, c. 31, Sched. 8, s. 17.

##### **Indemnification re: court action**

(3) A co-operative may, with the approval of the court, indemnify a person referred to in subsection (2) in respect of an action by or on behalf of the co-operative or other entity to procure a judgment in its favour, to which the person is made a party because of that person’s association with the co-operative or other entity as described in subsection (2), against all costs, charges and expenses reasonably incurred by the person in connection with such action if he or she fulfils the conditions set out in clauses (2) (a) and (b). 2004, c. 31, Sched. 8, s. 17.

##### **Indemnification re: civil or criminal action**

(4) Despite anything in this section, a person referred to in subsection (2) is entitled to indemnity from the co-operative in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which he or she is made a party because of that person’s association with the co-operative or other entity as described in subsection (2), if the person seeking indemnity,

- (a) was substantially successful on the merits in his or her defence of the action or proceeding; and
- (b) fulfils the conditions set out in clauses (2) (a) and (b). 2004, c. 31, Sched. 8, s. 17.

##### **Insurance**

(5) A co-operative may purchase and maintain insurance for the benefit of any person referred to in subsection (2) against any liability incurred by the person,

- (a) in his or her capacity as a director or officer of the co-operative, except where the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the co-operative; or
- (b) in his or her capacity as a director or officer, or similar capacity, of another entity where the person acts or acted in that capacity at the co-operative's request, except where the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the other entity. 2004, c. 31, Sched. 8, s. 17.

**Application for court approval**

(6) A co-operative or a person referred to in subsection (2) may apply to the court for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit. 2004, c. 31, Sched. 8, s. 17.

**Same**

(7) Upon an application under subsection (6), the court may order notice to be given to any interested person and such person is entitled to appear and be heard in person or by counsel. 2004, c. 31, Sched. 8, s. 17.

**Liability of directors for unlawful payment of indemnity**

(8) Directors of a co-operative who vote for or consent to a resolution authorizing a payment of indemnity contrary to this section are jointly and severally liable to restore to the co-operative any amounts so distributed or paid and not otherwise recovered by the co-operative. 2004, c. 31, Sched. 8, s. 17.

**Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 17 - 16/12/2004

**INSIDERS**

**Liability of insiders**

**111** (1) Every insider of a co-operative or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the co-operative, makes use of any specific confidential information for his, her or its own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the co-operative for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction. R.S.O. 1990, c. C.35, s. 111 (1).

(2) REPEALED: 2002, c. 24, Sched. B, s. 25.

**Definitions**

(3) In this section,

“associate”, where used to indicate a relationship with any person, means,

- (a) any corporation of which such person beneficially owns directly or indirectly equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,
- (b) any partner of that person acting by or for the partnership of which they are both partners,
- (c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
- (d) any spouse, son or daughter of that person, or
- (e) any relative of such person or of such person's spouse, other than an individual referred to in clause (d), who has the same home as such person; (“personne qui a un lien”)

“insider” or “insider of a co-operative” means any director or senior officer of a co-operative. (“initié”, “initié de la coopérative”) R.S.O. 1990, c. C.35, s. 111 (3); 1999, c. 6, s. 14 (3); 2005, c. 5, s. 14 (4); 2016, c. 23, s. 43.

**Idem**

(4) For the purposes of this section, one corporation shall be deemed to be affiliated with another corporation if, but only if, one of them is the subsidiary of the other. R.S.O. 1990, c. C.35, s. 111 (4).

**Section Amendments with date in force (d/m/y)**

1999, c. 6, s. 14 (3) - 1/03/2000

2002, c. 24, Sched. B, s. 25 - 1/01/2004

2005, c. 5, s. 14 (4) - 9/03/2005

2016, c. 23, s. 43 - 05/12/2016

### **Order to commence action**

**112** (1) Upon application by any person who was at the time of a transaction referred to in subsection 111 (1) or is at the time of the application an owner of securities of the co-operative, the court may, if satisfied that,

- (a) such person has reasonable grounds for believing that the co-operative has a cause of action under section 111; and
- (b) either,
  - (i) the co-operative has refused or failed to commence an action under section 111 within sixty days after receipt of a written request from such person so to do, or
  - (ii) the co-operative has failed to prosecute diligently an action commenced by it under section 111,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Minister to commence or continue an action in the name of and on behalf of the co-operative to enforce the liability created by section 111. R.S.O. 1990, c. C.35, s. 112 (1); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

### **Notice**

(2) The applicant under subsection (1) shall give to the co-operative and the Minister notice of the person's application, and the co-operative and the Minister have the right to appear and be heard thereon. R.S.O. 1990, c. C.35, s. 112 (2); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

### **Order to co-operate**

(3) Every order made under subsection (1) shall provide that the co-operative shall co-operate fully with the Minister in the institution and prosecution of the action and shall make available to the Minister all records, documents and other material or information known to the co-operative or reasonably ascertainable by the co-operative relevant to the action. R.S.O. 1990, c. C.35, s. 112 (3); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 37 - 1/07/1998

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

## **RECORDS**

### **Records**

**113** (1) Where this Act requires a record to be kept by a co-operative, it may be kept in any form. 2023, c. 9, Sched. 8, s. 12 (1).

### **Same**

- (2) The co-operative shall,
- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
  - (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record. R.S.O. 1990, c. C.35, s. 113 (2); 2023, c. 9, Sched. 8, s. 12 (2).

### **Admissibility of records in evidence**

(3) The information in a record is admissible in evidence as proof, in the absence of evidence to the contrary, of all facts stated in the record, before and after dissolution of the co-operative. 2023, c. 9, Sched. 8, s. 12 (3).

### **False information**

- (4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or,
- (a) record or assist in recording any information in a record; or
  - (b) make information purporting to be accurate available in a form referred to in clause (2) (b),
- knowing it to be untrue. R.S.O. 1990, c. C.35, s. 113 (4).

### **Section Amendments with date in force (d/m/y)**

### **Records to be kept**

**114** A co-operative shall cause to be kept the following records:

1. A copy of the articles of the co-operative.
2. All by-laws and resolutions, including special resolutions, of the co-operative.
3. A register of members and security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
  - i. in a co-operative with share capital, all persons who are or have been within ten years registered as holders of shares in the co-operative and the address including the street and number, if any, and an email address, if one is provided, of every such person while a holder, in which are set out also the number, class and series of shares held by such holder,
  - ii. in a co-operative without share capital, all persons who are or have been within ten years registered as members of the co-operative and the address including the street and number, if any, and an email address, if one is provided, of every such person while a member,
  - iii. in a co-operative with or without share capital, all persons who are or who have been holders of debt obligations other than debt obligations in bearer form of the co-operative and the address including the street and number, if any, and an email address, if one is provided, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses while directors, including the street and number, if any, and an email address if one is provided of all persons who are or have been directors of the co-operative with the several dates on which they have become or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the co-operative including, without limiting the generality of the foregoing, records of,
  - i. all sums of money received and disbursed by the co-operative and the matters with respect to which receipt and disbursement took place,
  - ii. all sales and purchases of the co-operative,
  - iii. the assets and liabilities of the co-operative, and
  - iv. all other transactions affecting the financial position of the co-operative.
6. The minutes of all proceedings at meetings of members, directors and any executive committee. R.S.O. 1990, c. C.35, s. 114; 2004, c. 31, Sched. 8, s. 18; 2019, c. 15, Sched. 8, s. 5; 2023, c. 9, Sched. 8, s. 13.

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 18 - 31/08/2007

2019, c. 15, Sched. 8, s. 5 - 10/12/2019

2023, c. 9, Sched. 8, s. 13 - 01/10/2023

### **Register of transfers**

**115** Every co-operative shall cause to be kept a register of transfers in which all transfers of securities issued by the co-operative in registered form and the date and other particulars of each transfer shall be set out. R.S.O. 1990, c. C.35, s. 115.

### **Transfer agent**

**116** A co-operative may appoint a registrar and a transfer agent to keep the register of security holders and the register of transfers. R.S.O. 1990, c. C.35, s. 116; 2023, c. 9, Sched. 8, s. 14.

### **Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 14 - 01/10/2023

### **Where registers to be kept**

**117** (1) The register of security holders and the register of transfers shall be kept at the head office of the co-operative or at such other office or place in Ontario as is appointed by resolution of the directors.

### **Valid registration**

(2) Registration of the transfer of a security of the co-operative in the register of transfers is a complete and valid registration for all purposes.

### **Destruction of spent documents**

(3) A co-operative, registrar or transfer agent is not liable to produce a security certificate or any document that is evidence of the issue or transfer of the security certificate after six years,

- (a) in the case of a share certificate, from the date of its cancellation; or
- (b) in the case of a certificate representing a debt obligation, from the date of retirement of the whole debt obligation of which the certificate represents a part. R.S.O. 1990, c. C.35, s. 117.

### **Records open to examination by directors**

**118** (1) The records mentioned in sections 114 and 115 shall, during the normal business hours of the co-operative, be open to examination by any director and shall, except as provided in section 117 and in subsections (2) and (3) of this section, be kept at the head office of the co-operative. R.S.O. 1990, c. C.35, s. 118 (1).

### **Same, examination by remote means**

(1.1) Subject to the articles and by-laws of the co-operative, the co-operative may, but is not required to, permit a director to examine any or all of the records mentioned in subsection (1) remotely at any time by means of any technology. 2023, c. 9, Sched. 8, s. 15.

### **Records of account at branch**

(2) A co-operative may keep at any place where it conducts its affairs such parts of the accounting records as relate to the operations, business and assets and liabilities of the co-operative carried on, supervised or accounted for at such place, but there shall be kept at the head office of the co-operative or such other place as is authorized under subsection (3) such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the co-operative. R.S.O. 1990, c. C.35, s. 118 (2).

### **Order for removal of records**

(3) Where a co-operative,

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection (1) at a place other than the head office of the co-operative; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
  - (i) at the head office or some other place in Ontario designated by the Minister, and
  - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as the Minister thinks fit, permit the co-operative to keep such of them at such place or places, other than the head office, as the Minister thinks fit and the Minister may by order and upon such terms as he or she sees fit rescind any such order. R.S.O. 1990, c. C.35, s. 118 (3); 1997, c. 28, s. 37; 2018, c. 17, Sched. 9, s. 13.

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 37 - 1/07/1998

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2023, c. 9, Sched. 8, s. 15 - 01/10/2023

### **Examination of records by members and creditors**

**119** (1) Subject to section 120, the records of a co-operative mentioned in section 114 or 115, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and any executive committee, shall, during the normal business hours of the co-operative and at the place or places where they are kept, be open to examination by the members and creditors or their agents or personal representatives, and any of them may make extracts therefrom. R.S.O. 1990, c. C.35, s. 119 (1).

### **Same, examination by remote means**

(1.1) Subject to the articles and by-laws of the co-operative, the co-operative may, but is not required to, permit a member or creditor or their agent or personal representative to examine any or all of the records mentioned in subsection (1) remotely at

any time by means of any technology and may also permit the person to make extracts by such means. 2023, c. 9, Sched. 8, s. 16 (1).

#### **Same, registrar or transfer agent appointed under s. 116**

(1.2) Subject to the articles and by-laws of the co-operative, a registrar or transfer agent appointed under section 116 may, but is not required to, permit a member or creditor or their agent or personal representative to examine the register of security holders or the register of transfers remotely at any time by means of any technology and may also permit the person to make extracts by such means. 2023, c. 9, Sched. 8, s. 16 (1).

#### **No refusal to permit inspection under subs. (1)**

(2) No person shall refuse to permit a person mentioned in subsection (1) to examine a record or to make an extract in accordance with subsection (1). 2023, c. 9, Sched. 8, s. 16 (2).

#### **Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 16 (1, 2) - 01/10/2023

#### **Lists of members and security holders**

**120** (1) Any member or creditor, upon filing with the co-operative or its agent the affidavit referred to in subsection (2) may,

- (a) make or cause to be made; or
- (b) require a co-operative or its transfer agent to make, upon payment of a reasonable charge therefor,

a list setting out the names alphabetically arranged of all or any members or security holders or both of the co-operative and the addresses of each such person as shown on the records of the co-operative made up to a date not more than ten days before the date of filing the affidavit. R.S.O. 1990, c. C.35, s. 120 (1).

#### **Form of Affidavit**

(2) The affidavit referred to in subsection (1) shall be in a form approved by the Minister. 1997, c. 19, s. 3 (5); 1999, c. 12, Sched. I, s. 1 (3) ; 2018, c. 17, Sched. 9, s. 13.

#### **Idem, where applicant a corporation**

(3) Where the applicant is a corporation, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the corporation.

#### **Use of list**

- (4) No person shall use a list of all or any of the members of a co-operative obtained under this section,
- (a) for the purpose of delivering or sending to all or any of the members advertising or other printed matter relating to securities other than the securities of the co-operative; or
  - (b) for any purpose not connected with the co-operative.

#### **Duty to furnish**

(5) Every co-operative or transfer agent shall furnish a list in accordance with subsection (1) when so required.

#### **Purposes of list**

(6) Purposes connected with the co-operative include any effort to influence the voting of members or security holders at any meeting thereof. R.S.O. 1990, c. C.35, s. 120 (3-6).

#### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (5) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (3) - 22/12/1999

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

#### **Trafficking in lists**

**121** No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the members of a co-operative. R.S.O. 1990, c. C.35, s. 121.

#### **Power of court to correct**

**122** (1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a co-operative other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder or member of the co-operative, the person aggrieved, or any security holder or member



of the co-operative, or the co-operative itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the co-operative to compensate the party aggrieved for any damage the party has sustained.

#### **Decision as to title**

(2) Any court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have the person's name entered in or omitted from such records whether the question arises between two or more security holders or members or alleged security holders or members, or between any security holders or members or alleged security holders or members and the co-operative.

#### **Trial of issue**

(3) The court may direct an issue to be tried.

#### **Jurisdiction of court not affected**

(4) This section does not deprive any court of any jurisdiction it otherwise has. R.S.O. 1990, c. C.35, s. 122.

### AUDITORS AND FINANCIAL STATEMENTS

#### **Exemption from audit provisions**

**123** (1) A co-operative that meets the conditions in subsection (2) is exempt, in respect of a financial year, from sections 124 and 125, subsections 126 (1) and (2), section 127, clause 128 (1) (b) and subsection 128 (3) if, before the beginning of the financial year, one of the following conditions is satisfied:

1. Each member of the co-operative and each shareholder of the co-operative, if any, or his or her attorney authorized in writing, consents in writing to the exemption.
2. The exemption is authorized by,
  - i. a special resolution of the members of the co-operative, and
  - ii. a resolution of the co-operative's shareholders of every class of shares and every series of shares, if any, passed by the directors of the co-operative and submitted to a special meeting of the shareholders of every class of shares and every series of shares duly called for the purpose of considering the resolution and confirmed, with or without variation, by at least two-thirds of the votes cast, whether or not such shareholders or series-holders are otherwise entitled to vote, or such greater proportion of the votes cast as the articles provide. 2019, c. 15, Sched. 8, s. 6.

#### **Conditions for exemption**

(2) Subsection (1) only applies to a co-operative that,

- (a) has never issued securities or, if it has issued securities, it was exempt from the requirement to file an offering statement under section 34 in respect of the securities;
- (b) has not received a grant or similar financial assistance from the federal government or a provincial or municipal government or an agency of any such government that has a condition requiring the co-operative to be audited in the financial year; and
- (c) satisfies any prescribed conditions. 2019, c. 15, Sched. 8, s. 6.

#### **Exemption for certain non-profit housing co-operatives**

(3) Subsection (1) does not apply to a non-profit housing co-operative in respect of a financial year if, at the end of the preceding financial year, the co-operative has more than \$50,000 in capital or more than \$50,000 in assets. 2019, c. 15, Sched. 8, s. 6.

#### **Interpretation of capital**

(4) For the purposes of subsection (3), a non-profit housing co-operative's capital is the sum of the following amounts, as shown on the co-operative's financial statements for the preceding financial year:

1. Outstanding member and patronage loans made to the co-operative.
2. Unsecured long-term debt.
3. Surplus. 2019, c. 15, Sched. 8, s. 6.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 16 - 24/08/1992

2019, c. 15, Sched. 8, s. 6 - 10/12/2019

### **Auditors**

**124** (1) The members of a co-operative at their first general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the members fail to do so, the directors shall forthwith make such appointment or appointments. R.S.O. 1990, c. C.35, s. 124 (1).

### **Idem**

(2) The members shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed. R.S.O. 1990, c. C.35, s. 124 (2).

### **Casual vacancy**

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act. R.S.O. 1990, c. C.35, s. 124 (3).

### **Removal of auditor**

(4) The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of the auditor's term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in the auditor's stead for the remainder of the auditor's term. R.S.O. 1990, c. C.35, s. 124 (4).

### **Notice to auditor**

(5) Before calling a general meeting for the purpose specified in subsection (4), the co-operative shall give the following documents to the auditor at least 15 days before notice of the meeting is sent:

1. Written notice of the intention to call the meeting, specifying the proposed date for sending notice of the meeting.
2. A copy of all material proposed to be sent to members in connection with the meeting. 2004, c. 31, Sched. 8, s. 19 (1).

### **Auditor's right to make representations**

(6) An auditor has the right to make written representations to the co-operative, at least three days before notice of the meeting is sent, concerning,

- (a) the person's proposed removal as auditor;
- (b) the appointment or election of another person to fill the office of auditor; or
- (c) the person's resignation as auditor,

and the co-operative, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting. R.S.O. 1990, c. C.35, s. 124 (6); 2004, c. 31, Sched. 8, s. 19 (2).

### **Remuneration**

(7) The remuneration of an auditor appointed by the members shall be fixed by the members, or by the directors if they are authorized so to do by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors. R.S.O. 1990, c. C.35, s. 124 (7).

