

SNL1998 CHAPTER C-35.1

**CO-OPERATIVES ACT**

Amended:

2001 c42 s10; 2016 c29

CHAPTER C-35.1

AN ACT RESPECTING CO-OPERATIVES

(Assented to December 15, 1998)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the Co-operatives Act .

1998 cC-35.1 s1

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### Definitions

2. In this Act

(a) "affiliate" means an affiliate of a co-operative within the meaning of subsection 5(1);

(b) "articles" means

(i) the original or restated articles of incorporation, amendment, amalgamation, continuance, reorganization, dissolution and revival of a co-operative, and

(ii) a statute or other constating instrument evidencing the corporate existence of a co-operative continued as a co-operative under this Act;

(c) "auditor" means an external auditor engaged by a co-operative;

(d) "common share" means a share in the capital stock of the co-operative to which voting and other rights are attached;

(e) "co-operative" means a corporation that

(i) is organized and operated on a co-operative basis, and

(ii) is incorporated or continued under this Act,

and includes a corporation that has as its object the operation of an enterprise or service on a co-operative basis or on a basis that, in the opinion of the registrar, is substantially similar to a co-operative basis, and is registered under this Act;

(f) "corporation" means an incorporated body of persons, wherever or however incorporated and includes a co-operative;

(g) "court" means, unless the context indicates otherwise, the Trial Division or a judge of the Trial Division;

(h) "debt obligation" means a bond, debenture, member loan, note, savings certificate or other evidence of indebtedness or guarantee of a co-operative, whether secured or unsecured;

(i) "delegate" means a natural person elected to represent a co-operative shareholder at meetings of a co-operative;

(j) "federal co-operative" means a co-operative incorporated under the Canada Co-operative Associations Act (Canada ) or another Act of the Parliament of Canada;

(k) "federation" means a co-operative established under section 88;

(l) "former Act" means the Co-operative Societies Act ;

(m) "incorporator" means a person who applies for the incorporation of a co-operative under section 7;

(n) "member", where used in relation to a co-operative, means a person, including a person less than 19 years of age, who, whether alone or jointly with others, is a shareholder or a joint shareholder in that co-operative and qualifies for membership in it under its by-laws;

(o) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(p) "preferred share" means a share in the capital stock of a co-operative that is not a common share;

(q) "register" and "registration", unless the context indicates otherwise, means registered under section 18;

(r) "registrar" means the Registrar of Co-operatives appointed under this Act and includes the deputy registrar;

(s) "shareholder" means a subscriber for or a holder of a share of a co-operative and includes the personal representative of a deceased shareholder;

(t) "special resolution" means a resolution passed by a majority of not less than 2/3 of the votes cast by the members present at a meeting who voted in respect of that resolution; and

(u) "subsidiary" means a subsidiary of a corporation within the meaning of subsection 5(2).

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#### Co-operative nature

3. A co-operative is organized, operated and administered on a co-operative basis where

- (a) a member or delegate has not more than one vote;
- (b) a member or delegate is not entitled to vote by proxy;
- (c) business is carried on primarily for the benefit of members;
- (d) membership in the co-operative is voluntary and available, without artificial restriction or unlawful basis of discrimination, to a person who can use its services and is willing to accept the responsibilities of membership;
- (e) the limit on the interest or dividends on share capital that it pays does not exceed the rate prescribed by regulation or in the co-operative's by-laws; and
- (f) a surplus or saving arising out of the operation of the co-operative is
  - (i) used to eliminate a deficit,
  - (ii) used to develop its business,
  - (iii) used to provide or improve common services to members,
  - (iv) distributed among members in proportion to their patronage with the co-operative,
  - (v) used to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation, and
  - (vi) distributed to a community based non-profit, charitable or benevolent organization.

1998 cC-35.1 s3

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#### Application

4. (1) This Act applies to a co-operative incorporated, continued or registered under this Act.

(2) This Act does not apply to a credit union incorporated, continued or registered under the Credit Union Act .

1998 cC-35.1 s4

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#### Affiliates and subsidiaries



5. (1) For the purpose of this Act, a person is an affiliate of a co-operative where that person is not a subsidiary of that co-operative and

(a) is a corporation more than 10% of whose voting shares are beneficially owned, directly or indirectly, by that co-operative; or

(b) has entered into a partnership or joint venture with that co-operative or its subsidiaries.

(2) For the purpose of this Act, a corporation is a subsidiary of another corporation where

(a) shares of one or more subsidiary corporations are owned by the nonsubsidiary corporation;

(b) the subsidiary corporations do not own shares in the nonsubsidiary corporation; and

(c) the nonsubsidiary corporation serves as a management or holding corporation for the subsidiary corporations.

(3) For the purpose of this Act, shares beneficially owned, directly or indirectly, by a subsidiary of a corporation are considered to be owned by the holding corporation as well.

1998 cC-35.1 s5

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Use of "co-operative"

6. A person or association of persons shall not use the word "co-operative", an abbreviation of the word "co-operative", or conduct business in the province in a manner which might lead to the belief that that person or association of persons is carrying on business as a co-operative unless that person or association of persons is incorporated under this Act or is incorporated under an Act of another province of Canada and is registered under this Act.

1998 cC-35.1 s6

## PART I

### INCORPORATION

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Incorporation

7. (1) Three or more persons may incorporate as a co-operative.

(2) The incorporators shall apply for incorporation by sending to the registrar

(a) its articles of incorporation as required by section 8;

(b) the by-laws of the co-operative subscribed by the incorporators;

(c) the required fee;

(d) the name of the co-operative;

(e) the place in the province and the address, including street name and number where the registered office of the co-operative is to be situated;

(f) a business plan; and

(g) information in addition to that mentioned in paragraphs (a) to (f), that the registrar may require.

(3) Notwithstanding subsection (1), a natural person may not incorporate a co-operative if he or she is less than 19 years of age.

1998 cC-35.1 s7

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## Articles

8. (1) The articles of a co-operative shall be in a form determined by the registrar.

(2) The articles of incorporation shall contain

(a) the name of the co-operative;

(b) the place of business of the co-operative;

(c) where there is share capital

(i) the par value of the shares,

(ii) the maximum number of shares where shares are limited,

(iii) a statement that the shares are limited or unlimited, and

(iv) where there are common and preferred shares, the par value of each share and special preferences, rights, conditions or restrictions attaching to each class of shares;

(d) a statement of the minimum and maximum number of directors;

(e) the objects and purposes of the co-operative;

(f) the fiscal year of the co-operative;

(g) any restriction to be applied to the business or businesses of the co-operative; and

(h) other articles that are prescribed by regulation.

(3) A co-operative may, in its articles, set out provisions to be contained in its by-laws.

1998 cC-35.1 s8

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## Certificate of incorporation

9. (1) Where the registrar is satisfied that the incorporators of a co-operative have satisfactorily complied with subsection 7(2) he or she shall register the co-operative and shall

(a) issue a certificate of incorporation stating that the co-operative is incorporated under this Act; and

(b) send to the co-operative at its registered office one copy of its registered articles and by-laws.

(2) Notwithstanding subsection (1), the registrar shall not incorporate a co-operative unless he or she is satisfied that

(a) the formation of the proposed co-operative will be for the convenience, benefit and advantage of its members;

(b) the proposed co-operative is organized and will be operated on a co-operative basis; and

(c) the proposed business plan of the incorporators demonstrates viability.