### **Appointment by court**

(8) If for any reason no auditor is appointed, the court may, on the application of a member, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the co-operative for the services of the auditor or auditors. R.S.O. 1990, c. C.35, s. 124 (8).

### **Notice of appointment**

(9) The co-operative shall give notice in writing to an auditor of the auditor's appointment forthwith after the appointment is made. R.S.O. 1990, c. C.35, s. 124 (9).

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 19 (1, 2) - 31/08/2007

### **Notice to auditor of proposal to appoint another**

**125** (1) If, at an annual meeting of members, it is proposed that an auditor who is not the incumbent auditor be appointed, the co-operative shall give written notice to the incumbent auditor, at least 15 days before notice of the meeting is sent, that management intends not to recommend the reappointment of the incumbent auditor at the annual meeting and the written notice shall also specify the proposed date on which notice of the meeting is to be sent. 2004, c. 31, Sched. 8, s. 20 (1).

### **Right of incumbent auditor to make representations**

(2) The incumbent auditor has the right to make written representations to the co-operative, at least three days before notice of the meeting is sent, concerning the proposal not to reappoint the person as auditor, and the co-operative, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting. R.S.O. 1990, c. C.35, s. 125 (2); 2004, c. 31, Sched. 8, s. 20 (2).

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 20 (1, 2) - 31/08/2007

### **Persons disqualified as auditors**

**126** (1) No person shall be appointed or act as auditor of a co-operative who is a director, officer or employee, or who has been, during the two years immediately preceding the proposed date of the person's appointment as auditor, a director, officer or employee of the co-operative or who is a partner, employer or employee of such director, officer or employee or who is a related person to any director or officer of the co-operative.

### **Idem**

(2) No person shall be appointed to act as auditor of a co-operative if the person or any partner or employer of or related person to the person transacts a material amount of business with the co-operative.

### **Auditors not to be appointed receivers, etc.**

(3) No person shall be appointed a receiver or a receiver and manager or liquidator of any co-operative of which the person or any partner or employer of or a related person to the person is the auditor or has been auditor within the two years preceding the person's appointment as receiver or receiver and manager or liquidator.

### **Trustee in bankruptcy not to be auditor**

(4) No person who is appointed a trustee of the estate of a co-operative under the *Bankruptcy and Insolvency Act* (Canada) or any partner or employer of or a related person to the person shall be appointed or act as auditor of the co-operative. R.S.O. 1990, c. C.35, s. 126.

### **Section Amendments with date in force (d/m/y)**

CTS 20 JA 17 - 1

### **Annual audit**

**127** (1) The auditor shall make such examination as will enable the auditor to report to the members as required by subsection (2). R.S.O. 1990, c. C.35, s. 127 (1).

### **Auditor's report**

(2) The auditor shall make a report to the members on the financial statement, other than the part thereof that relates to the period referred to in subclause 128 (1) (a) (ii), to be laid before the co-operative at any annual meeting during the auditor's term of office and shall state in the report whether in the auditor's opinion the financial statement referred to therein presents fairly the financial position of the co-operative and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1990, c. C.35, s. 127 (2).

### **Idem**

(3) Where the report under subsection (2) does not contain the unqualified opinion required thereby, the auditor shall state in the report the reasons therefor. R.S.O. 1990, c. C.35, s. 127 (3).

### **Facts discovered after statement**

(4) Where facts come to the attention of the officers or directors,

- (a) which could reasonably have been determined prior to the date of the last annual meeting of the members; and

- (b) which, if known prior to the date of the last annual meeting of members, would have required a material adjustment to the financial statement presented to the meeting,

the officers or directors shall communicate such facts to the auditor who reported to the members under this section and the directors shall forthwith amend the financial statement and send it to the auditor. R.S.O. 1990, c. C.35, s. 127 (4).

#### **Amendment of auditor's report**

(5) On the receipt of facts furnished under subsection (4) or from any other source, the auditor shall, if in the auditor's opinion it is necessary, amend the auditor's report in respect of the financial statement in accordance with subsection (3) and the directors or, if they fail to do so within a reasonable time, the auditor shall send the amended report to the members. R.S.O. 1990, c. C.35, s. 127 (5); 2004, c. 31, Sched. 8, s. 21.

#### **Idem**

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in the auditor's report a statement whether in the auditor's opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein. R.S.O. 1990, c. C.35, s. 127 (6).

#### **Idem**

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a co-operative are included in the financial statement of the co-operative, the report of the auditor of the co-operative required by subsection (2) may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the co-operative to comply with subsection (2). R.S.O. 1990, c. C.35, s. 127 (7).

#### **Idem**

- (8) The auditor in the auditor's report shall make such statements as the auditor considers necessary,
- (a) if the co-operative's financial statement is not in agreement with its accounting records;
  - (b) if the co-operative's financial statement is not in accordance with the requirements of this Act;
  - (c) if the auditor has not received all the information and explanations that the auditor has required; or
  - (d) if proper accounting records have not been kept, so far as appears from the auditor's examination. R.S.O. 1990, c. C.35, s. 127 (8).

#### **Right of access, etc.**

(9) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of the co-operative and is entitled to require from the directors, officers and employees of the co-operative such information and explanation as in the auditor's opinion are necessary to enable the auditor to report as required by subsection (2). R.S.O. 1990, c. C.35, s. 127 (9).

#### **Idem**

(10) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the co-operative and is entitled to require from the directors, officers and employees of each such subsidiary such information and explanation as in the auditor's opinion are necessary to enable the auditor to report as required by subsection (2). R.S.O. 1990, c. C.35, s. 127 (10).

#### **Idem**

(11) Where a subsidiary referred to in subsection (10) is a corporation to which this Act does not apply, the co-operative shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection (10). R.S.O. 1990, c. C.35, s. 127 (11).

#### **Auditor may attend members' meetings**

(12) The auditor of a co-operative is entitled to attend any meeting of members of the co-operative and to receive all notices and other communications relating to any such meeting that a member is entitled to receive, and to be heard at any such meeting that the auditor attends on any part of the business of the meeting that concerns the auditor as auditor. R.S.O. 1990, c. C.35, s. 127 (12).

### **Member may require auditor's attendance at members' meeting**

(13) Any member of a co-operative, whether or not the member is entitled to vote at meetings of members, may, by notice in writing to the co-operative given five days or more before any meeting of members, require the attendance of the auditor at such meeting at the co-operative's expense, and in such event the auditor shall attend the meeting. R.S.O. 1990, c. C.35, s. 127 (13).

### **Auditors must answer inquiries**

(14) At any meeting of members, the auditor, if present, shall answer inquiries directed to the auditor concerning the bases upon which the auditor formed the opinion stated in the report made under subsection (2). R.S.O. 1990, c. C.35, s. 127 (14).

### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 21 - 31/08/2007

### **Information to be laid before annual meeting**

**128** (1) The directors shall lay before each annual meeting of members,

- (a) a comparative financial statement relating separately to,
  - (i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the co-operative has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and
  - (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) a statement of patronage returns allocated to members during the year,
- (vi) a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;
- (b) the report of the auditor to the members; and
- (c) such further information respecting the financial position of the co-operative as the articles or by-laws of the co-operative require. R.S.O. 1990, c. C.35, s. 128 (1).

### **Designation of statements**

(2) It is not necessary to designate the statements referred to in subsection (1) as the statement of profit and loss, statement of surplus, statement of patronage returns, statement of source and application of funds and balance sheet. R.S.O. 1990, c. C.35, s. 128 (2).

### **Inspection of auditor's report**

(3) The report of the auditor to the members shall be open to inspection at the annual meeting by any member. 2001, c. 8, s. 17.

### **Section Amendments with date in force (d/m/y)**

2001, c. 8, s. 17 - 29/06/2001

### **Statement of profit and loss**

**129** (1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the co-operative for the period covered by the statement and so as to distinguish severally at least,

- (a) sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the co-operative;

- (d) income from other investments;
- (e) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (f) any provision for depreciation or for obsolescence or for depletion;
- (g) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (h) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (i) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period.

#### **Idem**

(2) Despite subsection (1), items of the natures described in clauses (1) (f) and (g) may be shown by way of note to the statement of profit and loss. R.S.O. 1990, c. C.35, s. 129.

#### **Statement of surplus**

**130** (1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus. R.S.O. 1990, c. C.35, s. 130 (1).

#### **Contributed surplus**

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
  - i. the amount of surplus arising from the reorganization of the co-operative's issued capital, including, the amount of surplus realized on the purchase of shares,
  - ii. donations of cash or other property by members, and
  - iii. the amount of membership fees.
3. The balance of such surplus at the end of the financial period. R.S.O. 1990, c. C.35, s. 130 (2).

#### **Earned surplus**

(3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
  - i. The amount of the net profit or loss for the financial period.
  - ii. The amount of dividends declared on each class and series of shares.
  - iii. The amount of patronage returns allocated to members.
  - iv. The amount transferred to or from reserves.
3. The balance of such surplus at the end of the financial period. R.S.O. 1990, c. C.35, s. 130 (3); 2004, c. 31, Sched. 8, s. 22.

#### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 22 - 31/08/2007

#### **Treatment of patronage returns**

**131** Where a co-operative allocates patronage returns, the statement referred to in subclause 128 (1) (a) (v) shall be drawn up to distinguish patronage returns according to services or products or groups of products acquired, marketed, handled, dealt in or sold or rendered by the customer or by the co-operative and such statement shall be so drawn as to present fairly the

information shown therein for the period and show separately for members and non-members the amount of patronage returns allocated to each service, product or groups of products. R.S.O. 1990, c. C.35, s. 131.

#### **Statement of source and application of funds**

**132** The statement of source and application of funds referred to in subclause 128 (1) (a) (vi) shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

- (a) funds derived from,
  - (i) current operations,
  - (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
  - (iii) issue of debt obligations, including member loans, or other indebtedness maturing more than one year after issue,
  - (iv) issue of shares,
  - (v) membership fees; and
- (b) funds applied to,
  - (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
  - (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
  - (iii) redemption or other retirement of shares,
  - (iv) payment of dividends,
  - (v) repayment of patronage loans,
  - (vi) payment of cash patronage returns, and
  - (vii) repayment of member loans. R.S.O. 1990, c. C.35, s. 132.

#### **Balance sheet**

**133** (1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the co-operative as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the co-operative from its directors, officers or members, except debts of reasonable amount arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.
3. Debts owing to the co-operative, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the co-operative.
4. Other debts owing to the co-operative segregating those that arose otherwise than in the ordinary course of its business.
5. Inventory, stating the basis of valuation.
6. Shares, bonds, debentures and other investments owned by the co-operative, except those referred to in paragraph 7, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
7. Securities of subsidiaries whose financial statements are not consolidated with those of the co-operative, stating the basis of valuation.
8. Lands, buildings and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the co-operative of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
9. There shall be stated under separate headings, in so far as they are not written off,
  - i. expenditures on account of future business,
  - ii. any expense incurred in connection with any issue of shares,

- iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
  - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks and other intangible assets and the amount, if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.
10. Bank loans and overdrafts.
  11. Debts owing by the co-operative, except those referred to in paragraphs 12 and 13, on loans from its directors, officers or members.
  12. Debts owing by the co-operative on loans from members, called member loans referred to in section 49.
  13. Debts owing by the co-operative to members on the compulsory loans of patronage returns referred to in subsection 56 (4).
  14. Debts owing by the co-operative to subsidiaries whose financial statements are not consolidated with those of the co-operative, whether on account of a loan or otherwise.
  15. Other debts owing by the co-operative, segregating those that arose otherwise than in the ordinary course of its business.
  16. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
  17. Dividends declared but not paid.
  18. Deferred income.
  19. Debt obligations issued by the co-operative, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
  20. The authorized capital, giving the number of each class and series of shares and a brief description of each class and series and indicating any class or series that is redeemable and the redemption price.
  21. The issued capital, giving the number of shares of each class and series issued and outstanding and the amount received therefor that is attributable to capital, and showing,
    - i. the number of shares of each class and series issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and
    - ii. where any shares issued before this Act comes into force have not been fully paid,
      - a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
      - b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.
  22. Contributed surplus.
  23. Earned surplus.
  24. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.
  25. The aggregate number of shares of the co-operative purchased and resold since the date of the last preceding balance sheet. R.S.O. 1990, c. C.35, s. 133 (1); 2004, c. 31, Sched. 8, s. 23.

#### **Notes**

(2) Explanatory information or particulars of any item mentioned in subsection (1) may be shown by way of note to the balance sheet. R.S.O. 1990, c. C.35, s. 133 (2).

#### **Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 23 (1-3) - 31/08/2007

#### **Notes to financial statement**

**134** (1) There shall be stated by way of note to the financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the



comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period. R.S.O. 1990, c. C.35, s. 134 (1).

### **Change in accounting practice**

(2) For the purpose of subsection (1), a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period. R.S.O. 1990, c. C.35, s. 134 (2).

### **Idem**

(3) Where applicable, the following matters shall be referred to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the co-operative.
3. Contractual obligations that will require abnormal expenditures in relation to the co-operative's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the co-operative, stating the liability so secured.
7. Any default of the co-operative in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class or series of shares and the date to which such dividends were last paid.
9. Where a co-operative has contracted to issue shares or has given an option to purchase shares, the class and series and the number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a co-operative has contracted to purchase or resell membership shares, the number of shares affected and price and date for the purchase or resale.
11. The aggregate direct remuneration paid or payable by the co-operative and its subsidiaries whose financial statements are consolidated with those of the co-operative to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the co-operative whose financial statements are not consolidated with those of the co-operative.
12. In the case of a co-operative with subsidiaries, the aggregate of any shares in, and the aggregate of any debt obligations of, that co-operative held by a subsidiary corporation whose financial statements are not consolidated with those of the co-operative.
13. The amount of any loans by the co-operative, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the co-operative's financial period, to the directors or officers of the co-operative.
14. Any restriction by the articles or by-laws of the co-operative or by contract on the payment of dividends that is significant in the light of the co-operative's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement.
16. The amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the co-operative, the manner in which the co-operative proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations.
17. Brief particulars of any action to which the co-operative is a party commenced under section 68 during the period.
18. In the case of a co-operative, other than a renewable energy co-operative, that transacts business with non-members,

- (i) where the amount of business transacted with non-members exceeds 20 per cent, a statement setting out the percentage of such business, or
- (ii) where the amount of business transacted with non-members does not exceed 20 per cent, a statement to this effect. R.S.O. 1990, c. C.35, s. 134 (3); 1994, c. 17, s. 2; 2004, c. 31, Sched. 8, s. 24; 2009, c. 12, Sched. I, s. 7.

**Idem**

(4) A note to a financial statement is a part of it. R.S.O. 1990, c. C.35, s. 134 (4).

**Interpretation of senior officer**

(5) In this section, “senior officer” does not include each of the five highest paid employees of a co-operative. R.S.O. 1990, c. C.35, s. 134 (5).

**Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 2 - 23/06/1994

2004, c. 31, Sched. 8, s. 24 (1, 2) - 31/08/2007

2009, c. 12, Sched. I, s. 7 - 9/09/2009

**Consolidated financial statement**

**135** (1) A co-operative, in this section referred to as “the holding co-operative”, may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form. R.S.O. 1990, c. C.35, s. 135 (1).

**Non-consolidated financial statement**

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding co-operative are not so included in the financial statement of the holding co-operative,

- (a) the financial statement of the holding co-operative shall include a statement setting forth,
  - (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding co-operative,
  - (ii) if there is only one such subsidiary, the amount of the holding co-operative’s proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative’s proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding co-operative,
  - (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding co-operative and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,
  - (iv) if there is only one such subsidiary, the amount of the holding co-operative’s proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding co-operative to the extent that such amount has not been taken into the accounts of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative’s proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding co-operative less its proportion of the losses, if any, suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding co-operative,
  - (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the co-operative’s own financial statement and is material from the point of view of its members;
- (b) if for any reason the directors of the holding co-operative are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding co-operative, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;

- (c) if, in the opinion of the auditor of the holding co-operative, adequate provision has not been made in the financial statement of the holding co-operative for the holding co-operative's proportion,
- (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding co-operative, or
  - (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding co-operative in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in the auditor's report the additional amount that in the auditor's opinion is necessary to make full provision therefor. R.S.O. 1990, c. C.35, s. 135 (2).

#### **Copies of subsidiary statement**

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding co-operative are included in the financial statement of the holding co-operative, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding co-operative at its head office and shall be open to examination by the members of the holding co-operative on request during the normal business hours of the holding co-operative. R.S.O. 1990, c. C.35, s. 135 (3).

#### **Examination by remote means**

(4) Subject to the articles or by-laws of the holding co-operative, the holding co-operative may, but is not required to, permit a member of the holding co-operative to examine the financial statements referred to in subsection (3) remotely at any time by means of any technology. 2023, c. 9, Sched. 8, s. 17.

#### **Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 17 - 01/10/2023

#### **Insignificant circumstances**

**136** Despite sections 129 to 135, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance. R.S.O. 1990, c. C.35, s. 136.

#### **Reserve**

**137** In a financial statement, the terms "reserve" and "réserve" shall be used to describe only,

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the co-operative for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled. R.S.O. 1990, c. C.35, s. 137.

#### **Audit committee**

**138** (1) The directors of a co-operative may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the co-operative to hold office until the next annual meeting of the members. R.S.O. 1990, c. C.35, s. 138 (1).

#### **Chair**

(2) The members of the audit committee shall elect a chair from among their number. R.S.O. 1990, c. C.35, s. 138 (2).

#### **Review**

(3) The co-operative shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors. R.S.O. 1990, c. C.35, s. 138 (3).

#### **Hearing of auditor**

(4) The auditor of a co-operative is entitled to receive notice of every meeting of the audit committee and, at the expense of the co-operative, to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee. 2023, c. 9, Sched. 8, s. 18 (1).

**Idem**

(5) Upon the request of the auditor, the chair of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or members. R.S.O. 1990, c. C.35, s. 138 (5).

**Right of auditor to be heard**

(6) The auditor of a co-operative shall be entitled to,

- (a) receive notice of,
- (b) to attend, at the expense of the co-operative; and
- (c) to be heard at,

meetings of the board of directors of the co-operative on matters relating to the auditor's duties as auditor. 2023, c. 9, Sched. 8, s. 18 (2).

**Section Amendments with date in force (d/m/y)**

2023, c. 9, Sched. 8, s. 18 (1, 2) - 01/10/2023

**Approval by directors**

**139** (1) The financial statement shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report, unless the co-operative is exempt under section 123, shall be attached to or accompany the financial statement.

**Rights of auditor where no audit committee**

(2) The auditor of a co-operative that has not elected an audit committee for the year to which the financial statement relates is entitled,

- (a) to receive notice of and to attend the meeting of directors called to approve the financial statement under subsection (1); and
- (b) to request a meeting of the board of directors of the co-operative to consider any matters the auditor believes should be brought to their attention and, upon the auditor's request, the president of the co-operative shall convene such a meeting. R.S.O. 1990, c. C.35, s. 139.

**Distribution of financial statement to members**

**140** (1) At least 10 days before the annual meeting of members, a co-operative shall send a copy of the financial statement and, subject to section 123, the auditor's report to each member at the member's latest address as shown on the records of the co-operative. 2004, c. 31, Sched. 8, s. 25.

**Same**

(2) The directors of a co-operative shall also send to each member a copy of any financial statement and auditor's report amended under subsection 127 (4) or (5). 2004, c. 31, Sched. 8, s. 25.

**Exception**

(3) Subsections (1) and (2) do not apply with respect to a member who has given written notice to the co-operative that the member does not wish to receive the financial statements and auditor's reports. 2004, c. 31, Sched. 8, s. 25.

**Section Amendments with date in force (d/m/y)**

2004, c. 31, Sched. 8, s. 25 - 31/08/2007

**141** REPEALED: 2019, c. 15, Sched. 8, s. 7.

**Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (6) - 10/10/1997; 1997, c. 28, s. 37 - 1/07/1998

2004, c. 31, Sched. 8, s. 26 (1, 2) - 31/08/2007

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 7 - 01/04/2020

## MAINTENANCE OF CO-OPERATIVE STATUS

### Information to be furnished to Minister

**142** (1) Upon the request of the Minister, every co-operative shall furnish to the Minister such information as the Minister may require to enable the Minister,

- (a) to compile statistical records and information in such form as the Minister may require;
- (b) to facilitate the carrying on of research projects;
- (c) to establish that all persons to whom this Act applies are not in contravention of this Act; and
- (d) to establish that the business and affairs of the co-operative are being conducted on a co-operative basis. R.S.O. 1990, c. C.35, s. 142 (1); 1997, c. 28, s. 37; 2017, c. 34, Sched. 9, s. 6.

(2) REPEALED: 1997, c. 28, s. 38.

### Section Amendments with date in force (d/m/y)

1997, c. 28, s. 37 - 1/07/1998; 1997, c. 28, s. 38 - 1/01/1998

2017, c. 34, Sched. 9, s. 6 - 29/10/2018

### Affairs not conducted on a co-operative basis

**143** Where the Minister is of the opinion that the business and affairs of the co-operative are not being conducted on a co-operative basis, the Minister may, after giving the co-operative an opportunity to be heard,

- (a) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of the *Business Corporations Act* and, where necessary for the purpose, changing the co-operative into a corporation with share capital; or
- (b) issue a certificate of amendment changing the co-operative into a corporation subject to the *Not-for-Profit Corporations Act, 2010* and, where necessary for the purpose, changing the co-operative into a corporation without share capital. 2019, c. 15, Sched. 8, s. 8.

### Section Amendments with date in force (d/m/y)

2017, c. 20, Sched. 8, s. 77 (1) - no effect - see 2019, c. 15, Sched. 8, s. 17 - 10/12/2019; 2017, c. 34, Sched. 9, s. 7 - 29/10/2018

2019, c. 15, Sched. 8, s. 8 (1) - 01/04/2020; 2019, c. 15, Sched. 8, s. 8 (2) - 19/10/2021

### Limit on non-member business

**144** (1) A co-operative shall not conduct 50 per cent or more of its business with non-members of that co-operative unless its articles or by-laws authorize it to do so. 2019, c. 15, Sched. 8, s. 9 (1).

### Idem

(2) For the purposes of subsection (1), the amount of business conducted by a co-operative with a non-member means the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative, on behalf of or for the non-members expressed as a percentage of the total value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of, or for all customers during the year. R.S.O. 1990, c. C.35, s. 144 (2).

### Idem

(3) For the purposes of computing the amount of business under subsection (2), there shall not be included, in the amount of business conducted with non-members, the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of or for non-members who are required, by a marketing plan established under an Act of the Legislature, to conduct such business only with the co-operative. 1992, c. 19, s. 17.

### Idem

(4) If a member of a co-operative sells products to a marketing board under a marketing plan established under an Act of the Legislature and the marketing board in turn sells the products, or equivalent products if the products are fungible, to the co-operative, the co-operative shall be deemed, for the purposes of this section, to have bought the products or equivalent products directly from the member. 1992, c. 19, s. 17.

### **Derivative of a product**

(5) In subsections (6) and (7), a derivative of a product is something that contains the product or is made, either in whole or in part, from the product. 1992, c. 19, s. 17.

### **If limitations on purchase of a product**

(6) If a marketing plan established under an Act of the Legislature provides for transferable entitlements to buy a product and a co-operative buys all the product that its entitlement allows, then any derivative of the product that the co-operative buys is deemed, for the purposes of this section, to have been bought directly from its members. 1992, c. 19, s. 17.

### **Idem**

(7) Subsection (6) applies only to the extent that the total consideration given for the products, equivalent products or derivatives of the products deemed, under subsection (4) or (6), to have been bought directly from members does not exceed the consideration received for the products that the members of the co-operative sell. 1992, c. 19, s. 17.

### **Exceptions**

(8) This section does not apply to the following co-operatives:

1. A co-operative whose articles provide that the co-operative's primary object is to provide employment to its members.
2. A non-profit housing co-operative.
3. REPEALED: 2019, c. 15, Sched. 8, s. 9 (2).

2009, c. 12, Sched. I, s. 8; 2019, c. 15, Sched. 8, s. 9 (2).

(9) REPEALED: 2009, c. 12, Sched. I, s. 8.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 17 - 24/08/1992

2009, c. 12, Sched. I, s. 8 - 9/09/2009

2017, c. 20, Sched. 8, s. 77 (1) - no effect - see 2019, c. 15, Sched. 8, s. 17 - 10/12/2019; 2017, c. 34, Sched. 9, s. 8 - 29/10/2018

2019, c. 15, Sched. 8, s. 9 (1, 2) - 10/12/2019

### **Membership requirements for co-operatives for workers**

**144.1** (1) If a co-operative's articles provide that the co-operative's primary object is to provide employment to its members, at least 75 per cent of its permanent full-time employees and 75 per cent of all employees, or such other proportions of employees as may be prescribed, must be members of the co-operative. 2019, c. 15, Sched. 8, s. 10.

### **Permanent full-time employees**

(2) For the purposes of subsection (1), an employee is not a permanent full-time employee if,

- (a) the employee is employed for a probationary period of one year or less;
- (b) the employee is employed under a contract for a term of two years or less; or
- (c) the employee's regular hours of work are less than fifteen hours per week. 2019, c. 15, Sched. 8, s. 10.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 18 - 24/08/1992

2017, c. 20, Sched. 8, s. 77 (1) - no effect - see 2019, c. 15, Sched. 8, s. 17 - 10/12/2019; 2017, c. 34, Sched. 9, s. 9 - 29/10/2018

2019, c. 15, Sched. 8, s. 10 - 10/12/2019

### **Non-profit housing co-operatives**

**144.2** (1) No non-profit housing co-operative shall conduct 50 per cent or more of its business with non-members of the co-operative. 1992, c. 19, s. 18; 2019, c. 15, Sched. 8, s. 11.

### **Idem**

(2) Subsection 144 (2) applies, with necessary modifications, for the purposes of this section. 1992, c. 19, s. 18.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 18 - 24/08/1992

2019, c. 15, Sched. 8, s. 11 - 10/12/2019

### **Members not to number fewer than minimum**

**145** (1) If a co-operative exercises its corporate powers when its members are fewer in number than the minimum number required by subsection (4) for a period of more than six months after the number has been so reduced, each person who was a member of the co-operative during the time that it so exercised its corporate powers after such period of six months and is aware of the fact that it so exercised its corporate powers is severally liable for the payment of the whole of the debts of the co-operative contracted during such time and may be sued for the debts without the joinder in the action of the co-operative or of any other member. 1992, c. 19, s. 19 (1).

### **Saving**

(2) A member who has become aware that the co-operative is so exercising its corporate powers may serve a protest in writing on the co-operative and may by registered letter notify the Minister of such protest having been served and of the facts upon which it is based, and such member may thereby and not otherwise, from the date of the member's protest and notification, exonerate himself, herself, or itself from liability. R.S.O. 1990, c. C.35, s. 145 (2).

### **Notice and penalty**

(3) If after notice from the Minister the co-operative refuses or neglects to bring the number of its members up to the minimum number required by subsection (4), such refusal or neglect may be regarded by the Minister as sufficient cause for the cancellation of the certificate of incorporation or any certificate issued under this Act. 1992, c. 19, s. 19 (2); 2017, c. 34, Sched. 9, s. 10.

### **Minimum number of members**

(4) For the purposes of this section, the minimum number of members of a co-operative is three if it is a worker co-operative and five if it is not. 1992, c. 19, s. 19 (2).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 19 (1, 2) - 24/08/1992

2017, c. 34, Sched. 9, s. 10 - 29/10/2018

## **INVESTIGATIONS**

### **Investigations and audits**

**146** (1) Upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it appears to be in the interests of the co-operative or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the co-operative or any subsidiary of the co-operative, or both, and to audit the accounts and records of the co-operative or any affiliate thereof named in the order.

### **Idem**

(2) An order may be made under subsection (1) whether or not there has been disclosure to the members of the co-operative of information relating to any matter on the basis of which the order is made.

### **Production of accounts and records**

(3) Every director, officer, agent, employee, banker and auditor of the co-operative or of any subsidiary of the co-operative named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the co-operative or subsidiary in their custody or control.

### **Examination may be under oath**

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or subsidiary in relation to its affairs, management, accounts and records.

### **Court order for examination**

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection (4) to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit.

## **Offences**

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection (3) and every person examined under subsection (4) or (5) who refuses to answer any question related to the affairs and management of the co-operative or any subsidiary is guilty of an offence under section 176, in addition to any other liability to which the person is subject.

## **Inspector's report**

(7) The inspector shall make a report to the court and shall forward a copy of the report to the co-operative and any subsidiary of the co-operative named in the order and to the person who made the application under subsection (1). R.S.O. 1990, c. C.35, s. 146.

## **Co-operative may appoint inspector for same purpose**

**147** (1) A co-operative may, by resolution passed at an annual meeting of members or a general meeting of members called for that purpose, appoint an inspector to investigate its affairs and management.

## **Powers and duties of inspector**

(2) The inspector appointed under subsection (1) has the same powers and shall perform the same duties as an inspector appointed under section 146 and shall make his or her report in such manner and to such persons as the co-operative by resolution of the members directs. R.S.O. 1990, c. C.35, s. 147.

## **Where Minister to appoint inspector**

**148** (1) Despite anything contained in section 146 or 147, the Minister shall appoint in writing an inspector to investigate and report on the affairs and management of the co-operative or its subsidiaries if 10 per cent of the members of the co-operative request in writing such investigation and show circumstances suggesting that,

- (a) the business of the co-operative or any of its subsidiaries is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the co-operative or any of its subsidiaries are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner oppressive or unfairly prejudicial to or in disregard of the interests of a security holder;
- (c) the co-operative or any of its subsidiaries was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the co-operative or any of its subsidiaries have in connection therewith acted fraudulently or dishonestly. R.S.O. 1990, c. C.35, s. 148 (1); 1997, c. 28, s. 39; 2018, c. 17, Sched. 9, s. 13.

## **Idem**

(2) The Minister may on the Minister's own initiative appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if it appears that there exist any of the circumstances mentioned in clause (1) (a), (b), (c) or (d). R.S.O. 1990, c. C.35, s. 148 (2); 1997, c. 28, s. 39; 2018, c. 17, Sched. 9, s. 3, 13.

## **Production of accounts and records**

(3) Every person shall produce for the examination of the inspector all accounts and records in their custody or control which relate to the co-operative or any of its subsidiaries.

## **Examination may be under oath**

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or any of its subsidiaries in relation to its affairs, management, accounts and records.

## **Court order for examination**

(5) Upon an application to the court by the inspector, the court may, on such terms and conditions as it sees fit, order any person not mentioned in subsection (4) to attend and be examined under oath before the inspector on any matter relevant to the investigation.

## **Offences**

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection (3) and every person examined under subsection (4) or (5) who refuses to answer any question related to the affairs and management of the co-operative or any of its subsidiaries is guilty of an offence under section 176 in addition to any other liability to which the person is subject. R.S.O. 1990, c. C.35, s. 148 (3-6).



### **Report to be made to Minister**

(7) The inspector shall deliver the report of his or her investigation to the Minister and the Minister may forward a copy of the report to the co-operative and any subsidiary of the co-operative investigated. R.S.O. 1990, c. C.35, s. 148 (7); 1997, c. 28, s. 39; 2018, c. 17, Sched. 9, s. 13.

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 39 - 1/07/1998

2018, c. 17, Sched. 9, s. 3, 13 - 08/06/2019

### **Remedies**

**149** Where it appears from the report of an inspector made under section 146, 147 or 148 that any of the circumstances set out in clause 148 (1) (a), (b), (c) or (d) exist, the Minister may, despite any other remedies available,

- (a) apply under subclause 207 (1) (b) (iv) of the *Business Corporations Act* to wind up the co-operative by order of the court;
- (b) cancel the certificate of incorporation for cause under section 166;
- (c) require, or apply to the court for an order under section 80 requiring, the directors of the co-operative to call a general meeting of members; or
- (d) refer the report of the inspector to the Attorney General. R.S.O. 1990, c. C.35, s. 149; 1997, c. 28, s. 40; 2018, c. 17, Sched. 9, s. 4, 13; 2023, c. 9, Sched. 8, s. 19.

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 40 (1, 2) - 1/07/1998

2018, c. 17, Sched. 9, s. 4, 13 - 08/06/2019

2023, c. 9, Sched. 8, s. 19 - 01/10/2023

### **Report admissible in proceedings**

**150** A copy of the report of an inspector appointed under this Act authenticated by a local registrar of the court or in the case of an investigation under section 147 or 148 by the inspector is admissible in any legal proceeding and is evidence of the opinion of the inspector in relation to any matter contained in the report. R.S.O. 1990, c. C.35, s. 150.

## **AMENDMENT OF ARTICLES**

### **Amendments**

**151** (1) A co-operative may from time to time amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease its authorized capital by cancelling shares whether issued or unissued or by reducing the par value of issued or unissued shares;
- (e) increase or decrease the membership fee;
- (f) increase or decrease the minimum amount of member loans;
- (g) redivide its authorized capital into shares of lesser or greater par value;
- (h) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the shares;
- (h.1) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the shares;
- (h.2) authorize the directors to change the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to unissued shares of any series;
- (h.3) revoke, diminish or enlarge any authority conferred on the directors under clause (h.1) or (h.2);

- (i) redesignate any class or series of shares;
- (i.1) reclassify any shares into a different class or series;
- (j) delete or vary any provision in its articles;
- (k) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative;
- (l) convert it into a co-operative with or without share capital;
- (m) convert it into a corporation to which the *Business Corporations Act* applies;
- (n) convert it into a corporation to which the *Not-for-Profit Corporations Act, 2010* applies. R.S.O. 1990, c. C.35, s. 151 (1); 2004, c. 31, Sched. 8, s. 27 (1); 2017, c. 20, Sched. 8, s. 77 (2).

#### **Directors' authority to amend articles**

(1.1) If the directors are authorized by the articles to divide any class of unissued shares into series and determine the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to the shares, the directors may authorize an amendment to the articles to so provide. 2004, c. 31, Sched. 8, s. 27 (2).

#### **Authorization**

(2) An amendment under subsection (1) shall be authorized by a special resolution and an amendment under subsection (1.1) may be authorized by a resolution of the directors. 2004, c. 31, Sched. 8, s. 27 (3).

#### **Additional authorization of amendment under cl. (1) (l)**

(2.1) Subject to section 152, if the amendment is an amendment under clause (1) (l), then, in addition to the confirmation required by subsection (2), the resolution is not effective until it has been confirmed by such additional authorization as may be required by the articles. 1999, c. 12, Sched. I, s. 1 (4).

#### **Additional authorization of amendments under subs. (1), (m) or (n)**

(3) Subject to section 152, if the amendment is an amendment under clause (1) (m) or (n), then, in addition to the confirmation required by subsection (2), the resolution is not effective until it has been confirmed in writing by 60 per cent of the members. R.S.O. 1990, c. C.35, s. 151 (3); 1999, c. 12, Sched. I, s. 1 (5).

#### **Additional authorization, preference shares**

- (4) The rules set out in subsection (4.1) apply,
  - (a) if the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class or series of preference shares; or
  - (b) if the amendment is to create preference shares ranking in any respect in priority to, or in parity with, any class or series of preference shares, other than a series authorized by section 27.1. 2004, c. 31, Sched. 8, s. 27 (4).