(3) A co-operative comes into existence on the date shown on the certificate of incorporation.

1998 cC-35.1 s9

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#### By-laws

10. (1) A co-operative may make by-laws which are not inconsistent with this Act and which are necessary or desirable for the procedure or governing of the co-operative and the implementation of things required under this Act or its articles.

(2) A co-operative may in a by-law require a greater number of votes of directors or members than is required by this Act.

(3) Notwithstanding subsection (2), the by-laws may not require a greater number of votes of members to remove a director or delegate than the number required under this Act.

1998 cC-35.1 s10

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#### Binding effect

11. The articles of a co-operative and its by-laws shall be considered to bind the co-operative and its members to the same extent as if they

(a) had been signed and sealed by the signing officers of the co-operative and by each member; and

(b) contained covenants on the part of each member and the heirs, executors and administrators of each member to observe all the provisions of the articles and by-laws.

1998 cC-35.1 s11

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## Name

12. (1) A co-operative may not have a name that

- (a) is identical to the name of a corporation carrying on business in the province;
- (b) so nearly resembles the name of a corporation or another organization of persons that, in the opinion of the registrar, the use of that name would or might be deceiving or misleading to persons dealing with the co-operative, or another corporation or organization of persons; or
- (c) is otherwise objectionable on grounds of public policy as determined by the registrar or in accordance with the regulations.

(2) The word "co-operative" or "coopérative" shall be part of the name of every co-operative.

(2.1) A co-operative may set out its name in its articles in an English form, a French form or in a combined English and French form.

(3) Notwithstanding subsections (1) and (5), a co-operative incorporated under the former Act may retain its existing name on the commencement of this Act.

(4) A co-operative shall legibly set out its name on all its contracts, invoices, negotiable instruments and orders for services and all publications and signs advertising its services.

(5) Where the name of a co-operative is registered contrary to subsection (1) the co-operative shall, upon the request of the registrar, change its name.

(6) Where a co-operative is requested by the registrar under subsection (5) to change its name and fails to do so within 90 days after the receipt of a written request to do so, the registrar may change the name of that co-operative substituting a name which he or she considers to be suitable.

(7) Where a change of the name of a co-operative is made under subsection (5) or (6), the registrar shall substitute the new name of the co-operative on the register and shall issue an altered certificate of incorporation indicating the change of name.

(8) A change of the name of a registered co-operative made under this section shall not affect a right or obligation of the co-operative, or a proceeding started by or in respect of the co-operative before the change was made.

(9) A change of the name of a co-operative shall be filed with the registrar.

1998 cC-35.1 s12; 2016 c29 s1

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## Business commencement requirements

13. (1) A co-operative shall not commence business in the province until the registrar has given his or her approval for that commencement.

(2) The registrar shall not approve the commencement of business of a co-operative unless he or she is satisfied that

(a) the co-operative has submitted to him or her changes which it may have made to its business plan;

(b) the certificate of incorporation of that co-operative has not been procured by the fraud or misrepresentation of a person;

(c) the co-operative will not be used for an illegal purpose; and

(d) the co-operative will pursue co-operative principles.

1998 cC-35.1 s13

## PART II

### CONTINUANCE

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#### Application for continuance

14. (1) A co-operative incorporated under the former Act shall continue in being upon the commencement of this Act as if incorporated under this Act.

(2) Where a co-operative is continued under this section and has articles and by-laws that are inconsistent with this Act, those by-laws shall be considered to be valid until 2 years from the date this Act comes into force or until the co-operative passes new articles or by-laws in accordance with this Act, whichever occurs first.

(3) Notwithstanding subsection (1), every former Act co-operative shall, within 2 years after the commencement of this Act, apply to the registrar for a certificate of continuance.

(4) A co-operative that applies for a certificate of continuance under subsection (3) may in its articles of continuance change or amend its articles.

1998 cC-35.1 s14

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#### Certificate of continuance

15. Upon receipt of an application under subsection 14(3), the registrar shall, if the applicant complies with this Act and all reasonable requirements of the registrar, issue a certificate of continuance to the former Act co-operative.

1998 cC-35.1 s15

## PART III

### GENERAL AND ADMINISTRATION

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## Registrar

16. The Lieutenant-Governor in Council shall appoint a Registrar of Co-operatives and may appoint one or more deputies who shall carry out the duties and exercise the powers of the registrar under this Act.

1998 cC-35.1 s16

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## Service

17. A document may be served on the registrar by leaving it at the office of the registrar or by mailing it by registered mail to the registrar at his or her office.

1998 cC-35.1 s17

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## Register

18. The registrar shall maintain a register of co-operatives with the name of every co-operative that is

- (a) incorporated or continued under this Act;
- (b) registered under this Act;
- (c) registered in accordance with the former Act; or
- (d) restored to the register under this Act,

provided that the co-operative has not been struck off that register.

1998 cC-35.1 s18

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## Inspection

19. Subject to the approval of the registrar, a person who has paid a required fee is entitled, during normal business hours, to examine and to make copies of or extracts from, a document required by this Act to be filed with the registrar.

1998 cC-35.1 s19

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## Certificate registration

20. The registrar shall register all certificates issued under this Act and a certificate is effective on the date it is registered.

1998 cC-35.1 s20

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## Time extension

21. The registrar may in his or her discretion extend the time required for filing a document or information under this Act.

1998 cC-35.1 s21

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## Seal

22. The Lieutenant-Governor in Council may establish a seal for use by the registrar in the performance of his or her duties.

1998 cC-35.1 s22

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## Power to refuse

23. The registrar may refuse to receive, file or register a document submitted to him or her, if he or she is of the opinion that the document contravenes this Act.

1998 cC-35.1 s23

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## Form of documents

24. (1) Certificates issued by the registrar under this Act shall be in the form established by the registrar.

(2) The registrar may require that a document or information contained in a document required under this Act be verified by affidavit.

1998 cC-35.1 s24

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## Fiscal year

25. The fiscal year of a co-operative shall be as determined by the co-operative and shall be contained in the articles of incorporation.

1998 cC-35.1 s25

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## Annual and special returns

26. (1) Within 30 days of the date of its annual meeting, a co-operative shall

(a) file with the registrar an annual return for the previous year in a form that is required by the registrar; and

(b) furnish the registrar with a copy of the financial statement including the auditor's comment and management letter respecting the audit of the co-operative.

(2) The registrar by written notice may require a co-operative to make a special return on a subject connected with the business and affairs of the co-operative and, when the registrar requires a special return, he or she shall specify in the notice a time within which the special return is to be made.

(3) The registrar may in his or her discretion and upon application by a co-operative extend the time by which a special return shall be made under subsection (2).

(4) A co-operative that does not file or is late in filing an annual return with the registrar shall pay a required fee.

1998 cC-35.1 s26

## PART IV

### CORPORATE INCIDENTS

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## Capacity and powers

27. (1) A co-operative has the capacity and, subject to this Act and its articles, the rights, powers and privileges of a person.

(2) A co-operative shall not contravene its articles.

(3) An act of a co-operative, including a transfer of property to or by that co-operative, is not invalid by reason only that the act or transfer contravenes its articles, by-laws or this Act.

1998 cC-35.1 s27

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## Seal

28. (1) The directors may by resolution adopt a corporate seal.

(2) A co-operative's seal shall contain the full name of the co-operative in legible characters.

(3) An instrument or agreement executed by or on behalf of a co-operative by a director, officer or agent of a co-operative is not invalid merely because a co-operative seal is not affixed to it.

1998 cC-35.1 s28

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## Registered office

29. (1) A co-operative shall at all times have a registered office in the province and shall, in writing, notify the registrar of the address of that registered office.

(2) The directors of a co-operative may change the address of its registered office within the province and shall, in writing, notify the registrar of that change.

(3) The registered office address of a co-operative shall include a street name and, where applicable, a civic number.

1998 cC-35.1 s29

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## Service on co-operative

30. A document may be served on a co-operative by

(a) delivery of the document to the co-operative's registered office during its usual business hours;

(b) personal service of it on a director or officer or, where applicable, the administrator, receiver or liquidator, of the co-operative; or

(c) sending it by registered mail to its registered office.

1998 cC-35.1 s30

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## Records and register

31. A co-operative shall prepare and maintain, at its registered office

(a) its articles and by-laws, and all amendments to those articles and by-laws;

(b) minutes of meetings and resolutions of the co-operative;

- (c) minutes of board and committee meetings, including resolutions made at those meetings;
- (d) a list of the names and latest known residential addresses of persons who are or have within the past year been directors or officers, with the dates on which each directorship or office commenced and, where applicable, ended;
- (e) a register of all members, their names and latest known residential address and the number and class of shares held by each member; and
- (f) financial statements of the co-operative including auditor reports.

1998 cC-35.1 s31

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#### Form of documents

32. (1) Documents and records required under this Act may be written or maintained in a written, photographic film, mechanical, computer or electronic data processing form or other means appropriate for record keeping and capable of reproducing information in intelligible written form within a reasonable time.

(2) Where a person who is entitled to examine a document kept by a co-operative makes a request to examine that document, the co-operative shall provide the information to that person in an accurate and intelligible form within a reasonable time and shall, on request, give to him or her a written copy of the information.

1998 cC-35.1 s32

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#### Examination of records

33. (1) A co-operative shall permit its members or their agents to examine documents described in section 31 except where the records are considered by the board of directors to be confidential.

(2) A co-operative may charge a fee for the provision of documents or other services to a person under this section.

(3) The registrar may without notice request that a co-operative provide to him or her a current list of members and their addresses as maintained under paragraphs 31(d) and (e) and that co-operative shall immediately comply with that request.

1998 cC-35.1 s33

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#### Preferred shareholders access

34. (1) On payment of a reasonable fee, 5 or more preferred shareholders, their agents or legal representatives may request a co-operative or its agent to furnish, within 21 days a list made up to a date not more than one month before the date of receipt of the affidavit setting out, in alphabetical or numeric order the name and address of each preferred shareholder and the co-operative shall comply with that request.

(2) Where an applicant is a corporation, the request shall be made by a director or officer of the corporation.

1998 cC-35.1 s34

## PART V

### DIRECTORS, OFFICERS AND EMPLOYEES

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#### Directors

35. (1) A co-operative shall be governed by a board of directors which shall conduct the business and affairs and exercise the powers of the co-operative for and on behalf of the co-operative and the board of directors may delegate its powers or duties to officers or members and employees of that co-operative.

(2) The board of directors of a co-operative shall be elected annually or as specified in the by-laws of the co-operative and each director may hold office for not more than 3 years or as specified in the by-laws and may be re-elected.

(3) The number of directors for a co-operative shall be stated in its articles of incorporation and may be increased or decreased in number by amendment of those articles but there shall not be fewer than 3 directors.

(4) Where the number of nominees for director exceeds the number of directors to be elected, the election of directors shall be by secret ballot.

(5) Where a vacancy exists on the board of directors, the remaining directors, provided that there is a quorum, may exercise all the powers of that board of directors and proceed to fill the vacancy for the unexpired term.

(6) Where no directors remain on a board of directors, the lesser of 10 members or 10% of the members of the co-operative may call a general meeting for the purpose of electing a board of directors.

(7) The holders of preferred shares who do not also hold common shares shall not vote in an election to elect directors.

(8) Notwithstanding subsection (7), a co-operative may in its articles of incorporation provide for the exclusive right of preferred shareholder members to elect a director.

1998 cC-35.1 s35

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## Qualifications of directors

36. A person shall not be a director if he or she is

(a) less than 19 years of age;

(b) not a natural person; or

(c) not a member of the co-operative or a designated representative of a member which is a partnership, association, firm or corporation.

1998 cC-35.1 s36

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## Meetings

37. (1) A board of directors shall hold a first meeting within 30 days after the annual general meeting at which that board was first elected and that board of directors shall, at its first meeting, elect from among the directors

(a) a president;

(b) a secretary; and

(c) those other officers of the co-operative required by the articles or by-laws to be elected.

(2) The incorporators whose names appear on the articles of incorporation shall be considered to have the powers and duties of directors and hold office until the first general meeting of the co-operative.

(3) The directors may, in accordance with the articles and by-laws of the co-operative, appoint officers to the co-operative, specify the duties and delegate to those officers the management of the business and affairs of the co-operative.

(4) Members of a co-operative may request that the board of directors meet as required in its by-laws.

1998 cC-35.1 s37

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## Validity of acts

38. An action of a director or officer is valid notwithstanding an irregularity in his or her election or appointment or a defect in his or her qualification.

1998 cC-35.1 s38

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## Notice of change

39. Within 30 days after a change is made in its directors, a co-operative shall notify the registrar of that change and the registrar shall file that notice.

1998 cC-35.1 s39

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## Remuneration

40. (1) Directors and committee members are not entitled to remuneration in connection with their duties as director or committee member or for attendance at meetings unless the remuneration is fixed in the by-laws or by the members by resolution at a general meeting.

(2) Directors and committee members may be reimbursed for expenses incurred in the performance of their duties and functions as directors or committee members.

(3) A co-operative may purchase and maintain insurance for the benefit of a director, committee member, officer or employee against liability, loss or damage incurred by that person while serving the co-operative or a subsidiary corporation as a director, committee member, officer or employee.

(4) The directors may fix the salaries of officers appointed by them and shall approve a scale of remuneration for employees of the co-operative.

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## Duties

41. (1) A director or officer of a co-operative, in exercising his or her powers and performing his or her duties, shall

(a) act honestly, in good faith and in the best interest of the co-operative;

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and

(c) comply with this Act and the articles and by-laws of the co-operative.

(2) A director, officer or associate of a director or officer, who, in connection with a transaction relating to shares of a co-operative or a debt obligation of a co-operative, uses confidential information for the benefit or advantage of himself or herself or an associate of him or her that, if generally known, might reasonably be expected to materially affect the value of the share or the debt obligation shall

(a) compensate a person for a direct loss suffered by that person as a result of the transaction, unless the information was known or reasonably should have been known to that person at the time of the transaction; and

(b) be accountable to the co-operative for a direct benefit or advantage received or receivable by him or her or his or her associate as a result of the transaction.

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## Liability

42. (1) Where the directors, without the approval of the membership, vote for, authorize or approve

- (a) the payment of remuneration to directors;
- (b) an acquisition or purchase of common shares other than the co-operative's own shares;
- (c) the purchase of shares in the co-operative;
- (d) the payment of a dividend or interest on shares;
- (e) a loan or guarantee or the giving of financial assistance;
- (f) a payment of an indemnity to a director or a former director; or
- (g) an act contrary to this Act or the articles or by-laws of the co-operative,

they are jointly and individually liable for loss or damage suffered by the co-operative.