#### **Same**

- (4.1) The following rules apply in the circumstances described in subsection (4):
  1. In addition to the confirmation required by subsection (2), the special resolution is not effective until it has been confirmed,
    - i. by at least two-thirds of the votes cast at a meeting of the holders of the affected class, classes or series of shares, duly called for the purpose, or by such greater proportion of the votes cast as the articles may provide, and
    - ii. by such additional authorization as the articles may provide.
  2. The holders of a series of shares of a class are entitled to vote separately only if the series is affected by the amendment in a manner that is different from other shares of the same class. 2004, c. 31, Sched. 8, s. 27 (4).

#### **Non-profit housing co-operatives**

(5) A non-profit housing co-operative may not amend its articles to do anything described in clause (1) (l), (m) or (n) or amend its articles so that the co-operative is no longer a non-profit housing co-operative as defined in subsection 1 (1) and no attempt to do so is effective. 1992, c. 19, s. 20.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 20 - 24/08/1992; 1999, c. 12, Sched. I, s. 1 (4-7) - 22/12/1999

2004, c. 31, Sched. 8, s. 27 (1-4) - 31/08/2007

2017, c. 20, Sched. 8, s. 77 (2) - 19/10/2021

### **Preference shareholders' right to dissent**

**151.1** (1) If a co-operative resolves to,

- (a) amend its articles in a manner referred to in subsection 151 (4); or
- (b) amalgamate with another co-operative under sections 156 and 157,

a holder of preference shares of any class or series entitled to vote on the confirmation of the resolution may dissent. 1999, c. 12, Sched. I, s. 1 (7); 2004, c. 31, Sched. 8, s. 28.

### **Right to be paid fair value of shares**

(2) In addition to any other right the shareholder may have, but subject to subsection (15), a shareholder who complies with this section is entitled, when the action approved by the resolution from which the shareholder dissents becomes effective, to be paid by the co-operative the fair value of the preference shares held by the shareholder in respect of which the shareholder dissents, determined as of the close of business on the day before the resolution was adopted. 1999, c. 12, Sched. I, s. 1 (7).

### **No partial dissent**

(3) A dissenting shareholder may only claim under this section with respect to all the preference shares of a class held by the dissenting shareholder. 1999, c. 12, Sched. I, s. 1 (7).

### **Written objection by shareholder**

(4) A dissenting shareholder shall send to the co-operative, at or before any meeting of shareholders at which the confirmation of a resolution referred to in subsection (1) is to be voted on, a written objection to the resolution, unless the co-operative did not give notice to the shareholder of the purpose of the meeting or of the shareholder's right to dissent. 1999, c. 12, Sched. I, s. 1 (7).

### **Notice of adoption of resolution to dissenting shareholders**

(5) The co-operative shall, within 10 days after the shareholders confirm the resolution, send to each shareholder who has filed the objection referred to in subsection (4) notice that the resolution has been confirmed, but such notice is not required to be sent to any shareholder who voted for the confirmation of the resolution or who has withdrawn the objection. 1999, c. 12, Sched. I, s. 1 (7).

### **Same**

(6) A notice sent under subsection (5) shall set out the rights of the dissenting shareholder and the procedures to be followed to exercise those rights. 1999, c. 12, Sched. I, s. 1 (7).

### **Demand for payment of fair value**

(7) A dissenting shareholder entitled to receive notice under subsection (5) shall, within 20 days after receiving such notice, or, if the shareholder does not receive such notice, within 20 days after learning that the resolution has been confirmed, send to the co-operative a written notice containing,

- (a) the shareholder's name and address;
- (b) the number and class of preference shares in respect of which the shareholder dissents; and
- (c) a demand for payment of the fair value of such shares. 1999, c. 12, Sched. I, s. 1 (7).

### **Offer to pay**

(8) A co-operative shall, not later than seven days after the later of the day on which the action approved by the resolution is effective or the day the co-operative received the notice referred to in subsection (7), send to each dissenting shareholder who has sent such notice,

- (a) a written offer to pay for the dissenting shareholder's preference shares in an amount considered by the directors of the co-operative to be the fair value thereof, accompanied by a statement showing how the fair value was determined; or
- (b) if subsection (15) applies, a notification that it is unable lawfully to pay dissenting shareholders for their preference shares. 1999, c. 12, Sched. I, s. 1 (7).

### **Same**

(9) Every offer made under subsection (8) for shares of the same class shall be on the same terms. 1999, c. 12, Sched. I, s. 1 (7).

### **Payment to shareholder**

(10) Subject to subsection (15), a co-operative shall pay for the preference shares of a dissenting shareholder within 10 days after an offer made under subsection (8) has been accepted, but any such offer lapses if the co-operative does not receive an acceptance within 30 days after the offer has been made. 1999, c. 12, Sched. I, s. 1 (7).

### **Determination of fair value by arbitrator**

(11) Where a co-operative fails to make an offer under subsection (8) or if a dissenting shareholder fails to accept an offer, the fair value for the shares of any such dissenting shareholder shall be determined by arbitration by one person chosen by both the co-operative and the affected dissenting shareholders. 1999, c. 12, Sched. I, s. 1 (7).

### **Panel of arbitrators**

(12) If the co-operative and the affected dissenting shareholders cannot agree on a single arbitrator, the arbitration shall be by a panel of three persons. 1999, c. 12, Sched. I, s. 1 (7).

### **Same**

(13) An arbitration panel shall be comprised of one person nominated by the co-operative, one person nominated by the affected dissenting shareholders and one person selected by the two nominees. 1999, c. 12, Sched. I, s. 1 (7).

### **Arbitration Act, 1991 applies**

(14) The *Arbitration Act, 1991* applies, with necessary modifications, to arbitrations under this section. 1999, c. 12, Sched. I, s. 1 (7).

### **Where co-operative unable to pay**

(15) A co-operative shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that,

- (a) the co-operative is, or after the payment would be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the co-operative's assets would thereby be less than the aggregate of its liabilities. 1999, c. 12, Sched. I, s. 1 (7).

### **Definition of "fair value"**

(16) In this section,

"fair value" means the price that a buyer would pay to a seller, both acting prudently, knowledgeably and willingly, in an arm's length transaction in an open market under conditions requisite to a fair sale. 1999, c. 12, Sched. I, s. 1 (7).

### **Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. I, s. 1 (7) - 10/10/1997

2004, c. 31, Sched. 8, s. 28 - 31/08/2007

### **Conversion of co-operative to corporation**

**152** (1) Despite subsection 151 (3), where a co-operative is no longer able to conduct its business and affairs on a co-operative basis by reason of the provisions of an Act of the Legislature or of the Parliament of Canada, the co-operative may apply to the Minister for a certificate of amendment converting the co-operative to a corporation to which the *Business Corporations Act* applies and, where necessary for the purpose, changing the co-operative into a corporation with share capital.

### **Authorization**

(2) An application under subsection (1) shall be authorized by special resolution. R.S.O. 1990, c. C.35, s. 152.

### **Articles of amendment**

**153** (1) For the purpose of bringing an amendment to the articles into effect, the co-operative shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in a form approved by the Minister and setting out,

- (a) the name of the co-operative;

- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 151 (2), (3) and (4); and
- (d) the date of the confirmation of the resolution by the members. R.S.O. 1990, c. C.35, s. 153 (1); 1997, c. 19, s. 3 (7); 1999, c. 12, Sched. I, s. 1 (8); 2017, c. 34, Sched. 9, s. 11.

**Change of name**

(2) Where the articles of amendment are to change the name of the co-operative, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent.

**Decrease of capital**

(3) Where the articles of amendment are to decrease the authorized capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent and that the decrease will not render the co-operative insolvent, and, if required by the Minister, by evidence that establishes to the satisfaction of the Minister that no creditors object to the amendment.

***Pro forma* balance sheet**

(4) Where the articles of amendment are to make any change in the authorized capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change. R.S.O. 1990, c. C.35, s. 153 (2-4).

**Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (7) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (8) - 22/12/1999

2017, c. 34, Sched. 9, s. 11 - 29/10/2018

**Certificate of amendment**

**154** (1) If the articles of amendment conform to law, the Minister shall, when all fees established by the Minister have been paid,

- (a) endorse on each duplicate of the articles of amendment the words “Filed/déposé” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in the Minister’s office; and
- (c) issue to the co-operative or its agent a certificate of amendment to which the Minister shall affix the other duplicate. R.S.O. 1990, c. C.35, s. 154 (1); 1997, c. 19, s. 3 (8).

**Effect of certificate**

(2) The amendment becomes effective upon the date set forth in the certificate of amendment and the articles of incorporation are amended accordingly. R.S.O. 1990, c. C.35, s. 154 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (8) - 10/10/1997

RESTATEMENT OF ARTICLES

**Restatement of articles**

**155** (1) A co-operative may at any time restate its articles of incorporation as theretofore amended. R.S.O. 1990, c. C.35, s. 155 (1).

**Filing of restatement**

(2) For the purposes of bringing the restated articles into effect, the co-operative shall deliver to the Minister the restated articles in a form approved by the Minister and setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended. R.S.O. 1990, c. C.35, s. 155 (2); 1997, c. 19, s. 3 (9); 1999, c. 12, Sched. I, s. 1 (9); 2017, c. 34, Sched. 9, s. 12.

### **Certificate of restatement**

(3) If the restated articles of incorporation conform to law, the Minister shall, when all fees established by the Minister have been paid,

- (a) endorse on each duplicate of the restated articles the words “Filed/déposé” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in the Minister’s office; and
- (c) issue to the co-operative or its agent a restated certificate of incorporation to which the Minister shall affix the other duplicate. R.S.O. 1990, c. C.35, s. 155 (3); 1997, c. 19, s. 3 (10).

### **Effect of certificate**

(4) The restated articles of incorporation become effective upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto. R.S.O. 1990, c. C.35, s. 155 (4).

### **Where special Act ceases to apply**

(5) Where a certificate of restatement is issued to a co-operative incorporated by special Act, the co-operative is continued as if it had been incorporated under this Act and the special Act ceases to apply to the co-operative. R.S.O. 1990, c. C.35, s. 155 (5).

### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (9, 10) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (9) - 22/12/1999

2017, c. 34, Sched. 9, s. 12 - 29/10/2018

## **AMALGAMATIONS AND CONTINUATIONS**

### **Amalgamation**

**156** (1) Any two or more co-operatives may amalgamate and continue as one co-operative. R.S.O. 1990, c. C.35, s. 156 (1).

### **Agreement**

(2) The co-operatives proposing to amalgamate shall enter into an agreement for the amalgamation, prescribing the terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, as may be applicable,

- (a) the name of the amalgamated co-operative;
- (b) the objects of the amalgamated co-operative;
- (c) the place in Ontario where the head office of the amalgamated co-operative is to be located, giving the municipality and the upper-tier municipality or, where the head office is to be located in territory without municipal organization, the geographic township and district, and the address giving the street and number, if any;
- (d) the authorized capital of the amalgamated co-operative, the classes and series, if any, of shares into which it is to be divided, the number of shares of each class and series and the par value of each share;
- (e) if there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to them and to each series, in so far as they have been fixed by the directors;
- (f) the restrictions, if any, to be placed on the transfer of member loans or of its shares or any class thereof of the amalgamated co-operative;
- (g) the authorized loan capital of the amalgamated co-operative;
- (h) the amount of membership fee and the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership in the amalgamated co-operative;
- (i) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated co-operative;
- (j) the time and manner of election of the subsequent directors of the amalgamated co-operative;
- (k) whether or not the by-laws of the amalgamated co-operative are to be those of one of the amalgamating co-operatives and, if not, a copy of the proposed by-laws of the amalgamated co-operative;

- (l) the manner in which the issued shares of each of the amalgamating co-operatives are to be converted into issued shares of the amalgamated co-operative;
- (m) the manner of conversion of the loan and share capital, as the case may be, of the amalgamating co-operatives into the loan and share capital, as the case may be, of the amalgamated co-operative;
- (n) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated co-operative. R.S.O. 1990, c. C.35, s. 156 (2); 2002, c. 17, Sched. F, Table; 2004, c. 31, Sched. 8, s. 29 (1).

#### **Shares of amalgamating co-operative held by another**

(3) Where shares of one of the amalgamating co-operatives are held by or on behalf of another of the amalgamating co-operatives, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated co-operative. R.S.O. 1990, c. C.35, s. 156 (3).

#### **Treatment of patronage loans**

(4) The member or patronage loans, if any, of the amalgamating co-operatives shall represent liabilities of the amalgamated co-operative. R.S.O. 1990, c. C.35, s. 156 (4).

#### **Approval of agreement**

(5) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating co-operatives. R.S.O. 1990, c. C.35, s. 156 (5).

#### **Approval by holders of preference shares**

(6) An amalgamation agreement is not effective until it has been confirmed in the manner provided in subsections 151 (4) and (4.1), with necessary modifications, in addition to the approval required by subsection (5), if carrying out the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class or series of preference shares of any of the amalgamating co-operatives or in the creation of preference shares of the amalgamated co-operative ranking in any respect in priority to, or in parity with, any existing class or series of preference shares of any of the amalgamating co-operatives. 2004, c. 31, Sched. 8, s. 29 (2).

#### **Non-profit housing co-operatives**

(7) Despite subsection (1), a non-profit housing co-operative may not amalgamate except in accordance with subsection (8). 1992, c. 19, s. 21.

#### **Idem**

- (8) A non-profit housing co-operative may amalgamate with another non-profit housing co-operative but only if,
  - (a) each co-operative has been a non-profit housing co-operative either since it came into existence or since the 2nd day of October, 1992; and
  - (b) the co-operatives are continued after the amalgamation as a non-profit housing co-operative. 1992, c. 19, s. 21.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 21 - 24/08/1992

2002, c. 17, Sched. F, Table - 1/01/2003

2004, c. 31, Sched. 8, s. 29 (1, 2) - 31/08/2007

#### **Filing of articles of amalgamation**

**157** (1) For the purpose of bringing an amalgamation into effect, the amalgamating co-operatives shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in a form approved by the Minister and setting out,

- (a) the names of each of the amalgamating co-operatives;
- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 156; and

- (d) the dates on which the amalgamation agreement was approved by the members of each of the amalgamating co-operatives. R.S.O. 1990, c. C.35, s. 157 (1); 1997, c. 19, s. 3 (11); 1999, c. 12, Sched. I, s. 1 (10); 2017, c. 34, Sched. 9, s. 13.

#### **Evidence of solvency**

- (2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating co-operatives is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation. R.S.O. 1990, c. C.35, s. 157 (2).

#### **Issuance of certificate of amalgamation**

- (3) If the articles of amalgamation conform to law, the Minister shall, when all fees established by the Minister have been paid,
- (a) endorse on each duplicate of the articles the words “Filed/déposé” and the day, month and year of the filing thereof;
  - (b) file one of the duplicates in the Minister’s office; and
  - (c) issue to the amalgamated co-operative or its agent a certificate of amalgamation to which the Minister shall affix the other duplicate. R.S.O. 1990, c. C.35, s. 157 (3); 1997, c. 19, s. 3 (12).

#### **Effect of certificate**

- (4) Upon the date set forth in the certificate of amalgamation,
- (a) the amalgamation becomes effective and the amalgamating co-operatives are amalgamated and continue as one co-operative under the terms and conditions prescribed in the amalgamation agreement;
  - (b) the amalgamated co-operative possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating co-operatives;
  - (c) the issued capital of the amalgamated co-operative is, subject to the decrease provided for in subsection 156 (3), equal to the aggregate of the issued capital of each of the amalgamating co-operatives immediately before the amalgamation becomes effective; and
  - (d) the articles of incorporation of each of the amalgamating co-operatives are amended to the extent necessary to give effect to the terms and conditions of the amalgamation agreement. R.S.O. 1990, c. C.35, s. 157 (4).

#### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (11, 12) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (10) - 22/12/1999

2017, c. 34, Sched. 9, s. 13 - 29/10/2018

#### **Certificate of continuance**

**158** (1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate of continuance continuing it as if it had been incorporated under this Act. 1997, c. 19, s. 3 (13).

#### **Same**

- (2) Articles of continuance in a form approved by the Minister shall be sent to the Minister. 1997, c. 19, s. 3 (13); 1999, c. 12, Sched. I, s. 1 (11); 2017, c. 34, Sched. 9, s. 14.

#### **Amendments to original articles**

- (3) The articles of continuance shall make any amendments to the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which the corporation was incorporated and any amendments necessary to make the articles of continuance conform to the laws of Ontario, and may make such other amendments as would be permitted under this Act if the corporation were incorporated under the laws of Ontario, provided that at least the same level of approval has been obtained for such other amendments as would have been required if the corporation were incorporated under the laws of Ontario. 1997, c. 19, s. 3 (13).

#### **Certificate of continuance**

- (4) Upon receipt of articles of continuance, the Minister may issue a certificate of continuance, on such terms and subject to such limitations and conditions as the Minister considers proper. 1997, c. 19, s. 3 (13).

#### **Section Amendments with date in force (d/m/y)**



1997, c. 19, s. 3 (13) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (11) - 22/12/1999

2017, c. 34, Sched. 9, s. 14 - 29/10/2018

### **Continuation of corporations incorporated under other Acts**

**158.1** (1) A corporation incorporated under the *Business Corporations Act*, the *Corporations Act*, the *Not-for-Profit Corporations Act, 2010* or a predecessor of any of these Acts may apply to the Minister for a certificate of continuance continuing it as if it had been incorporated under this Act if the application meets the requirements set out in the Act that governs the corporation's corporate status. 2017, c. 20, Sched. 8, s. 77 (3).

#### **Same**

(2) Articles of continuance in a form approved by the Minister shall be sent to the Minister. 1997, c. 19, s. 3 (14); 1999, c. 12, Sched. I, s. 1 (12); 2017, c. 34, Sched. 9, s. 15.

### **Amendments to original articles**

(3) The articles of continuance shall make any amendments to the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which the corporation was incorporated and any amendments necessary to make the articles of continuance conform to this Act, and may make such other amendments as would be permitted under this Act if the corporation were incorporated under this Act, provided that at least the same level of approval has been obtained for such other amendments as would have been required if the corporation were incorporated under this Act. 1997, c. 19, s. 3 (14).

### **Endorsement of certificate of continuance**

(4) Upon receipt of articles of continuance, the Minister may issue a certificate of continuance, on such terms and subject to such limitations and conditions as the Minister considers proper. 1997, c. 19, s. 3 (14).

### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (14) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (12) - 22/12/1999

2017, c. 20, Sched. 8, s. 77 (3) - 19/10/2021; 2017, c. 34, Sched. 9, s. 15 - 29/10/2018

### **Effect of certificate of continuance**

**158.2** (1) Articles of continuance become effective on the date set out in the certificate of continuance, and upon that date,

- (a) the corporation becomes a co-operative to which this Act applies as if it had been incorporated under this Act;
- (b) the articles of continuance are deemed to be the articles of incorporation of the continued co-operative; and
- (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued co-operative.

#### **Same**

(2) Where a corporation is continued as a co-operative under this Act,

- (a) the co-operative possesses all the property, rights, privileges and franchises and is subject to all the liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the corporation;
- (b) a conviction against, or ruling, order or judgment in favour of or against, the corporation may be enforced by or against the co-operative; and
- (c) the co-operative shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against the corporation. 1997, c. 19, s. 3 (14).

### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (14) - 10/10/1997

### **Transfer of Ontario co-operative**

**159** (1) A co-operative may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the co-operative as if it had been incorporated under the laws of that other jurisdiction.

#### **Notice**

(2) This Act ceases to apply to the co-operative on and after the date on which the co-operative is continued under the laws of the other jurisdiction and the co-operative shall file with the Minister a copy of the instrument of continuation certified by the proper officer of the other jurisdiction authorized to certify such documents.

### **Application**

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario. R.S.O. 1990, c. C.35, s. 159.

### **Non-profit housing co-operative**

(4) This section does not apply with respect to non-profit housing co-operatives. 1992, c. 19, s. 22.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 22 - 24/08/1992

### **Rights of creditors preserved**

**160** All rights of creditors against the property, rights and assets of a co-operative amalgamated under section 156 or continued under section 158 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the co-operative thenceforth attach to the amalgamated or continued co-operative and may be enforced against it. R.S.O. 1990, c. C.35, s. 160.

## **DISSOLUTION**

### **Winding up**

**161** Sections 190 to 236, except section 221, of the *Business Corporations Act* apply with necessary modifications to co-operatives, and for the purpose a reference therein to a corporation shall be deemed to be a reference to a co-operative and a reference therein to a shareholder shall be deemed to be a reference to a member. R.S.O. 1990, c. C.35, s. 161.

### **Distribution of property**

**162** (1) On any distribution of the property of a co-operative, member loans and patronage returns that are lent to the co-operative rank after the ordinary debts. R.S.O. 1990, c. C.35, s. 162 (1).

### **Distribution of property upon dissolution**

(2) The articles or by-laws of a co-operative may provide that upon the dissolution of the co-operative and after the payment of all debts and liabilities, including any dividends declared and not paid, and the purchase for cancellation or redemption of all outstanding shares, the remaining property of the co-operative or any part of it may be distributed or disposed of,

- (a) equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member;
- (b) among the members at the time of dissolution on the basis of patronage returns accrued to the members during the five fiscal years immediately preceding the dissolution or after the date of incorporation; or
- (c) to one or more co-operatives or charitable organizations.

### **Price for membership shares**

(2.1) The price for purchase for cancellation or redemption of membership shares shall not exceed the par value of the shares.

### **Price for preference shares**

(2.2) The price for purchase for cancellation or redemption of preference shares shall not exceed the par value together with any premium and cumulative dividends that are due but not declared. 1994, c. 17, s. 28.

### **Distribution if articles or by-laws silent**

(3) In the absence of any provisions in the articles or by-laws permitted by subsection (2), upon the dissolution of the co-operative, the whole of its remaining property shall be distributed equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member. R.S.O. 1990, c. C.35, s. 162 (3).

### **Section Amendments with date in force (d/m/y)**

1994, c. 17, s. 28 - 23/06/1994

### **Voluntary dissolution**

**163** A co-operative may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the members of the co-operative duly called for the purpose or by such other proportion of the votes cast as the articles provide, but such other proportion shall not be less than 50 per cent of all the members entitled to vote at the meeting;

- (b) the consent in writing of all the members entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives at any time within two years after the date set forth in its certificate of incorporation where the co-operative has not commenced business and has not issued any shares or received any membership fees or loans. R.S.O. 1990, c. C.35, s. 163.

#### **Articles of dissolution**

**164** (1) For the purpose of bringing the dissolution authorized under clause 163 (a) or (b) into effect, the co-operative shall deliver to the Minister articles of dissolution in a form approved by the Minister, and setting out,

- (a) the name of the co-operative;
- (b) that its dissolution has been duly authorized under clause 163 (a) or (b);
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection (3) or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its members or that it has distributed its remaining property in accordance with section 162 or in accordance with subsection (4) where applicable; and
- (e) that there are no proceedings pending in any court against it.
- (f) REPEALED: 2019, c. 15, Sched. 8, s. 12 (1).

R.S.O. 1990, c. C.35, s. 164 (1); 1997, c. 19, s. 3 (15); 1999, c. 12, Sched. I, s. 1 (13); 2017, c. 34, Sched. 9, s. 16; 2019, c. 15, Sched. 8, s. 12 (1).

#### **Articles of dissolution where co-operative never active**

(2) For the purpose of bringing a dissolution authorized under clause 163 (c) into effect, the co-operative shall deliver to the Minister articles of dissolution in a form approved by the Minister and setting out,

- (a) the name of the co-operative;
- (b) the date set forth in its certificate of incorporation;
- (c) that the co-operative has not commenced business;
- (d) that none of its shares has been issued;
- (e) that no membership fees or loans have been received;
- (f) that dissolution has been duly authorized under clause 163 (c);
- (g) that it has no debts, obligations or liabilities;
- (h) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto; and
- (i) that there are no proceedings pending in any court against it.
- (j) REPEALED: 2019, c. 15, Sched. 8, s. 12 (2).

R.S.O. 1990, c. C.35, s. 164 (2); 1997, c. 19, s. 3 (16); 2019, c. 15, Sched. 8, s. 12 (2).

#### **Where creditor unknown**

(3) Where a co-operative authorizes its dissolution and a creditor is unknown or the creditor's whereabouts is unknown, the co-operative may, by agreement with the Public Guardian and Trustee, pay to the Public Guardian and Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause (1) (c). R.S.O. 1990, c. C.35, s. 164 (3).

#### **Where member or shareholder unknown**

(4) Where a co-operative authorizes its dissolution and a member is unknown or the member's whereabouts is unknown, it may, by agreement with the Public Guardian and Trustee, deliver or convey the member's share of the property to the Public Guardian and Trustee to be held in trust for the member, and such delivery or conveyance shall be deemed to be a distribution to that member for the purposes of the dissolution. R.S.O. 1990, c. C.35, s. 164 (4).

### **Power to convert**

(5) If the property delivered or conveyed to the Public Guardian and Trustee under subsection (4) is in a form other than cash, the Public Guardian and Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash. R.S.O. 1990, c. C.35, s. 164 (5).

### **Payment to person entitled**

(6) If the amount paid under subsection (3) or the property delivered or conveyed under subsection (4) or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to that person, but, if not so claimed, it vests in the Public Guardian and Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes that person's right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Guardian and Trustee shall be paid to that person. R.S.O. 1990, c. C.35, s. 164 (6).

### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (15, 16) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (13) - 22/12/1999

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2017, c. 34, Sched. 9, s. 16 - 29/10/2018

2019, c. 15, Sched. 8, s. 12 (1, 2) - 09/03/2020

### **Certificate of dissolution**

**165** (1) If the articles of dissolution conform to law, the Minister shall, when all fees established by the Minister and all taxes payable by the co-operative to the Minister of Finance have been paid,

- (a) endorse on each duplicate of the articles of dissolution the words "Filed/déposé" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in the Minister's office; and
- (c) issue to the co-operative or its agent a certificate of dissolution to which the Minister shall affix the other duplicate. R.S.O. 1990, c. C.35, s. 165 (1); 1997, c. 19, s. 3 (17).

### **Effect of certificate**

(2) The dissolution becomes effective and the co-operative is dissolved upon the date set forth in the certificate of dissolution. R.S.O. 1990, c. C.35, s. 165 (2).

### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (17) - 10/10/1997

### **Cancellation of certificate, etc.**

**166** (1) If sufficient cause is shown to the Minister, the Minister may, after giving the co-operative an opportunity to be heard, decide that an order cancelling a certificate of incorporation or any other certificate will be issued. 2017, c. 34, Sched. 9, s. 17.

### **Order**

(2) If a decision to issue an order has been made, the Minister shall issue the order cancelling the certificate on such terms and conditions as the Minister thinks fit, and,

- (a) in the case of the cancellation of a certificate of incorporation, the co-operative is dissolved upon the date fixed in the order; and
- (b) in the case of the cancellation of any other certificate, the matter that became effective on the issuance of the certificate ceases to be in effect from the date fixed in the order. 2017, c. 34, Sched. 9, s. 17.

### **Section Amendments with date in force (d/m/y)**

2017, c. 34, Sched. 9, s. 17 - 29/10/2018

### **Notice of dissolution**

**167** (1) Where a co-operative is in default in filing an annual return or financial statement for a period of two years, the Minister may give notice, by registered mail to the co-operative or by publication once in *The Ontario Gazette*, that an order

dissolving the co-operative will be issued unless the co-operative files the annual return or financial statement within one year after the giving of the notice. R.S.O. 1990, c. C.35, s. 167 (1).

#### **Dissolution for default**

(2) Upon default in compliance with the notice given under subsection (1), the Minister may decide that an order cancelling the certificate of incorporation will be issued. 2017, c. 34, Sched. 9, s. 18.

#### **Order**

(2.1) If a decision has been made to issue an order, the Minister shall issue the order cancelling the certificate of incorporation and, subject to subsection (3), the co-operative is dissolved on the date fixed in the order. 2017, c. 34, Sched. 9, s. 18.

#### **Revival**

(3) Where a co-operative is dissolved under subsection (2), the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in the Minister's discretion by order, on such terms and conditions as he or she sees fit to impose, revive the co-operative, and thereupon the co-operative, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved. R.S.O. 1990, c. C.35, s. 167 (3).

#### **Section Amendments with date in force (d/m/y)**

2017, c. 34, Sched. 9, s. 18 - 29/10/2018

#### **Suits after dissolution**

**168** (1) Despite the dissolution of a co-operative under section 165, 166 or 167,

- (a) any action, suit or other proceeding commenced by or against the co-operative before its dissolution may be proceeded with as if the co-operative had not been dissolved;
- (b) any action, suit or other proceeding may be brought against the co-operative after its dissolution as if the co-operative had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment, order or other decision if the co-operative had not been dissolved remains available for such purpose. R.S.O. 1990, c. C.35, s. 168 (1); 2002, c. 24, Sched. B, s. 30 (5).

#### **Service after dissolution**

(2) For the purposes of this section, the service of any process on a co-operative after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Ministry as being a director or officer of the co-operative before the dissolution. R.S.O. 1990, c. C.35, s. 168 (2).

#### **Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 30 (5) - 1/01/2004

#### **Availability of co-operative's property to satisfy judgments**

**168.1** (1) Despite clause 168 (1) (c), this section applies if, as a result of the dissolution of a co-operative, property becomes forfeited corporate property within the meaning of the Forfeited Corporate Property Act, 2015. 2020, c. 34, Sched. 6, s. 11.

#### **Same, property to which *Forfeited Corporate Property Act, 2015* applies**

(2) Property described in subsection (1) to which the *Forfeited Corporate Property Act, 2015* applies is no longer available to satisfy a judgment, order or decision against the co-operative or to be sold in power of sale proceedings after the earliest of,

- (a) the day the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* disposes of the Crown's interest in the property;
- (b) the day an order cancelling encumbrances against the property under section 18 of the *Forfeited Corporate Property Act, 2015* takes effect;
- (c) in the case of real property, the day a notice under section 24 of the *Forfeited Corporate Property Act, 2015*, indicating that the Crown intends to use the property for Crown purposes, is registered on title to the property; and

(d) in the case of personal property, the day the Crown begins to use the property for Crown purposes. 2020, c. 34, Sched. 6, s. 11.

**Same, property to which *Escheats Act, 2015* applies**

(3) Property described in subsection (1) to which the *Escheats Act, 2015* applies is no longer available to satisfy a judgment, order or decision against the co-operative or to be sold in power of sale proceedings after the earliest of,

- (a) the day the Public Guardian and Trustee takes possession of the property;
- (b) the day the Public Guardian and Trustee disposes of the Crown's interest in the property; and
- (c) the day the Crown begins to use the property for Crown purposes. 2020, c. 34, Sched. 6, s. 11.

**Section Amendments with date in force (d/m/y)**

2020, c. 34, Sched. 6, s. 11 - 01/01/2021

**Liability of members to creditors**

**169** (1) Despite the dissolution of a co-operative, each of the members among whom its property has been distributed remains liable to its creditors to the extent of the amount received by the member upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against the member. R.S.O. 1990, c. C.35, s. 169 (1); 2002, c. 24, Sched. B, s. 30 (6).

**Action against one member as representing class**

(2) Where there are numerous members, the court referred to in subsection (1) may permit an action to be brought against one or more members as representatives of the class and, if the plaintiff establishes the plaintiff's claim as creditor, may make an order of reference and add as parties in the referee's office all such members as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. R.S.O. 1990, c. C.35, s. 169 (2).

**Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 30 (6) - 1/01/2004

**Forfeiture of undisposed property**

**170** Subject to section 168, any real or personal property of a co-operative that has not been disposed of at the date of its dissolution is forfeit to the Crown. R.S.O. 1990, c. C.35, s. 170.

**Annual return**

**171** On the day the co-operative sends or is required to send, whichever is earlier, a copy of its financial statement to its members under subsection 140 (1), the co-operative shall also file an annual return in a form approved by the Minister. 2019, c. 15, Sched. 8, s. 13.

**Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 41 (3) - 1/07/1998

2017, c. 34, Sched. 9, s. 19 - 29/10/2018

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

2019, c. 15, Sched. 8, s. 13 - 10/12/2019

NON-PROFIT HOUSING CO-OPERATIVES

**Transition — deemed contents of articles — S. O. 1992, c. 19, s. 26**

**171.0.1** (1) The articles of a co-operative to which this section applies are deemed to provide that the co-operative is a non-profit housing co-operative for the purposes of this Act. 1992, c. 19, s. 26 (1)

**Publicly assisted housing co-operatives**

(2) This section applies with respect to a co-operative within the meaning of this Act if,

- (a) an object of the co-operative is to provide housing to its members; and
- (b) the co-operative has received financial assistance, related to housing, from the Government of Canada or Ontario, a municipality or a regional, district or metropolitan municipality or an agency of any of them. 1992, c. 19, s. 26 (2)

### **Exception for equity co-operatives**

(3) This section does not apply to a co-operative the articles of which provide that, on the dissolution of the co-operative and after the payment of its debts and liabilities, the remaining property of the co-operative be transferred to or distributed among the members. 1992, c. 19, s. 26 (3)

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 26 - 24/08/1992

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### **Non-profit housing co-operatives cannot be converted**

**171.1** (1) A non-profit housing co-operative cannot be converted into or continued as any other kind of co-operative or corporation and no attempt to do so is effective.

#### **Idem**

(2) Section 143 does not apply with respect to non-profit housing co-operatives. 1992, c. 19, s. 23.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

### **Restrictions on payments, etc., to members**

**171.2** (1) A non-profit housing co-operative shall not distribute or pay any of its property to its members during its existence or on its dissolution.

#### **Exceptions**

(2) Despite subsection (1), a non-profit housing co-operative may pay a member,

- (a) amounts owed to the member including patronage returns and interest on a member loan or any other loan from the member at a rate not exceeding the prescribed maximum annual percentage; or
- (b) reasonable amounts for goods or services provided by the member. 1992, c. 19, s. 23.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

### **Compensation relating to member unit**

**171.3** (1) No person shall accept compensation for the withdrawal of membership by a member of a non-profit housing co-operative or for the giving up of possession of a member unit by such a member other than,

- (a) compensation for amounts owed to the member by the co-operative; or
- (b) compensation for furnishings or improvements made by the member if the compensation is reasonable and is approved by the board of directors.

### **Compensation from other users**

(2) No person shall accept, in connection with the use of part of a member unit by another person, compensation that exceeds the amount that, having regard to the latter person's use of the housing unit, would be a reasonable share of the housing charges relating to the unit.

#### **Idem**

(3) No person shall accept, in connection with the use of a member unit, compensation that exceeds the housing charges relating to the unit.

### **Excess owed to co-operative**

(4) A person who accepts compensation in contravention of this section shall pay the co-operative an amount equal to the value of the compensation or the excess compensation and that amount is a debt the co-operative may recover in a civil proceeding. 1992, c. 19, s. 23.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

### **Rights to occupy member units**

**171.4** (1) Only a member of a non-profit housing co-operative has a right to occupy a member unit of the co-operative and, upon ceasing to be a member, a person ceases to have any occupancy rights.