(2) The liability imposed in subsection (1) is in addition to and not in derogation of a liability imposed on a director by another Act or law.

(3) For the purpose of this section, a director who is present at a meeting of directors or of a committee of directors shall be considered to have cast an affirmative vote or given consent to a resolution unless

- (a) that director's dissent is entered in the minutes of the meeting;
- (b) the director's written dissent is
  - (i) delivered to the secretary of the meeting before its adjournment, or
  - (ii) delivered or sent by registered mail to the registered office of the co-operative immediately after the adjournment of the meeting; or
- (c) he or she proves that he or she did not consent to or approve that matter.

(4) A director who votes affirmatively on a matter for a resolution mentioned in subsection (1) is not entitled to dissent under subsection (3).

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## Reporting to registrar

43. (1) Where a director or officer of a co-operative is aware that the co-operative has engaged in an illegal activity, he or she shall, immediately after first becoming aware of that activity, report to the registrar on that activity.

(2) A person does not contravene subsection (1) if he or she establishes that the activity to be reported has already been reported in writing to the registrar, or that the registrar is already aware or should reasonably be aware of that activity.

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## Indemnification

44. (1) A co-operative may indemnify

- (a) a director or officer of the co-operative;
- (b) a former director or officer of the co-operative; or

(c) a person who acts or has acted at the request of the co-operative as a director or officer of a corporation of which the co-operative is or was a member or a creditor,

against costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil or administrative action or proceeding to which that person is made a party by reason of being or having been a director or officer of the co-operative or corporation.

(2) Notwithstanding subsection (1), a co-operative may indemnify a director, officer or other person only where that person acted honestly and in good faith with a view to the best interests of the co-operative.

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## Duty not limited

45. The provisions of a contract, the co-operative articles or by-laws or the circumstances of his or her appointment do not relieve a director from

- (a) the duty to act in accordance with this Act; and
- (b) liability that by virtue of a rule of law would otherwise attach to him or her with respect to negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the co-operative.

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## Disclosure

46. (1) A director or officer of a co-operative who

(a) is a party to a contract or proposed contract with the co-operative; or

(b) is a director or an officer of, or has an interest in a corporation that is a party to a contract or proposed contract with the co-operative,

shall disclose in writing to the co-operative, or request to have entered in the minutes of meetings of directors, the nature and extent of his or her interest.

(2) Where the disclosure required under subsection (1) is to be made by an officer who is not a director, that officer shall make the disclosure

(a) immediately after he or she becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors;

(b) where he or she acquires an interest after a contract is made, immediately after he or she acquires the interest; or

(c) where he or she has an interest in a contract before becoming an officer, immediately after he or she becomes an officer.

(3) Notwithstanding subsection (2), where a contract or proposed contract would not in the ordinary course of the co-operative's business, require approval by the directors or shareholders, a director or officer shall disclose in writing to the co-operative or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest after he or she becomes aware of the contract or proposed contract.

(4) A director mentioned in subsection (1) shall not take part in discussions or vote on a resolution approving a contract to which he or she is a party.

(5) Where a director is not entitled to vote at a meeting under subsection (4) and his or her presence is required to constitute a quorum at a meeting of directors, a decision of the directors shall not be considered invalid only by reason of the absence of that director.

(6) Where

(a) a director or officer discloses his or her interest under this section; and

(b) the contract in which the director or officer has an interest

(i) is approved by the directors or shareholders, and

(ii) is reasonable and fair to the co-operative at the time it was approved,

that contract is not void or voidable only because of that interest or because a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized that contract.

(7) Where a director or officer of a co-operative does not disclose his or her interest in a contract under this section, a judge of the Trial Division may, on the application of the co-operative or a member of the co-operative, set aside that contract on terms that he or she considers appropriate.



(8) This section does not require the disclosure of an interest in a contract or transaction that is of a type available to and customarily entered into between the co-operative and its members.

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#### Borrowing powers

47. (1) The directors may, subject to the by-laws of the co-operative,

- (a) borrow money on the credit of the co-operative;
- (b) issue, reissue, sell or pledge debt obligations of the co-operative; and
- (c) mortgage, hypothecate, pledge or otherwise create a security interest in property of the co-operative to secure a debt obligation of the co-operative.

(2) A sale, lease or exchange of all or substantially all of the property of a co-operative, other than in the ordinary course of business of the co-operative, shall have the approval of the members in the manner required in the by-laws.

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#### Conduct of meetings

48. (1) The board of directors may, with the consent of the majority of directors, conduct a meeting of the directors or a committee of the board of directors by means of telephone or other electronic telecommunication equipment provided that all persons participating in the meeting are able to hear and communicate with each other.

(2) The board of directors may pass a resolution of that board without conducting a meeting provided that all directors have consented in writing to that resolution and that resolution shall be filed with the minutes of proceedings of the board of directors.

(3) The by-laws may require that all resolutions of the board of directors be passed at a meeting of that board.

(4) The board of directors shall keep minutes of the proceedings of that board of directors.

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#### Removal of directors

49. (1) The members of a co-operative may, by a resolution approved by a 2/3 majority of the votes cast at a general or special meeting, remove a director from office and may fill the vacancy resulting from that removal in accordance with this Act.

(2) Notwithstanding subsection (1), where the holders of preferred shares of a co-operative have an exclusive right to elect a director, that director may only be removed by an ordinary resolution at a meeting of the preferred shareholders of that class.

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#### Meetings of directors

50. (1) The chairperson of a co-operative

(a) may call a meeting of directors;

(b) on the written request of at least 2 directors, shall call a meeting within 2 weeks of the receipt of that request; and

(c) may delegate the call of a meeting to another director.

(2) Directors shall be given notice of meetings in accordance with the by-laws.

(3) A majority of the directors constitutes a quorum at a meeting of directors.

(4) A director may waive a notice of a meeting of directors.

(5) For the purpose of subsection (4), the attendance of a director at a meeting of directors shall be considered to be a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not lawfully called.

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#### Bonding

51. Where an officer of a co-operative receives, manages or handles money, goods, wares or merchandise on behalf of the co-operative, the directors shall require that that officer, before commencing his or her duties as an officer be bonded by a fidelity bond in an amount required by the directors.

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#### Committees

52. (1) A board of directors may appoint from among the directors and the members, those committees which are considered necessary and, by resolution, delegate to a committee those powers considered necessary for the efficient conduct of the affairs and business of the co-operative.

(2) Where powers are delegated to a committee under subsection (1), that committee shall consist of not less than one director.

(3) A quorum of a committee shall be not less than a majority of its members and all matters shall be determined by a majority vote.

(4) A committee shall report to the board of directors in accordance with the by-laws.

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## PART VI

### FINANCE

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#### Shares

53. (1) The shares of a co-operative shall have a par value fixed by the articles at an amount not less than \$5 per share.

(2) Where a co-operative has only one class of shares the rights of these shareholders are equal in all aspects.

(3) A co-operative may issue preferred shares as prescribed by regulation.

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#### Issue of shares

54. (1) Shares issued by a co-operative are non-assessable and a member is not liable to the co-operative or to its creditors beyond the sum remaining unpaid on the member's subscription for shares.

(2) A co-operative shall not issue a share until it is fully paid

(a) in money; or

(b) in property or past service that, in the opinion of the directors, is the fair equivalent of the money that the co-operative would have received if the share had been issued for money.

(3) In this section, "property" does not include a promissory note or a promise to pay.