### **Other persons**

(2) A member who has a right to occupy a member unit may, subject to the co-operative's by-laws, allow other persons to occupy the unit.

### **Other person's rights dependent on member**

(3) A person who has been allowed by a member to occupy a member unit ceases to have any rights with respect to the unit if the member ceases to be a member. 1992, c. 19, s. 23.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

### **Non-member units**

**171.5** (1) The board of directors of a non-profit housing co-operative may designate one or more housing units as non-member units.

### **Revocation of designation**

(2) The board of directors may revoke a designation as a non-member unit, including a designation deemed to have been made under this section, but the designation of an occupied unit may be revoked only if all the occupants who are at least sixteen years old consent.

### **Delegation of power**

(3) A committee of the board of directors consisting of at least two directors may, if authorized by the by-laws, exercise the powers of the board under this section.

### **Newly purchased buildings**

(4) If a non-profit housing co-operative acquires a housing unit that is occupied, the unit shall be deemed to have been designated as a non-member unit.

### **Co-operatives becoming non-profit housing co-operatives**

(5) If, at the time a co-operative becomes a non-profit housing co-operative, a housing unit is occupied but none of the persons occupying the unit is a member, the housing unit shall be deemed to have been designated as a non-member unit.

### **Transitional**

(6) If, when this section comes into force, a housing unit of a non-profit housing co-operative is occupied but none of the persons occupying the unit is a member, the unit shall be deemed to have been designated as a non-member unit. 1992, c. 19, s. 23.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

### **Housing charges**

**171.6** (1) The housing charges of a non-profit housing co-operative shall be established by a resolution of the members.

### **Exception for short term occupancy rights**

(2) Despite subsection (1), the board of directors may, if authorized by the by-laws, establish the housing charges for members of a non-profit co-operative whose occupancy rights are for fixed terms of one year or less.

### **Subsidies**

(3) The board of directors may, subject to the by-laws, establish subsidies for housing charges.

### **Delegation of the board's powers**

(4) A committee of the board of directors or a director, officer or employee of the co-operative may, if authorized by the by-laws, exercise the powers of the board of directors under subsection (2) or (3).

### **Procedure for awarding subsidies**

(5) The procedures for awarding subsidies to individual members must be procedurally fair. 1992, c. 19, s. 23.



#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

#### **Application of landlord and tenant law**

**171.7** (1) The common law relating to landlord and tenant relationships and the *Commercial Tenancies Act* do not apply with respect to the member units of a non-profit housing co-operative. 2013, c. 3, s. 2.

#### **Same**

(1.1) The *Residential Tenancies Act, 2006* does not apply with respect to the member units of a non-profit housing co-operative, except as otherwise provided in this Act or the *Residential Tenancies Act, 2006*. 2013, c. 3, s. 2.

#### **Idem**

(2) A proceeding commenced under the *Commercial Tenancies Act* or the *Residential Tenancies Act, 2006*, by or against a co-operative, may be continued under that Act even if the co-operative becomes a non-profit housing co-operative. 1992, c. 19, s. 23; 1997, c. 24, s. 211 (2); 2006, c. 17, s. 250 (2).

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992; 1997, c. 24, s. 211 (1, 2) - 17/06/1998

2006, c. 17, s. 250 (1, 2) - 31/01/2007

2013, c. 3, s. 2 - 1/06/2014

#### **Termination of membership**

**171.8** (1) If a member of a non-profit housing co-operative does not have occupancy rights, his or her membership may be terminated in accordance with subsection 49 (3) or section 66 but, if the member has occupancy rights, his or her membership or occupancy rights may be terminated only if both are terminated concurrently in accordance with subsection (2). 1992, c. 19, s. 23.

#### **Procedure for terminating membership, etc.**

(2) The following rules apply, instead of subsections 66 (1) to (3), with respect to the termination of the membership and occupancy rights of a member of a non-profit housing co-operative:

1. Membership and occupancy rights may be terminated only by a resolution of the board of directors.
2. Membership and occupancy rights may be terminated only if the member ceases to occupy a member unit or on a ground set out in the by-laws. Membership and occupancy rights may not be terminated on a ground in the by-laws that is unreasonable or arbitrary.
3. The member shall be given written notice that the board of directors will consider terminating the member's membership and occupancy rights. The notice must be given at least ten days before the meeting of the board of directors at which the matter will be considered.
4. The notice must,
  - i. set out the time and, if applicable, place of the board's meeting at which the matter will be considered,
  - i.1 set out instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, if the member may attend the meeting by such means,
  - ii. set out the grounds for the proposed termination,
  - iii. identify the member unit to which the member has occupancy rights,
  - iv. specify the date of the proposed termination,
  - v. advise the member that he or she may appear and make submissions at the board's meeting, and
  - vi. advise the member that he or she may appeal the board's decision to the members if the by-laws provide a right of appeal for a termination on the grounds set out in the notice.
- 4.1 The notice must advise the member that he or she need not vacate the member unit but that, after the termination of the member's membership and occupancy rights, the co-operative may obtain possession of the member unit,
  - i. by obtaining an order of the Landlord and Tenant Board terminating the member's occupancy of the member unit and evicting the member if Part V.1 of the *Residential Tenancies Act, 2006* applies, or

- ii. by obtaining a writ of possession from the court if Part V.1 of the *Residential Tenancies Act, 2006* does not apply.
5. If a meeting is adjourned, no new notice is required if all of the following are announced at the time of an adjournment:
    - i. The time of the continued meeting.
    - ii. If applicable, the place of the continued meeting.
    - iii. If applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting.
  6. The member has a right to appear, either personally or by a person authorized under the *Law Society Act* to represent the member, and to make submissions at the meeting of the board of directors.
  7. In a decision to terminate the member's membership and occupancy rights, the board of directors may specify a date for the termination that is later than the proposed date that was specified in the notice to the member.
  8. The member shall be given written notice of the decision of the board of directors within 10 days after the board's meeting.
- 9.-14. REPEALED: 2013, c. 3, s. 3 (4).

1992, c. 19, s. 23; 2006, c. 21, Sched. C, s. 103 (2); 2013, c. 3, s. 3 (1-4); 2023, c. 9, Sched. 8, s. 20 (1, 2).

**Procedure for appealing termination of membership, etc.**

(3) The following rules apply, instead of subsections 66 (4) and (5), with respect to an appeal by a member of the termination of his or her membership and occupancy rights in a non-profit housing co-operative:

1. If the by-laws provide a right of appeal for a termination on the grounds set out in the notice of termination required by paragraph 3 of subsection (2), the member may appeal the board's decision to the members. The effect of the decision is suspended until the appeal is disposed of or abandoned.
2. To appeal the decision to terminate his or her membership and occupancy rights, a member must give written notice to the co-operative within seven days, or such longer period as the by-laws provide, after the notice of the board's decision has been given to the member under paragraph 8 of subsection (2).
3. The appeal shall be considered at a meeting of the members held at least 14 days after the notice to appeal is received.
4. If the co-operative receives written representations with the member's notice of appeal, the board of directors shall, subject to paragraph 7, ensure that a copy of the representations is given, before the meeting at which the appeal will be considered, to each member entitled to receive notice of the meeting. The distribution of the representations shall be at the co-operative's expense. This paragraph does not apply if the representations exceed 5,000 words.
5. The member has a right to appear, either personally or by a person authorized under the *Law Society Act* to represent the member, and to make submissions at the meeting of the members.
6. The appeal shall be decided by a majority vote of the members and the members may confirm, vary or set aside the board's decision. If no decision is made by the members or if there is no quorum at the meeting or if there is no longer a quorum when the vote is to be taken, the board's decision is deemed to have been confirmed.
7. The board of directors is not bound under paragraph 4 with respect to a member's representations if it clearly appears that the right of the member to have his or her representations distributed is being abused to secure needless publicity for matters that,
  - i. are not related to the appeal, and
  - ii. are not related, in a significant way, to the business or affairs of the co-operative.
8. If the board of directors refuses to distribute copies of a member's representations, the board shall ensure that written notice of its refusal together with written reasons for it are given to the member within 10 days after the representations were received by the co-operative.
9. Upon application by a member whose representations the co-operative has refused to distribute, the court may restrain the holding of the meeting at which the appeal will be considered and may make any further order it thinks fit.

10. The board of directors or any other person aggrieved by the member's representations may apply to the court for an order permitting the board to refuse to distribute the representations and the court, if it is satisfied that paragraph 7 applies, may make any such order it thinks fit.
11. If copies of a member's representations are distributed under paragraph 4, the co-operative, the directors, officers and employees of the co-operative and persons acting on behalf of the co-operative, other than the member who makes the representations, do not incur any liability only by reason of distributing copies of the representations. 2013, c. 3, s. 3 (5).

### **Transition**

(4) For clarity, paragraph 4 of subsection (2), as it read immediately before the day subsection 20 (3) of Schedule 8 to the *Less Red Tape, Stronger Economy Act, 2023* comes into force, continues to apply to a notice that was given before that day in respect of a board meeting to be held on or after that day. 2023, c. 9, Sched. 8, s. 20 (3).

(5)-(8) REPEALED: 2013, c. 3, s. 3 (5).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006; 2006, c. 21, Sched. C, s. 103 (2) - 1/05/2007

2013, c. 3, s. 3 (1-5) - 1/06/2014

2023, c. 9, Sched. 8, s. 20 (1-3) - 01/10/2023

### **Termination by member of membership and occupancy rights**

#### **Withdrawal from membership**

**171.8.1** (1) If a member of a non-profit housing co-operative does not have occupancy rights, the member may withdraw from membership in accordance with section 64 but, if the member has occupancy rights, his or her membership or occupancy rights may be terminated by the member only if both are terminated concurrently in accordance with subsection (2). 2013, c. 3, s. 4.

#### **Procedure for terminating membership, etc.**

(2) The following rules apply with respect to the termination of the membership and occupancy rights of a member of a non-profit housing co-operative who wishes to terminate his or her membership and occupancy rights:

1. The member must give at least 60 days written notice to the co-operative of the member's intention to terminate his or her membership and occupancy rights.
2. The notice must specify the last day of a month as the date of the termination.
3. The member may not withdraw the notice without the consent of the board of directors.
4. Unless the notice is withdrawn with the consent of the board of directors, the member's membership and occupancy rights are terminated on the termination date specified in the notice.
5. If the member does not vacate the member unit on or before the termination date specified in the notice, the co-operative may obtain possession of the member unit by obtaining an order issued by the Landlord and Tenant Board under Part V.1 of the *Residential Tenancies Act, 2006* terminating the member's occupancy of the member unit and evicting the member. 2013, c. 3, s. 4.

#### **Period of notice, termination date end of February or March**

(3) A member who gives notice under this section specifying as the termination date the last day of February or the last day of March in any year is deemed to have given at least 60 days notice of the termination if the notice is given not later than January 1 of that year in respect of a termination date that is the last day of February, or February 1 of that year in respect of a termination date that is the last day of March. 2013, c. 3, s. 4.

#### **Repayment to member on withdrawal**

(4) Subsections 64 (3) to (6) apply with necessary modifications, and subject to section 67, to a termination of membership and occupancy rights under this section. 2013, c. 3, s. 4.

### **Section Amendments with date in force (d/m/y)**

2013, c. 3, s. 4 - 1/06/2014

### **Expired membership, etc., deemed to continue**

**171.9** (1) If the membership and occupancy rights of a member of a non-profit housing co-operative would otherwise expire, the membership and occupancy rights shall, unless the person consents in writing to their expiry, be deemed to continue until they are terminated in accordance with this Act.

### **Grounds required to terminate expired membership, etc.**

(2) Membership and occupancy rights that are deemed to continue under subsection (1) may not be terminated on the ground that their term has expired.

### **Short fixed terms**

(3) If the membership and occupancy rights of a member of a non-profit housing co-operative are for a fixed term of less than one year and the co-operative gives the member written notice, in accordance with subsection (4), of the expiry of the term, the following apply instead of subsection (1):

1. The membership and occupancy rights of the member expire unless the member gives the co-operative written notice, in accordance with paragraph 2, that the member wishes to continue his or her membership and occupancy rights.
2. The notice described in paragraph 1 must be given within thirty days, or such longer period as may be set out in the by-laws, after the notice of the expiry of the term was given by the co-operative.
3. If the member gives the notice described in paragraph 1, the member's membership and occupancy rights are deemed to continue until they are terminated in accordance with this Act and they may not be terminated on the ground that their term has expired.
4. Despite paragraph 3, the co-operative may require the member to move, at the end of the fixed term, to a comparable or superior member unit with comparable housing charges.

### **Idem**

(4) The notice of expiry of the term given by the co-operative must be given at least thirty days, or such longer period as may be set out in the by-laws, before the end of the term. 1992, c. 19, s. 23.

### **If member does not vacate by expiry date**

(5) If the member does not vacate the member unit on or before the expiry date set out in the notice given by the co-operative under subsection (3), the member's membership and occupancy rights nevertheless expire on the expiry date and the co-operative may obtain possession of the member unit by obtaining an order issued by the Landlord and Tenant Board under Part V.1 of the *Residential Tenancies Act, 2006* terminating the member's occupancy of the member unit and evicting the member. 2013, c. 3, s. 5.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2013, c. 3, s. 5 - 1/06/2014

### **Student housing**

#### **Non-application of s. 171.9**

**171.9.1** (1) If a member who is a post-secondary student has membership and occupancy rights for a fixed term of less than one year in a non-profit housing co-operative that provides housing units primarily for post-secondary students, this section applies and section 171.9 does not apply to the member. 2013, c. 3, s. 6.

### **Termination notice**

(2) A member described in subsection (1) may give notice to the co-operative to terminate his or her membership and occupancy rights on a fixed day,

- (a) at the time he or she takes occupancy of the member unit or enters into an occupancy agreement with the co-operative;  
or
- (b) as a condition of taking occupancy of the member unit or entering into an occupancy agreement with the co-operative.  
2013, c. 3, s. 6.

### **Agreement to terminate**

(3) If a member described in subsection (1) enters into an agreement, at the time he or she takes occupancy of the member unit or enters into an occupancy agreement with the co-operative or as a condition of taking occupancy or entering into an

occupancy agreement with the co-operative, to terminate his or her membership and occupancy rights on a fixed day, he or she is deemed to have given the notice described in subsection (2). 2013, c. 3, s. 6.

#### **If student does not vacate by termination date**

(4) If the member does not vacate the member unit on or before the termination date set out in the notice described in subsection (2) or (3), the member's membership and occupancy rights nevertheless terminate on the termination date and the co-operative may obtain possession of the member unit by obtaining an order issued by the Landlord and Tenant Board under Part V.1 of the *Residential Tenancies Act, 2006* terminating the member's occupancy of the member unit and evicting the member. 2013, c. 3, s. 6.

#### **Section Amendments with date in force (d/m/y)**

2013, c. 3, s. 6 - 1/06/2014

#### **Compensation if member unit not vacated**

**171.10** A non-profit housing co-operative is entitled to compensation for the use and occupation of a member unit by a member who does not vacate the member unit after his or her membership and occupancy rights are terminated or expire. 2013, c. 3, s. 7.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2013, c. 3, s. 7 - 1/06/2014

#### **Effect of acceptance of arrears**

**171.11** The acceptance by a non-profit housing co-operative of arrears of housing charges or compensation for occupation of a member unit does not operate as a waiver of any right the co-operative has, or any step the co-operative has taken, to terminate a person's membership and occupancy rights or to take possession of the unit. 1992, c. 19, s. 23.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

#### **Repossession of a member unit**

**171.12** (1) Unless a member unit is vacant, a non-profit housing co-operative may obtain possession of the member unit only after the member's membership and occupancy rights are terminated under section 171.8, 171.8.1 or 171.9.1 or expire under section 171.9, and only by one of the following means:

1. If Part V.1 of the *Residential Tenancies Act, 2006* applies, by obtaining an order issued by the Landlord and Tenant Board terminating the member's occupancy of the member unit and evicting the member, in accordance with that Act.
2. If Part V.1 of the *Residential Tenancies Act, 2006* does not apply, by obtaining a writ of possession from the court under this Act. 2013, c. 3, s. 8.

#### **Timing of service of notice of termination**

(2) If Part V.1 of the *Residential Tenancies Act, 2006* applies in respect of a termination of a member's membership and occupancy rights under section 171.8 of this Act, the co-operative shall not serve a notice of termination on the member under that Part until,

- (a) the expiry of the appeal period under paragraph 2 of subsection 171.8 (3) if the member did not appeal the board's decision to terminate his or her membership and occupancy rights; or
- (b) the disposition or abandonment of the appeal if the member did appeal the board's decision to terminate his or her membership and occupancy rights. 2013, c. 3, s. 8.

#### **Transition**

(3) If a non-profit housing co-operative has made an application for a writ of possession under this Act and the court has not made a determination on that application before the day this subsection comes into force, the co-operative may,

- (a) continue the application; or
- (b) if Part V.1 of the *Residential Tenancies Act, 2006* applies, discontinue the application and follow the procedures under that Act to apply to the Landlord and Tenant Board for an order terminating the member's occupancy of the member unit and evicting the member. 2013, c. 3, s. 8.

#### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2013, c. 3, s. 8 - 1/06/2014

#### **Membership, etc., reinstated**

##### **Writ or eviction order not issued**

**171.12.1** (1) If, after a person's membership and occupancy rights are terminated under section 171.8, 171.8.1 or 171.9.1, or expire under section 171.9, an application is made under this Act for a writ of possession or under Part V.1 of the *Residential Tenancies Act, 2006* for an order terminating the person's occupancy of a member unit and evicting the person and, after final disposition of the application, no writ of possession or eviction order is issued and the person is still in possession of the member unit, the person's membership and occupancy rights are deemed to have not terminated or expired. 2013, c. 3, s. 8.

##### **Termination notice or eviction order void**

(2) If, after a person's membership and occupancy rights are terminated under section 171.8, 171.8.1 or 171.9.1, or expire under section 171.9, a notice of termination is given or an application is made under Part V.1 of the *Residential Tenancies Act, 2006* for an order terminating the person's occupancy of a member unit and evicting the person and the notice of termination or eviction order becomes void, or the eviction order expires, and the person is still in possession of the member unit, the person's membership and occupancy rights are deemed to have not terminated or expired. 2013, c. 3, s. 8.

#### **Section Amendments with date in force (d/m/y)**

2013, c. 3, s. 8 - 1/06/2014

#### **Application for writ of possession**

**171.13** (1) After a person's membership and occupancy rights are terminated under section 171.8, or if there is no member occupying a member unit, the non-profit housing co-operative may apply to the court for an order,

- (a) declaring that the person's membership and occupancy rights are terminated or that there is no member occupying the unit, as applicable; and
- (b) directing that a writ of possession be issued. 1992, c. 19, s. 23; 2006, c. 19, Sched. C, s. 1 (1); 2013, c. 3, s. 9 (1).

#### **Application for eviction order**

(1.1) Subsection (1) does not apply in the circumstances in which Part V.1 of the *Residential Tenancies Act, 2006* applies. 2013, c. 3, s. 9 (2).

#### **Application may also be for payment**

(2) In an application under subsection (1), the co-operative may also apply to have the order require that arrears of housing charges or compensation under section 171.10 or amounts owing under subsection 171.3 (4) be paid. 1992, c. 19, s. 23.

#### **Member unit must be occupied**

(3) An application under subsection (1) may only be made if the person against whom the order is sought is in possession of a member unit. 1992, c. 19, s. 23.

#### **Service of application and contents**

(4) The application shall be served on the respondent at least four clear days before the day for the return of the application and it shall contain a notice about how the respondent may dispute the application and a warning about what may be ordered if the application is not disputed. 1992, c. 19, s. 23.

#### **Form of notice and warning**

(5) The notice and warning shall be in the form approved by the Minister. 1992, c. 19, s. 23; 1997, c. 19, s. 3 (19); 1999, c. 12, Sched. I, s. 1 (14) ; 2018, c. 17, Sched. 9, s. 13.

#### **Dispute**

(6) The respondent may dispute the applicant's claim by attending on the return of the application or by filing with the local registrar before the day for the return of the application a statement in writing setting out briefly the grounds upon which the respondent disputes the applicant's claim. 1992, c. 19, s. 23.

### **Payment to local registrar of amounts in dispute**

(7) No dispute to a claim for arrears of housing charges or compensation under section 171.10 may be made under subsection (6) on the grounds that the co-operative is in breach of obligations under the co-operative's by-laws unless the respondent pays, to the local registrar, the amount of the housing charges and compensation claimed, by the co-operative, to be in arrears less any amounts of housing charges and compensation alleged, by the respondent, to have been paid, as substantiated by receipts filed or as verified by affidavit. 1992, c. 19, s. 23.

### **Default judgment**

(8) If the claim of the applicant is not disputed, the local registrar may sign an order declaring that the membership and occupancy rights are terminated or declaring that there is no member occupying the unit or directing that a writ of possession issue or may give judgment for the amount of arrears of housing charges or for the amount of compensation under section 171.10 or amounts owing under subsection 171.3 (4), or any of them, in accordance with the claim. 1992, c. 19, s. 23.

### **Setting aside default judgment**

(9) If the local registrar signs an order or judgment under subsection (8), the respondent may, within seven days after the service of it, by motion without notice apply to the judge to have the order or judgment set aside and the judge may so order upon being satisfied that reasonable grounds for dispute exist. 1992, c. 19, s. 23.

### **Extension of time for motion to set aside**

(10) The judge may extend the time for bringing a motion under subsection (9) upon being satisfied that a proper case has been made for so doing. 1992, c. 19, s. 23.

### **Hearing**

(11) If the claim of the applicant is disputed, the case may be set down for a hearing forthwith or at such time and place as the judge may appoint. 1992, c. 19, s. 23.

### **Order and judgment**

(12) After a hearing, the judge shall determine the applicant's claim and may make an order declaring the membership and occupancy rights terminated or declaring that there is no member occupying a unit or directing that a writ of possession issue or give judgment for the arrears of housing charges or for compensation under section 171.10 found due or amounts owing under subsection 171.3 (4), or any of them, and in any such order may impose such terms and conditions as the judge considers appropriate. 1992, c. 19, s. 23.

(13) REPEALED: 2013, c. 3, s. 9 (3).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992; 1997, c. 19, s. 3 (19) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (14) - 22/12/1999

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2013, c. 3, s. 9 (1-3) - 01/06/2014

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

**171.14** REPEALED: 2013, c. 3, s.10.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2013, c. 3, s. 10 - 01/06/2014

### **Procedure re applications**

**171.15** (1) An application under section 171.13 relating to a member unit shall be made, heard and determined in the county or district in which the unit is located. 1992, c. 19, s. 23; 2013, c. 3, s. 11 (1).

### **Idem**

(2) An application under section 171.13 shall be heard and determined in a summary way. 1992, c. 19, s. 23; 2013, c. 3, s. 11 (2).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2013, c. 3, s. 11 (1, 2) - 01/06/2014

### **Appeal**

**171.16** (1) An appeal lies to the Divisional Court from a final order of a judge under section 171.13. 1992, c. 19, s. 23; 2013, c. 3, s. 12 (1).

### **Payment of housing charges, etc.**

(2) If a payment of arrears of housing charges or compensation under section 171.10 has been made under subsection 171.13 (7) in respect of a ground of dispute that is a subject of appeal, no notice of appeal may be filed, other than by the co-operative, until any additional housing charges or compensation accruing to the date of the filing of the notice has been paid to the local registrar of the court and evidence of payments made under this subsection and subsection 171.13 (7) shall accompany the notice. 1992, c. 19, s. 23; 2006, c. 19, Sched. C, s. 1 (1); 2013, c. 3, s. 12 (2).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2013, c. 3, s. 12 (1, 2) - 1/06/2014

### **Payment of housing charges, etc., out of court**

**171.17** The judge of the court may, if the order has become final, on the application of any of the parties, direct the local registrar to pay money held by him or her under subsection 171.13 (7) or 171.16 (2) to the person entitled to it. 1992, c. 19, s. 23; 2006, c. 19, Sched. C, s. 1 (1); 2013, c. 3, s. 13.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2013, c. 3, s. 13 - 1/06/2014

### **Party may be represented**

**171.18** (1) A party to an application under section 171.13 may be represented by a person authorized under the *Law Society Act* to represent the party. 2006, c. 21, Sched. C, s. 103 (3); 2013, c. 3, s. 14 (1).

### **Exclusion of representatives**

(2) A judge of the court may exclude from a hearing anyone, other than a person who is licensed under the *Law Society Act*, appearing on behalf of a party if the judge finds that such person is not competent properly to represent or to advise the party, or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 2006, c. 21, Sched. C, s. 103 (3); 2013, c. 3, s. 14 (2).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006; 2006, c. 21, Sched. C, s. 103 (3) - 1/05/2007

2013, c. 3, s. 14 (1, 2) - 1/06/2014

### **Representative actions**

**171.19** If more than one person has a common interest in respect of an application under this Part, one or more of those persons may be authorized by a judge of the court to make or defend an application on behalf of or for the benefit of all. 1992, c. 19, s. 23; 2006, c. 19, Sched. C, s. 1 (1); 2013, c. 3, s. 15.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2013, c. 3, s. 15 - 1/06/2014



### **What evidence is admissible**

**171.20** (1) Subject to subsections (2), (4) and (5), a judge of the court may admit any oral testimony or any document or thing as evidence at a hearing under section 171.13 and may act on such evidence. 2013, c. 3, s. 16.

### **Idem**

(2) The evidence need not be given or proven under oath or affirmation or admissible as evidence in a court as long as it is relevant to the subject-matter of the proceeding. 1992, c. 19, s. 23.

### **Repetitious evidence**

(3) The judge may exclude anything unduly repetitious. 1992, c. 19, s. 23.

### **What evidence is inadmissible**

(4) Nothing is admissible in evidence at a hearing,

- (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
- (b) that is inadmissible by any statute. 1992, c. 19, s. 23.

### **Conflicts**

(5) Nothing in subsection (1) or (2) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding. 1992, c. 19, s. 23.

### **Copies**

(6) If a judge is satisfied as to their authenticity, a copy of a document or other thing may be admitted as evidence at a hearing. 1992, c. 19, s. 23.

### **Photocopies**

(7) If a document has been filed in evidence at a hearing, the judge may, or the person producing it or entitled to it may with the leave of the judge, cause the document to be photocopied and the judge may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by the judge. 1992, c. 19, s. 23.

### **Certified copy admissible in evidence**

(8) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a true copy of it by the judge, is admissible in evidence in a proceeding in which the document is admissible as evidence of the document. 1992, c. 19, s. 23.

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2013, c. 3, s. 16 - 1/06/2014

### **Effect of procedural irregularities**

**171.20.1** Where grounds for terminating a member's membership and occupancy rights have otherwise been established, the court shall not set aside or otherwise invalidate the decision of a non-profit housing co-operative to terminate the member's membership and occupancy rights on the ground that a procedural irregularity has occurred if,

- (a) the irregularity is,
  - (i) an irregularity in the content or service of any form, notice or other document,
  - (ii) an irregularity in the conduct of the meeting of the co-operative's board of directors held pursuant to subsection 171.8 (2),
  - (iii) an irregularity in the conduct of the meeting of the members of the co-operative held pursuant to subsection 171.8 (3), or
  - (iv) an inadvertent failure to comply with any time requirements;
- (b) the irregularity is not shown to have affected the decision of the co-operative in a material way; and
- (c) the interests of any person were not adversely affected in a material way by the irregularity. 2013, c. 3, s. 17.

**Section Amendments with date in force (d/m/y)**

2013, c. 3, s. 17 - 1/06/2014

**Power of judge to refuse writ, etc.**

**171.21** (1) Upon an application by a co-operative for a writ of possession relating to a member unit, a judge may, despite any other provision of this Act or the co-operative's by-laws,

- (a) refuse to grant the application if he or she is satisfied, having regard to all the circumstances, that it would be unfair to grant it;
- (b) order that the enforcement of the writ of possession be postponed for a period not exceeding one week.

**Idem**

(2) If the member who had occupancy rights to the member unit has died or has left the unit and none of the persons who are occupying the unit are members or have occupied the unit continuously for the three years preceding the day the application for a writ of possession was made, the judge may refuse to grant the application under clause (1) (a) only as required by subsection (3).

**Idem**

(3) Without restricting the generality of subsection (1), the judge shall refuse to grant the application if he or she is satisfied that,

- (a) the co-operative has contravened the Act or its articles or by-laws and the contravention is material and relevant to the application;
- (b) a reason for the application being brought is that the person against whom an order is sought has complained to any governmental authority of the co-operative's violation of any statute or municipal by-law dealing with health or safety standards including any housing standard or by-law;
- (c) a reason for the application being brought is that the person against whom an order is sought has attempted to secure or enforce his or her legal rights; or
- (d) a reason for the application being brought is that the member unit is occupied by children, provided that the occupation by the children does not constitute overcrowding and the unit is suitable for children. 1992, c. 19, s. 23.

**Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

**No withholding services**

**171.22** A non-profit housing co-operative shall not,

- (a) withhold reasonable supply of any vital services, such as heat, fuel, electricity, gas, water, food or other vital service, that it is the co-operative's obligation to supply under the by-laws, or deliberately interfere with the supply of any such vital service whether or not it is the co-operative's obligation to supply such service, during the occupation of the member unit and until the date on which a writ of possession under this Act or an eviction order under Part V.1 of the *Residential Tenancies Act, 2006* is executed; or
- (b) substantially interfere with the reasonable enjoyment of the member unit for all usual purposes by a member or former member or by members of his or her household with intent to cause the member or former member to give up possession of the premises or to refrain from asserting any of the rights provided by this Act or provided by the by-laws. 1992, c. 19, s. 23; 2013, c. 3, s. 18.

**Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2013, c. 3, s. 18 - 1/06/2014

**Service re termination, expiry of membership and occupancy rights**

**Service on a person**

**171.23** (1) A notice or other document required to be given to or served on a person in relation to the termination or expiry of the membership and occupancy rights of a member of a non-profit housing co-operative or in relation to the obtaining of a writ of possession under this Act is sufficiently given or served,

- (a) by handing it to the person;
- (b) by handing it to an apparently adult person in the member unit;
- (c) by leaving it in the mail box where mail is ordinarily delivered to the person;
- (d) if there is no mail box, by sliding it under the door of the member unit or through a mail slot in the door or leaving it at the place where mail is ordinarily delivered to the person; or
- (e) by sending it by mail to the last known address where the person resides or carries on business. 2013, c. 3, s. 19.

**Service on the co-operative**

(2) A notice or other document required to be given to or served on a non-profit housing co-operative in relation to the termination or expiry of the membership and occupancy rights of a member of the co-operative or in relation to the obtaining of a writ of possession under this Act is sufficiently given or served,

- (a) by delivering it personally or sending it by mail to,
  - (i) the head office of the co-operative as shown on the records of the Ministry, or
  - (ii) the co-operative's business office; or
- (b) by handing it to a manager or co-ordinator of the co-operative exercising authority in respect of the residential complex to which the notice or document relates. 2013, c. 3, s. 19.

**Deemed delivery**

(3) If a document is given or served by mail, it is deemed to have been given or served on the fifth day after the date of mailing. 2013, c. 3, s. 19.

**Other methods of service**

(4) A judge may order any other method of service in respect of any matter before him or her. 2013, c. 3, s. 19.

**When notice deemed valid**

(5) A notice or other document that is not given or served in accordance with this section is deemed to have been validly given or served if it is proven that its contents actually came to the attention of the co-operative, the member or the other person or entity for whom it was intended within the required time period. 2013, c. 3, s. 19.

**Non-application of s. 172**

(6) Section 172 does not apply if this section applies. 2013, c. 3, s. 19.

**Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

2013, c. 3, s. 19 - 1/06/2014

**Entry by canvassers, etc.**

**171.24** No non-profit housing co-operative or servant or agent of such a co-operative shall restrict reasonable access to the housing units of the co-operative by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or a school board for the purpose of canvassing or distributing election material. 1992, c. 19, s. 23.

**Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

**No right of distress**

**171.25** No non-profit co-operative shall distraint for non-payment of housing charges or compensation under section 171.10 even if a right of distress was acquired before this section comes into force. 1992, c. 19, s. 23.

**Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 23 - 24/08/1992

## GENERAL

### Notices

#### Notice to members and directors

**172** (1) Subject to the articles or by-laws of a co-operative, a notice or other document required to be given or sent by the co-operative to a member or director,

- (a) may be delivered personally or sent by mail to his or her latest address as shown on the records of the co-operative; or
- (b) except in such circumstances as may be prescribed, may be sent electronically to him or her in accordance with the *Electronic Commerce Act, 2000* and such conditions as may be prescribed under this Act. 2004, c. 31, Sched. 8, s. 30 (1).

#### Same

(1.1) A notice or other document sent by mail by the co-operative to a member or director shall be deemed to be given or sent,

- (a) for the purposes of subsections 56 (3), 66 (5), 124 (5) or (6), and 125 (1), on the date on which it is mailed; and
- (b) in any other case and subject to the articles or by-laws of the co-operative, at the time when it would be delivered in the ordinary course of mail. 2004, c. 31, Sched. 8, s. 30 (1); 2019, c. 15, Sched. 8, s. 14.

#### Undelivered mail

(2) Where notices or other documents required by this Act, the articles or by-laws to be given or sent by a co-operative to a member have been mailed to the member at the member's latest address as shown on the records of the co-operative and where, on three consecutive occasions, notices or other documents have been returned by the Post Office to the co-operative, the co-operative is not required to mail to the member any further notices or other documents until such time as the co-operative receives written notice from the member requesting that notices and other documents be sent to the member at a specified address. R.S.O. 1990, c. C.35, s. 172 (2).

#### Notice from members and directors

(2.1) Subject to the articles or by-laws of a co-operative, a notice or other document required to be given or sent by a member or director to the co-operative,

- (a) may be delivered personally or sent by mail to the head office of the co-operative in accordance with subsection (3); or
- (b) except in such circumstances as may be prescribed, may be sent electronically to the co-operative in accordance with the *Electronic Commerce Act, 2000* and such conditions as may be prescribed under this Act. 2004, c. 31, Sched. 8, s. 30 (2).

#### Notice to co-operative

(3) Except where otherwise provided in this Act, a notice or document required to be given or sent to a co-operative may be sent to the co-operative by prepaid mail at its head office as shown on the records of the Ministry and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. R.S.O. 1990, c. C.35, s. 172 (3).

#### Waiver of notice and abridgement of time

(4) Where a notice or other document is required by this Act or the regulations to be given or sent, the giving or sending of the notice or other document may be waived or the time for the giving or sending of the notice or other document may be waived or abridged with the consent in writing of the person entitled to it, whether before or after the time prescribed. 2023, c. 9, Sched. 8, s. 21.

#### Same

(5) The consent of a person entitled to waive the requirement for the giving or sending of a notice or other document or to waive or abridge the time for the giving or sending of the notice or other document under subsection (1) may be sent by electronic means in accordance with the *Electronic Commerce Act, 2000*. 2023, c. 9, Sched. 8, s. 21.

#### Section Amendments with date in force (d/m/y)

2004, c. 31, Sched. 8, s. 30 (1, 2) - 31/08/2007

2019, c. 15, Sched. 8, s. 14 - 01/04/2020

2023, c. 9, Sched. 8, s. 21 - 01/10/2023

### **Accepting copy of notice or other document**

**172.1** (1) If a notice or other document is required to be sent to the Minister under this Act, the Minister may accept a copy of it if it meets the Director's requirements established under this Act. 2020, c. 7, Sched. 6, s. 3.