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## Allocation of surplus

55. (1) Where a co-operative has a surplus in a fiscal year and before it allocates among or credits that surplus to members, the directors

- (a) shall apply the surplus
  - (i) first to pay income tax,
  - (ii) second to retire all or a part of a deficit it has previously incurred, and
  - (iii) third to maintain a reserve that the co-operative is required to maintain under this Act or its by-laws;

- (b) may set aside a part of the surplus in reserves that the directors consider necessary; and

- (c) may provide, in the manner set out in its by-laws, for payment out of the surplus of dividends or interest on shares.

(2) Where, by ordinary resolution, the members approve, at the end of a fiscal year, the directors may credit or pay to the members

- (a) subject to subsection (1), all or part of a surplus;
- (b) reserves, other than reserves the co-operative is required to maintain under this Act; and
- (c) unallocated earnings from previous years

in proportion to the business done by the members with or through the co-operative.

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## Payment of dividends

56. (1) A dividend or interest payment on shares made under paragraph 55(1)(c) may be paid in cash or credited to a member's account.

(2) A co-operative shall not declare or pay a dividend or interest payment on shares where

- (a) the co-operative is insolvent; or
- (b) there are reasonable grounds for believing that the co-operative would become insolvent as a result of declaring or paying the dividend or interest payment.

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## Share purchase and compulsory loans

57. The by-laws of a co-operative may provide that the members determine whether a dividend declared under section 56 is

- (a) used by a member for the purchase of shares in that co-operative; or
- (b) loaned to or retained by that co-operative for a time, on terms fixed by the members.

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#### Deductions

58. The by-laws of a co-operative may provide that the co-operative may deduct an amount from the money it receives for the goods, products or services it has marketed, handled, or dealt with, for or on behalf of a member or non-member patron and apply that amount to a loan or to the purchase of shares in the same manner and subject to the same restrictions as provided in section 57 for the application of dividends.

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#### Common share purchase

59. (1) A co-operative may purchase common shares of the co-operative that are available for compulsory purchase under section 84 or that are offered for sale.

(2) A co-operative shall pay a purchase price for a share purchased under this section equal to the par value of the share together with dividends accrued but unpaid with respect to that share, within the period of time specified in that co-operative's by-laws.

(3) Shares of a co-operative purchased or acquired by that co-operative under this section shall be considered to be cancelled.

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#### Share purchase restrictions

60. (1) Notwithstanding subsections 59(1) and 84(2), a co-operative shall not purchase or otherwise acquire its shares and may suspend the purchase or acquisition of shares where

- (a) the co-operative is insolvent;
- (b) the proposed purchase or acquisition would render that co-operative insolvent;
- (c) the proposed purchase or acquisition would, in the opinion of the directors, be detrimental to the financial stability of the co-operative; or

(d) as a result of the purchase or acquisition, the number of the members of the co-operative would be less than the number required to incorporate under this Act.

(2) The directors may not suspend the purchase or acquisition of shares under subsection (1) for more than 6 months unless the suspension is approved by a special resolution of the members.

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## Lien

61. A co-operative shall have a first charge upon

- (a) crops, agricultural produce and livestock progeny;
- (b) industrial implements, machinery, raw materials or products produced in whole or in part using those;
- (c) fish or fish products;
- (d) logs, lumber or other products produced from a logging or sawmill operation; and
- (e) other tangible property

where that co-operative supplies or provides money to a member or other person to purchase the agricultural requisites, farm or breeding livestock, agricultural machinery or implements, industrial implements or machinery, raw materials, fishery supplies or equipment, logging, saw mill operation or tangible property utilized in the production of products under paragraphs (a), (b), (c), (d) and (e).

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## Lien on member's interest

62. (1) A co-operative has a lien on a share or other financial interest of a member for a debt of that member to the co-operative.

(2) A co-operative may enforce a lien under subsection (1) and may apply money held by the co-operative to the credit of the member toward payment of a debt due by the member to the co-operative.

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## PART VII

### SHARE CERTIFICATES

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## Personal property

63. Subject to conditions or restrictions contained in this Act or the articles and by-laws of a co-operative, shares in a co-operative are personal property and are transferable.

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#### Share certificate

64. (1) A shareholder of a co-operative is, on request and without charge, entitled to a certificate, signed by the proper officers of the co-operative, stating the number of shares held by him or her and the amount paid on those shares.

(2) The co-operative is not required to issue more than one certificate for a share held jointly by 2 or more persons.

(3) A co-operative may in its by-laws provide that the signatures of the officers designated to sign share certificates may be engraved, lithographed or otherwise mechanically reproduced on the share certificates and, in that event those share certificates shall be considered to have been actually signed by those officers.

(4) A share certificate is evidence of the title of the shareholder to the shares referred to on the certificate.

(5) Where a co-operative has more than one class of shares,

(a) the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to a class of shares are required to be stated in legible characters

(i) on each share certificate representing that class of shares, or

(ii) by a written statement permanently affixed to the share certificate; or

(b) a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attached to the class of shares and that the full text of those preferences, rights, conditions, restrictions, limitations or prohibitions is obtainable on request and without fee from the secretary of the co-operative shall be inscribed in legible characters on each share certificate representing that class of shares.

(6) Where the statement referred to in paragraph (5)(b) is inscribed on share certificates of a co-operative, the secretary of the co-operative shall furnish to a shareholder, on request and without charge, the full text of preferences, rights, conditions, restrictions, limitations or prohibitions attached to the class of shares.

(7) Notwithstanding subsection (1), the by-laws may provide that a co-operative is not required to issue share certificates with respect to common shares, and, in that case

(a) the share register kept by the co-operative under paragraph 31(e) is evidence of the number of shares held by each member; and

(b) where requested in writing by a member, the co-operative shall provide a statement to the member showing the interest of the member in the co-operative.

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#### Transfer of shares

65. A transfer of a common share in a co-operative is not valid unless

- (a) a written application by the transferee is approved and the transfer is authorized by
  - (i) a resolution of the directors, or
  - (ii) a person authorized by a resolution of the directors to approve applications and transfers of that kind; and
- (b) notification of approval given under paragraph (a) is sent to the transferee and his or her name has been entered on the register as required under paragraph 31(e).

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#### Joint membership

66. (1) Where a share in a co-operative is held jointly by members,

- (a) only one member of a joint membership is entitled to vote at a time;
  - (b) only one member of a joint membership of 2 or more holders of a share in a co-operative may be a director at a time unless the by-laws of a co-operative state otherwise; and
  - (c) each member of a joint membership has an interest in the co-operative equal to that of other members in the joint membership.
- (2) Notwithstanding paragraph (1)(b), where a member of a joint membership also holds a share in his or her own name, he or she may vote and be a director, where another member of the joint membership is also a director.

(3) Where a share in a co-operative is held jointly

- (a) it may be held as a joint tenancy or a tenancy in common, but, where the members of a joint membership do not specify to the co-operative how the share is to be held, the share shall be considered to be held as a tenancy in common; and
- (b) the members of a joint membership are jointly and individually liable for all assessments, levies, dues, fees, payments and other charges imposed or payable with respect to the membership.

(4) In the absence of an agreement to the contrary, where one member of a joint membership pays more than his or her proportionate share of an assessment, levy, due, payment, fee or other charge with respect to a joint membership by reason of the default of another of the members of the joint membership, the member who paid the amount in excess of his or her proportionate share has a lien on the interest of and may recover the amount from the member who made the default.