### **Copy deemed original**

(2) A copy referred to in subsection (1) is deemed to satisfy any requirements under this Act for an original to be sent to the Minister. 2020, c. 7, Sched. 6, s. 3.

### **Endorsement or issuance**

(3) An endorsement or issuance by the Minister under this Act in respect of a notice or other document, including articles and applications, is deemed to comply with requirements under this Act for endorsement or issuance if it complies, with necessary modifications, with all the requirements of this Act other than any requirements respecting originals, duplicates and number of documents. 2020, c. 7, Sched. 6, s. 3.

### **Section Amendments with date in force (d/m/y)**

2020, c. 7, Sched. 6, s. 3 - 12/05/2020

### **Signatures**

**172.2** For greater certainty, in respect of requirements under this Act respecting the signing of articles, applications and other documents filed with the Minister, any articles, applications and other documents that meet the Director's requirements established under this Act are deemed to satisfy any requirements for a signature under this Act. 2020, c. 7, Sched. 6, s. 3.

### **Section Amendments with date in force (d/m/y)**

2020, c. 7, Sched. 6, s. 3 - 12/05/2020

**Note:** On the day section 9 of Schedule 1 (*Alternative Filing Methods for Business Act, 2020*) to the *COVID-19 Response and Reforms to Modernize Ontario Act, 2020* comes into force, the Act is amended by adding the following section: (See: 2020, c. 7, Sched. 6, s. 4)

### **Documents filed under *Alternative Filing Methods for Business Act, 2020***

**172.3** Documents filed by a method specified under the *Alternative Filing Methods for Business Act, 2020*, as it read immediately before it was repealed, are deemed to have been filed by in-person delivery or mail for the purposes of this Act. 2020, c. 7, Sched. 6, s. 4.

### **Section Amendments with date in force (d/m/y)**

2020, c. 7, Sched. 6, s. 4 - not in force

### **Offence, false statement**

**173** (1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both.

### **Defence**

(2) No person is guilty of an offence under subsection (1) if the person did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading. R.S.O. 1990, c. C.35, s. 173.

### **Offence, failure to file**

**174** (1) Every person who fails to file with the Minister any document that this Act requires to be filed with the Minister is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or, if such person is a corporation, to a fine of not more than \$50,000. 1997, c. 28, s. 42; 2018, c. 17, Sched. 9, s. 5, 12.

### **Idem**

(2) Where a corporation is guilty of an offence under subsection (1), every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. C.35, s. 174 (2).

### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 42 - 1/07/1998

2018, c. 17, Sched. 9, s. 5, 12 - 08/06/2019

**175 REPEALED:** 1997, c. 28, s. 43.

**Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 43 - 1/01/1998

**Offence, general**

**176** (1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or, if such person is a corporation, to a fine of not more than \$100,000.

**Idem**

(2) Where a corporation is guilty of an offence under subsection (1), every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not more than \$5,000. R.S.O. 1990, c. C.35, s. 176.

**Limitation**

**177** No proceeding for an offence under this Act shall be started more than two years after the facts on which the proceedings are based first came to the knowledge of the Minister. 1999, c. 12, Sched. I, s. 1 (15); 2017, c. 34, Sched. 9, s. 20; 2018, c. 17, Sched. 9, s. 12.

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. I, s. 1 (15) - 22/12/1999

2017, c. 34, Sched. 9, s. 20 - 29/10/2018

2018, c. 17, Sched. 9, s. 12 - 08/06/2019

**Order for compliance**

**178** Where a co-operative or a director, officer or employee of a co-operative does not comply with any provision of this Act or the articles or the by-laws of the co-operative, the Minister or a member or a creditor of the co-operative, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights the Minister, the member or the creditor may have, may apply to the court for an order directing the co-operative, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit. R.S.O. 1990, c. C.35, s. 178; 1997, c. 28, s. 44; 2017, c. 34, Sched. 9, s. 21; 2018, c. 17, Sched. 9, s. 6.

**Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 44 - 1/07/1998

2017, c. 34, Sched. 9, s. 21 (1, 2) - 29/10/2018

2018, c. 17, Sched. 9, s. 6 - 08/06/2019

**Proof by affidavit**

**179** (1) The Minister may require that any fact relevant to the performance of the duties of the Minister under this Act or the regulations be verified by affidavit or otherwise. 2018, c. 17, Sched. 9, s. 7 (1).

**Oaths at hearings**

(2) For the purpose of holding a hearing under this Act, the Minister may administer oaths to witnesses and require them to give evidence under oath. R.S.O. 1990, c. C.35, s. 179 (2); 1997, c. 28, s. 45 (2); 2018, c. 17, Sched. 9, s. 7 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 45 (1, 2) - 1/07/1998

2018, c. 17, Sched. 9, s. 7 (1, 2) - 08/06/2019

**Publication of notices in *The Ontario Gazette***

**180** (1) The Minister shall cause notice to be published forthwith in *The Ontario Gazette*,

- (a) of the issue of every certificate under section 6, 9, 154, 155, 157, 158 or 165;
- (b) of the issue of every order under section 166 or 167;

(c) of the filing of a certified copy of an order under subsection 205 (6) or subsection 218 (2) of the *Business Corporations Act*;

(d) of the filing of a notice by a liquidator under subsection 205 (2) of the *Business Corporations Act*. R.S.O. 1990, c. C.35, s. 180; 1997, c. 28, s. 46 (1).

#### **Same, by Minister**

(2) The Minister shall cause to be published forthwith in *The Ontario Gazette* notice of the issue of every order under section 118. 1997, c. 28, s. 46 (2) ; 2018, c. 17, Sched. 9, s. 13.

#### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 46 (1, 2) - 1/07/1998

2018, c. 17, Sched. 9, s. 13 - 08/06/2019

#### **Searches**

**181** (1) Upon payment of the fee established by the Minister, any person is entitled to examine any document filed or issued under this Act or any predecessor thereof, and to make extracts from the document. 2018, c. 17, Sched. 9, s. 8.

#### **Certifications by Minister**

(2) Upon payment of the fee established by the Minister, the Minister shall furnish any person with a certificate as to whether or not a document has been filed with or issued by the Minister under this Act or any predecessor thereof or with a certified copy of any such document. R.S.O. 1990, c. C.35, s. 181 (2); 1997, c. 19, s. 3 (20).

#### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (20) - 10/10/1997; 1997, c. 28, s. 47 - 1/07/1998

2018, c. 17, Sched. 9, s. 8 - 08/06/2019

#### **Execution of certificates of Minister**

**182** (1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be signed by the Minister or by a public servant who is employed under Part III of the *Public Service of Ontario Act, 2006* and who is designated by the regulations. R.S.O. 1990, c. C.35, s. 182 (1); 1997, c. 28, s. 48 (1); 2017, c. 34, Sched. 9, s. 22.

#### **Certificates of evidence**

(2) Any certificate issued by the Minister and signed by a person authorized by or under subsection (1), or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as proof, in the absence of evidence to the contrary, of the facts so certified without proof of the signature or the official position of the person appearing to have signed the certificate. R.S.O. 1990, c. C.35, s. 182 (2); 1997, c. 28, s. 48 (2).

#### **Reproduction of signature**

(3) For the purposes of this section, any signature of the Minister or of a public servant designated by the regulations may be printed or otherwise mechanically or electronically reproduced. 2019, c. 15, Sched. 8, s. 15.

#### **Section Amendments with date in force (d/m/y)**

1997, c. 28, s. 48 (1, 2) - 1/01/1998

2017, c. 34, Sched. 9, s. 22 - 29/10/2018

2019, c. 15, Sched. 8, s. 15 - 10/12/2019

#### **Notice of refusal to file**

**183** (1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by the Minister before it becomes effective, he or she shall give written notice to the person who delivered the articles or other document of his or her refusal, specifying the reasons therefor.

#### **Failure to act deemed refusal**

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection (1), the Minister has not filed or refused to file such articles or other document, the Minister shall be deemed for the purposes of section 184 to have refused to file it. R.S.O. 1990, c. C.35, s. 183.

### **Appeal from Minister**

**184** (1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 9 (2), (3) or (4);
- (c) issue a certificate of amendment under section 143 or 152;
- (d) issue an order under section 166,

may appeal the decision to the Divisional Court. R.S.O. 1990, c. C.35, s. 184 (1); 2017, c. 34, Sched. 9, s. 23; 2019, c. 15, Sched. 8, s. 16.

### **Certificate of Minister**

(2) The Minister shall certify to the Divisional Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;
- (b) the record of any hearing; and
- (c) all written submissions to the Minister or other material that is relevant to the appeal. R.S.O. 1990, c. C.35, s. 184 (2).

### **Representation**

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. R.S.O. 1990, c. C.35, s. 184 (3).

### **Order of court**

(4) Where an appeal is taken under this section, the Divisional Court may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly. R.S.O. 1990, c. C.35, s. 184 (4).

### **Minister may make further decision**

(5) Despite an order of the Divisional Court, the Minister has power to make any further decision upon new material or where there is a material change in the circumstances, and every such decision is subject to this section. R.S.O. 1990, c. C.35, s. 184 (5).

### **Section Amendments with date in force (d/m/y)**

2017, c. 34, Sched. 9, s. 23 - 29/10/2018

2019, c. 15, Sched. 8, s. 16 - 10/12/2019

### **Appeal from court**

**185** An appeal lies to the Court of Appeal from any order made by the court under this Act. R.S.O. 1990, c. C.35, s. 185.

### **Transition, continuing proceedings and activities**

**185.1** (1) Proceedings and other activities that, on the day section 12 of Schedule 9 to the *Restoring Trust, Transparency and Accountability Act, 2018* comes into force, are commenced or conducted by the Superintendent, or to which the Superintendent is a party, and that are ongoing are deemed to be proceedings and other activities commenced or conducted by the Minister, or to which the Minister is a party, and shall be continued as such. 2018, c. 17, Sched. 9, s. 9.

### **Definition of Superintendent**

(2) In subsection (1), "Superintendent" is a reference to the former position of Superintendent of Financial Services under the repealed *Financial Services Commission of Ontario Act, 1997*. 2020, c. 36, Sched. 14, s. 5 (2).

### **Section Amendments with date in force (d/m/y)**

2018, c. 17, Sched. 9, s. 9 - 08/06/2019

2020, c. 36, Sched. 14, s. 5 (2) - 08/12/2020

### **Requirements established by the Director**

**185.2** (1) The Director may establish requirements in respect of filings made by in-person delivery, mail or by a method specified under the *Alternative Filing Methods for Business Act, 2020*,



**Note:** On the day section 9 of Schedule 1 (*Alternative Filing Methods for Business Act, 2020*) to the *COVID-19 Response and Reforms to Modernize Ontario Act, 2020* comes into force, subsection 185.2 (1) of the Act is amended by striking out “in respect of filings made by in-person delivery, mail or by a method specified under the *Alternative Filing Methods for Business Act, 2020*” at the end of the portion before clause (a). (See: 2020, c. 7, Sched. 6, s. 5 (2))

- (a) specifying whether and which articles, applications, other forms approved under section 187 and supporting documents must be signed, specifying requirements respecting their signing, and governing the form and format of signatures, including establishing rules respecting electronic signatures;
- (b) specifying and governing methods of executing articles, applications, other forms approved under section 187, supporting documents and statements, other than by signing them, and establishing rules respecting those methods;
- (c) if this Act specifies requirements respecting the signing of articles, applications and other documents filed with the Minister, specifying and governing alternative requirements for their signing or providing that signing is not required;
- (d) specifying requirements for co-operatives filing articles, applications and other forms approved under section 187, whether electronically or by another method, to keep a properly executed version of them, including records related to an electronic signature if signed by electronic signature, at the head office in paper or electronic format and, if required by notice from the Director, to provide a copy of the executed version, including records related to an electronic signature, to the Minister within the time period set out in the notice;
- (e) specifying and governing a type of copy, including a type of copy of a court order or other document issued by the court, that may be filed with the Minister. 2020, c. 7, Sched. 6, s. 5 (1).

#### **Non-application of *Legislation Act, 2006***

(2) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a requirement established by the Director under subsection (1). 2020, c. 7, Sched. 6, s. 5 (1).

#### **Conflict**

(3) If there is a conflict between a requirement established under this section and a regulation made under this Act, the regulation prevails to the extent of the conflict. 2020, c. 7, Sched. 6, s. 5 (1).

#### **Section Amendments with date in force (d/m/y)**

2020, c. 7, Sched. 6, s. 5 (1) - 12/05/2020; 2020, c. 7, Sched. 6, s. 5 (2) - not in force

#### **Regulations**

**186** (1) The Lieutenant Governor in Council may make regulations respecting any matter that the Lieutenant Governor in Council considers necessary relating to the incorporation, conduct and dissolution of co-operatives including, without limiting the generality of the foregoing, regulations,

- (a) respecting names, objects, authorized capital, membership, the designations, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to shares or classes or series of shares or any other matter pertaining to articles or the filing of articles;
  - (a.1) prescribing the content of and governing the use of offering statements and statements of material change;
  - (a.2) prescribing, for the purposes of section 31, the manner by which preference shares issued in classes or in series may be redeemed;
  - (a.3) prescribing, for the purposes of section 34, the number of security holders;
- (b) REPEALED: 1997, c. 19, s. 3 (22).
- (b.1) prescribing maximum annual percentages for the purposes of subsection 49 (1), subsection 56 (4), clause 57 (2) (a) and subsections 58 (2) and 171.2 (2);
- (b.2) prescribing the methods by which the percentages mentioned in clause (b.1) shall be determined including prescribing a method that bases the percentages on the prime interest rate charged by the bank, trust company, credit union or caisse populaire identified in a co-operative’s by-laws for that purpose;
- (b.3) governing the electronic delivery of documents, including prescribing for the purposes of section 172 the circumstances in which a document shall not be sent electronically;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;

- (d) designating any person for the purposes of clause (c) of the definition of “certified copy” in section 1 and for the purposes of section 182. R.S.O. 1990, c. C.35, s. 186; 1992, c. 19, s. 24; 1994, c. 17, s. 29; 1997, c. 19, s. 3 (21, 22); 1997, c. 28, s. 49 (2); 2004, c. 31, Sched. 8, s. 31.

### **Regulations re transfer of Superintendent powers, duties and functions**

(2) The Lieutenant Governor in Council may make regulations governing transitional matters that may arise due to the transfer of powers conferred on, duties assigned to and functions of the Superintendent under this Act to the Minister. 2018, c. 17, Sched. 9, s. 10.

### **Minister’s regulations**

(2.1) The Minister may make regulations governing,

- (a) inspections of statements under section 37, examinations of records under 118 and 119 and examinations of financial statements under section 135;
- (b) transitional matters as the Minister considers necessary or advisable to facilitate the implementation of amendments to this Act made by Schedule 8 to the *Less Red Tape, Stronger Economy Act, 2023*. 2023, c. 9, Sched. 8, s. 22.

### **Definition of Superintendent**

(3) In subsection (2),

“Superintendent” means the former position of Superintendent of Financial Services under the repealed *Financial Services Commission of Ontario Act, 1997*. 2020, c. 36, Sched. 14, s. 5 (3).

### **Section Amendments with date in force (d/m/y)**

1992, c. 19, s. 24 - 24/08/1992; 1994, c. 17, s. 29 (1-3) - 23/06/1994; 1997, c. 19, s. 3 (21, 22) - 10/10/1997; 1997, c. 28, s. 49 (2) - 1/01/1998

2004, c. 31, Sched. 8, s. 31 (1, 2) - 31/08/2007

2018, c. 17, Sched. 9, s. 10 - 08/06/2019

2020, c. 36, Sched. 14, s. 5 (3) - 08/12/2020

2023, c. 9, Sched. 8, s. 22 - 01/10/2023

### **Forms**

**187** (1) The Minister may require that forms approved by the Minister be used for any purpose under this Act. 2018, c. 17, Sched. 9, s. 11.

### **Fees**

(2) The Minister may, by order, establish and charge fees, and provide for the waiver or refund of all or any part of any of those fees,

- (a) for anything that the Minister is required or authorized to do under this Act; and
- (b) for search reports, copies of documents or information, filing of documents or other services under this Act. 2018, c. 17, Sched. 9, s. 11.

### **Non-application of *Legislation Act, 2006***

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made by the Minister under subsection (2). 2018, c. 17, Sched. 9, s. 11.

### **Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 3 (23) - 10/10/1997; 1999, c. 12, Sched. I, s. 1 (16, 17) - 22/12/1999

2015, c. 20, Sched. 7, s. 2 - no effect - see 2018, c. 17, Sched. 9, s. 14 - 06/12/2018

2017, c. 34, Sched. 9, s. 24 - 29/10/2018

2018, c. 17, Sched. 9, s. 11 - 06/12/2018

**188-190** REPEALED: 2023, c. 9, Sched. 8, s. 23.

### **Section Amendments with date in force (d/m/y)**

2020, c. 7, Sched. 6, s. 6 - 17/03/2020; 2020, c. 7, Sched. 6, s. 8 - no effect - see 2023, c. 9, Sched. 8, s. 24 - 08/06/2023

2023, c. 9, Sched. 8, s. 23 - 01/10/2023

SCHEDULE REPEALED: 2023, C. 9, SCHED. 8, S. 23.

**Section Amendments with date in force (d/m/y)**

2020, c. 7, Sched. 6, s. 7 - 17/03/2020; 2020, c. 7, Sched. 6, s. 8 - no effect - see 2023, c. 9, Sched. 8, s. 24 - 08/06/2023

2023, c. 9, Sched. 8, s. 23 - 01/10/2023

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