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#### Variation of joint membership

67. An application of members of a joint membership to withdraw as shareholders in a co-operative or to vary the composition of the joint membership shall be signed by all persons comprising that joint membership.

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### PART VIII

#### MEETINGS

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#### First general meeting

68. (1) Within 4 months of the date of its incorporation under this Act a co-operative shall hold a first general meeting at which all members are entitled to be present and vote.

(2) The directors may apply to the registrar for an extension of the time for holding the general meeting and the registrar may in his or her discretion specify another time within which a general meeting shall be held.

(3) The first general meeting held under subsection (1) shall include

- (a) the adoption of by-laws for the administration of the co-operative;
- (b) the election of directors; and
- (c) the appointment of an auditor in accordance with section 91.

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#### Annual general meeting

69. (1) A co-operative shall hold an annual general meeting in each year not later than 4 months after the end of the fiscal year of the co-operative.

(2) Notwithstanding subsection (1), the registrar, upon application by the board of directors, may in his or her discretion approve another date by which the annual general meeting of a co-operative shall be held.

(3) The registrar may indicate with an approval given under subsection (2) that the new date for an annual general meeting be a continuing yearly annual general meeting date for that co-operative.

(4) The by-laws of a co-operative may provide for holding semi-annual or other periodic meetings.

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### Special meetings

70. (1) The directors shall call a special meeting of the members on receipt of a written request specifying the purpose of the meeting from,

- (a) where a co-operative has more than 50 members, not less than 10% of those members; or
- (b) where a co-operative has 50 members or less, a majority of those members.

(2) The directors shall call a special meeting under subsection (1) within 20 days of their receipt of the request and the special meeting shall dispose of the specific business outlined in the request.

(3) The registrar may call a special meeting of a co-operative

(a) to report to the members the results of an audit, examination or other investigation of the affairs of the co-operative ordered by the registrar; or

(b) where a co-operative does not hold an annual general meeting as required under section 69 so that members may obtain information regarding the affairs of the co-operative that they are entitled to receive under this Act.

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### Meeting called by registrar

71. (1) The registrar, on the application of 30% of members entitled to vote at a meeting or on his or her own initiative, may call a general meeting to be held and conducted in a manner that he or she directs.

(2) The registrar may order that the quorum required under this Act or the by-laws be varied or dispensed with at a general meeting called under this section.

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### Regional meetings

72. (1) A co-operative may make by-laws establishing regions, and providing for the conduct of meetings in those regions and may hold general meetings under this Act in the region in which members of the co-operative reside.

(2) A resolution presented at a regional meeting may be passed if the resolution

(a) is proposed at a regional meeting of which all members in the region have received notice under this Act; and

(b) is approved by a total number of members in all regions of the province that would be sufficient to pass the resolution at a single general meeting of the whole co-operative.

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## Notice

73. (1) A co-operative shall give to members at least 10 and not more than 30 days' notice of a general meeting specifying the place, date and time at which it is to be held and, where applicable, specifying an intention to propose a special resolution.

(2) Notice of a general meeting at which there is to be transacted business other than business required by this Act to be transacted at an annual general meeting or business involving the reappointment of the incumbent auditor, shall state

(a) the nature of that business in sufficient detail to enable the members to form a reasoned judgment on that business;

(b) where a special resolution is to be submitted to the meeting, the text of that resolution; and

(c) where the voluntary disposition or liquidation and dissolution of the co-operative is to be proposed, the full terms and conditions on which it is proposed to take place.

(3) The proceedings and the business transacted at a general meeting are not invalidated only because a member did not receive notice of the meeting.

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## Service

74. (1) A notice or other document required by this Act or the by-laws of a co-operative to be provided to a member shall not be considered served upon a member unless that notice or document is

(a) served personally on a member or, if that member is a corporation, partnership or other firm or unincorporated association of persons, on a director, partner, officer or designated representative or another member of the governing body of that corporation, partnership, firm or unincorporated association; or

(b) sent by registered mail addressed to the member at his or her latest address as shown in the records of the co-operative.

(2) Notwithstanding subsection (1), where by-laws of a co-operative permit, notice shall be considered to have been given where that notice is

(a) advertised prominently in newspapers circulated in the province or region served by the co-operative; and

(b) posted in prominent places that are accessible to members and are designated in the by-laws.

(3) Notwithstanding subsection (1), where a co-operative is required to provide a document to its members with a notice of a general meeting and it inserts the notice of the meeting in a newspaper under subsection (2), it may effect service of the document

(a) by giving information about the document in the notices given under paragraphs (2)(a) and (b), including an adequate description of the nature of the document; and

(b) by providing a copy of the document free of charge to a member who requests it.

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## Quorum

75. (1) The quorum at a general meeting is the number of members entitled to vote at a meeting that is specified in the co-operative's by-laws.

(2) Unless the by-laws otherwise provide, where a quorum is present at the opening of a general meeting, the members present may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting.

(3) Where a quorum is not present at the opening of a general meeting, the members present shall adjourn the meeting and shall not transact other business.

(4) Where a meeting is adjourned under subsection (3), members shall hold another general meeting within 7 days of the adjourned meeting and business transacted at the meeting shall be considered to be binding upon the members.

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## Qualification

76. (1) A person is not qualified to be a member unless he or she holds a share or a portion of a share issued by the co-operative.

(2) For the purpose of determining all matters respecting membership, a partnership or other unincorporated association of persons shall be considered to be a corporation and a single member.

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## Delegates

77. (1) A co-operative which is a member of another co-operative may make by-laws to provide for the nomination and appointment of a person as a delegate to attend a general meeting of that other co-operative and

(a) the rights and powers of members at an annual or special meeting shall be exercised by the co-operative's delegate on behalf of the co-operative for which the member was appointed as a delegate;

(b) a reference in this Act to members with respect to the exercise of a member's right or power shall be considered to be a reference to delegates; and

(c) unless otherwise provided in the by-laws of the co-operative which appointed the delegate or of the co-operative at whose meetings the delegate is an appointed member, the delegates may exercise at annual meetings or special meetings the full rights and powers of a member, including the right to vote.

(2) Members of a co-operative who elect a delegate representative may at an annual or special meeting called for that purpose remove that delegate as provided for in the by-laws.

(3) Notwithstanding subsection (1), members may, at an annual or special meeting called for that purpose, amend the by-laws to eliminate the nomination and appointment of delegates to general meetings.

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## Voting rights

78. (1) A member may vote at a meeting and each member is entitled to one vote.

(2) Notwithstanding subsection (1), a co-operative may provide in its by-laws for voting by a class of members.

(3) Where a co-operative is a federation, it may provide in its by-laws for voting based on the number of members in its member co-operatives.

(4) A co-operative shall make by-laws respecting

(a) what constitutes an invalid vote; and

(b) the time and manner in which delegates may vote.

(5) A member may not vote by proxy and shall cast his or her vote in person.

(6) Notwithstanding subsection (5), a co-operative may provide in its by-laws for voting by members with respect to elections of directors and officers, other than by personal attendance at a meeting.

(7) Five or more members at a general meeting may demand a vote by ballot before or on the declaration of the result of a vote by show of hands, and the result of the vote by ballot shall be the final decision of the members.

1998 cC-35.1 s78

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#### Member proposals

79. A member who is entitled to vote at an annual meeting of members may, at that meeting, submit a proposal on a matter which he or she wishes to discuss in the manner required by the by-laws of that co-operative.

1998 cC-35.1 s79

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#### By-laws

80. (1) A proposed by-law shall be presented at the annual general meeting or a special meeting called for the purpose and members shall vote to adopt or reject that by-law.

(2) A by-law shall not be passed unless confirmed by at least a majority of the members present at a meeting.

(3) A by-law may be amended or repealed in the same manner as it may be proposed and confirmed under this section.

(4) A by-law and an amendment or revocation of a by-law may be made at the annual general meeting, a general meeting, a special meeting or, by mail ballot where

(a) notice of the by-law, amendment or revocation of the by-law is given in writing to members of the co-operative or posted in a public place at the main office of the co-operative at least 30 days before

(i) the meeting at which the by-law, amendment or revocation of the by-law is to be made, cancelled or revoked, or

(ii) the return date for the mail ballot vote of a member and that return date shall be stated on the notice; and

(b) a majority of the voting members of the co-operative vote in person, by delegate or by mail ballot in favour of the by-law, amendment or revocation.

(5) A by-law shall, upon receipt of the approval of members, be immediately forwarded to the registrar and shall take effect immediately upon receipt of the approval of the registrar unless that by-law states a later date from which the by-law is to have effect.

1998 cC-35.1 s80

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#### Corporate and other members

81. (1) Where a corporation, partnership, firm or association is a member of a co-operative, that co-operative shall recognize a person authorized by a resolution of the directors or governing body of that corporation, partnership, firm or association to represent it at meetings of the co-operative.

(2) A person authorized under subsection (1) may exercise, on behalf of the corporation, partnership, firm or association he or she represents, all the powers the corporation, partnership, firm or association could exercise as a member.

1998 cC-35.1 s81

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#### Voting procedure

82. (1) Members shall vote on all matters requiring a vote

(a) by a show of hands; or

(b) by secret ballot where 5 members entitled to vote demand a secret ballot.

(2) Where a co-operative has divided the territory in which it does business into regions a member is entitled to vote only at the regional meeting designated by the directors.

(3) The chairperson of the meeting may vote, but is not entitled to a second vote in the event of a tie.

(4) A majority of the members or delegates who are present and cast votes at a meeting shall decide all questions.

1998 cC-35.1 s82

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#### Compulsory sale of shares

83. Where

(a) winding up or liquidation proceedings have commenced with respect to a corporation that is a member of a co-operative; or

(b) a member of a co-operative has, within the immediately preceding 2 years, failed to transact business with the co-operative

that co-operative may by written notice to the member, require the sale of that member's common shares to the co-operative in accordance with section 60, and that member shall sell those shares.

1998 cC-35.1 s83

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#### Withdrawal and termination of membership

84. (1) A member may withdraw from a co-operative on terms and conditions that a co-operative may provide in the by-laws.

(2) The by-laws of a co-operative shall contain conditions on which in accordance with section 59 a co-operative shall purchase member shares or repay member loans where

(a) a member withdraws under subsection (1); or

(b) a membership ceases for another reason.

(3) Members may terminate the membership of a member where

(a) that member has received at least 10 days' notice from the board of the meeting at which his or her membership is to be considered; and

(b) the termination is approved by a majority of the board.

1998 cC-35.1 s84

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## Appeal

85. (1) Where a person's membership is terminated under section 84, he or she may appeal that termination to the members in the manner required in the by-laws, and the members shall confirm or set aside the resolution terminating the membership.

(2) Notwithstanding subsection (1), a person whose membership is terminated for failure to pay fees, assessments, rent or occupancy charges or to fulfil other financial obligations to the co-operative is not eligible to appeal the termination to the members under subsection (1).

(3) Where a person appeals the termination of his or her membership, notwithstanding the resolution terminating his or her membership, he or she continues to be a member until the termination of his or her membership is confirmed by the meeting of the board of directors or by the members under this section.

1998 cC-35.1 s85

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## Re-admittance

86. A person whose membership is terminated under section 84 may be re-admitted to membership by a majority vote of members.

1998 cC-35.1 s86

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## Deceased members



87. (1) On the death of a member a co-operative shall transfer that member's share as required in the by-laws of that co-operative.

(2) A co-operative may, instead of transferring a share or shares in accordance with subsection (1), pay to a person entitled to receive that share or shares under subsection (1) or to his or her estate, an amount of money equal to the value of the share or interest of the deceased member.

(3) The value of a share or an interest in a co-operative shall be determined as required in the by-laws of that co-operative.

1998 cC-35.1 s87

## PART IX

### ESTABLISHMENT OF FEDERATIONS

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#### Federations

88. (1) Where an application is made to the registrar by not less than 5 registered co-operatives plus any number of organizations operating in the province which are not registered co-operatives and in respect of which the registrar has certified that they have as their object the promotion of the economic interests of their members provided that those organizations are operating in accordance with co-operative principles, the registrar may, by order, establish the applicants as a federation.

(2) Co-operatives which apply to the registrar under subsection (1) shall, before making that application

(a) receive, by a majority vote of the proposed applicants, confirmations that an application under subsection (1) is to proceed; and

(b) receive confirmation from each proposed co-operative applicant that an approval has been given at a general meeting of each co-operative to join the proposed federation.

(3) A federation established under subsection (1) may make by-laws which are not inconsistent with this Act and which are necessary or desirable for the implementation of things required under this section and, in particular, may make by-laws

(a) providing for the criteria for accepting co-operatives or other organizations with similar objectives into a federation;

(b) providing for membership in a national or regional association;

(c) providing for the governing of the federation by directors elected or appointed as delegates from among members of co-operatives in that federation;

(d) providing for the election of not less than 3 executive officers of the federation from among persons elected or nominated under paragraph (c); and

(e) providing for the remuneration and payment of expenses of the directors.

(4) The provisions of this Act other than this section shall not apply to a federation.

1998 cC-35.1 s88

## PART X

### FINANCIAL DISCLOSURE AND AUDIT

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#### Annual financial statements

89. The directors shall place before members at the annual general meeting of a co-operative.

- (a) financial statements relating to the previous fiscal year;
- (b) where applicable, the report of the auditor; and
- (c) other information respecting the financial position of the co-operative and the results of its operations that are required by the articles or the by-laws.

1998 cC-35.1 s89

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#### Financial statements availability

90. The financial statements and where applicable, the auditors report, shall be made available to members who request a copy, not less than 10 days immediately before the annual general meeting.

1998 cC-35.1 s90

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#### Auditor

91. (1) The members of a co-operative shall, by resolution at the annual general meeting, appoint an auditor.

(2) The co-operative shall give the registrar written notice of the removal, resignation or other termination of office of the auditor.

(3) The members of a co-operative may by ordinary resolution at a general or special meeting, remove from office an auditor other than an auditor appointed by the registrar under section 92.

(4) A vacancy created by the removal of an auditor shall be filled by resolution of the members at a general or special meeting.

(5) Notwithstanding subsection (4), where a vacancy in the office of auditor exists, the directors may, by resolution appoint an interim auditor for the co-operative.

1998 cC-35.1 s91

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#### Registrar appointment of auditor

92. Where a co-operative does not have an auditor, a member may apply to the registrar requesting the registrar to appoint an auditor to hold office until an auditor is appointed by the members and the registrar may order the appointment of and fix the remuneration of an auditor and may determine who is responsible for paying the remuneration.

1998 cC-35.1 s92

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#### Auditor rights

93. (1) A co-operative shall provide to its auditor notice of the annual general meeting in the same manner that notice of that meeting is provided to members.

(2) The auditor is entitled, to attend general meetings and may be questioned and heard on matters relating to his or her duties as auditor.

(3) Where an auditor of a co-operative requests from the present or former directors, officers, employees or agents of the co-operative information, records, documents, books, accounts and vouchers of the co-operative or any of its subsidiaries, that are, in the opinion of the auditor, necessary to enable him or her to make examinations and reports required under this Act those directors, officers, employees or agents shall comply with that request.

(4) On the demand of the auditor of a co-operative, the directors of the co-operative shall obtain from the present or former directors, officers, employees or agents of a subsidiary of the co-operative and furnish to the auditor the information and explanations that are described in subsection (3).

1998 cC-35.1 s93

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#### Content of audit

94. An auditor shall provide to a co-operative which he or she has audited

- (a) a report on the financial statements of the co-operative for the preceding fiscal year; and
- (b) a management letter with respect to that year that includes his or her observations on
  - (i) the adequacy of measures for internal control adopted by the co-operative, and
  - (ii) corrective measures undertaken by the co-operative in response to comments made or deficiencies reported by him or her with respect to the manner in which the co-operative carried on its business.

1998 cC-35.1 s94

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## Discrepancies

95. (1) A director, officer or employee of a co-operative shall, as soon as is practicable, notify the auditor of errors or misstatements in a financial statement that he or she is aware of and the auditor shall notify the board of the errors or misstatements.

(2) The board of directors shall, in writing, inform the registrar of errors or misstatements reported under subsection (1) and the registrar shall make an order respecting those errors and misstatements that he or she considers necessary.

1998 cC-35.1 s95

## PART XI

### EXAMINATION BY REGISTRAR

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## Examination

96. (1) The registrar or a person appointed by the registrar may examine a co-operative or its subsidiary to determine whether that co-operative or subsidiary is contravening or has contravened this Act.

(2) While conducting an examination, the registrar or another person appointed by the registrar may

(a) require a co-operative to produce for inspection, inventory, reports, books, papers or other documents or records in the co-operative's possession or under its control as these relate to the co-operative; and

(b) make and keep copies of the documents or records that are produced.

(3) A registrar or other person who conducts an examination under this section shall complete a report, in writing, on the examination made under subsection (2) and that report shall include all findings and conclusions of that examination.

(4) In order to carry out an examination under this section the registrar or other person may request a member, director or officer of a co-operative or a manager of the property of that co-operative to give to him or her all reasonable assistance in carrying out the examination and those persons shall comply with that request.

1998 cC-35.1 s96

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## Offences

97. (1) A person or co-operative is guilty of an offence where that person or co-operative
- (a) contravenes or fails to comply with this Act;
  - (b) does not comply with an order made by the registrar under this Act;
  - (c) hinders or obstructs the registrar or other person appointed under section 96 who is performing duties under this Act;
  - (d) wilfully makes a false or misleading statement in supplying information required by the registrar or other person under section 96; or
  - (e) refuses to give information to the registrar or other person appointed under subsection 96 as required for the purposes of this Act.
- (2) A natural person who is guilty of an offence under this Act is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than 6 months or to both the fine and imprisonment.
- (3) A co-operative that is guilty of an offence under this Act is liable on summary conviction to a fine of not more than \$25,000.

1998 cC-35.1 s97

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## Cease and desist orders

98. (1) Where the registrar believes that a co-operative is doing or is failing to do something which
- (a) contravenes this Act;
  - (b) is inconsistent with the purpose of a co-operative or the manner of operating a co-operative under this Act;
  - (c) might reasonably be expected to result in a situation that would contravene this Act or be inconsistent with the purposes or manner of operation referred to in paragraph (b); or
  - (d) constitutes a practice that might adversely affect the interests of members, customers or creditors of the co-operative,
- the registrar may order that co-operative to do or refrain from doing that thing, in order to remedy that situation.

- (2) The registrar shall provide a copy of an order made under subsection (1) to each director of the co-operative.

1998 cC-35.1 s98

## PART XII

### AMENDMENTS

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## Amendment of articles

99. (1) The members of a co-operative may by special resolution amend the articles of that co-operative to

- (a) change the name of the co-operative;
- (b) change the place in which its registered office is located;
- (c) add, change or remove a restriction on the business or businesses that the co-operative may carry on;
- (d) change the designation of shares and add, change or remove rights, privileges, restrictions and conditions, including rights to accrued dividends, with respect to its shares, whether issued or unissued;
- (e) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares;
- (f) revoke, diminish or enlarge an authority conferred under paragraph (e);
- (g) add, change or remove restrictions on the transfer of shares;
- (h) increase or decrease the number of directors; and
- (i) add, change or remove another provision that is permitted in this Act to be set out in the articles.

(2) Where, in a special resolution made under subsection (1), the members authorize the directors to revoke the resolution, the directors of a co-operative may revoke that resolution before it is acted upon without further approval of the members.

(3) An amendment to the articles under this section shall, where applicable, also be approved by special resolution of the preferred shareholders.

1998 cC-35.1 s99

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## Proposal to amend

100. A member who is entitled to vote at an annual general meeting of members may propose an amendment to the articles by forwarding that proposal in writing to the directors not less than 15 days prior to the issuance of notices for the annual general meeting.

1998 cC-35.1 s100

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## Registrar approval

101. (1) An amendment to articles made under section 99 shall be served upon the registrar in writing and shall not be considered in force until the registrar has approved that amendment under subsection (2).

(2) Where the registrar receives articles of amendment under subsection (1) and he or she is satisfied that the amendment

(a) has been approved by the members and, where applicable, the preferred shareholders; and

(b) does not contravene a provision of this Act

he or she may approve that amendment and issue a certificate of amendment in accordance with section 129.

(3) An amendment to the articles shall not affect

(a) an existing cause of action or claim or liability to prosecution in favour of or against the co-operative or its directors or officers; or

(b) a civil, criminal or administrative action or proceeding to which a co-operative or its directors or officers is a party.

(4) Notwithstanding subsection (2), where amended articles propose to change the purpose of a co-operative, the registrar may deny or approve that amendment.

1998 cC-35.1 s101; 2001 c42 s10

## PART XIII

### AMALGAMATION

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#### Co-operative amalgamation

102. (1) Two or more co-operatives may amalgamate and continue as one co-operative.

(2) A co-operative may amalgamate with a corporation incorporated under the Corporations Act or the Canada Business Corporations Act (Canada ) and continue as a co-operative, provided that the corporation is a subsidiary of the co-operative.

1998 cC-35.1 s102

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#### Amalgamation agreement

103. Each co-operative and corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, including

(a) the provisions that are required to be included in articles of incorporation under this Act;

(b) the manner in which the shares or memberships of each amalgamating co-operative or corporation are to be converted into shares or memberships or other securities or assets of the amalgamated co-operative; and

(c) whether the by-laws of the amalgamated co-operative are to be those of one of the amalgamated co-operatives and, where not, a copy of the proposed by-laws.

1998 cC-35.1 s103

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#### Member approval

104. (1) The directors of each amalgamating co-operative or corporation shall submit an amalgamation agreement made under section 103 for approval to a general meeting of the holders of each class of its shares.

(2) The directors shall give a notice of a general meeting respecting an amalgamation to members and preferred shareholders as provided in section 131.

(3) Each preferred share of an amalgamating co-operative carries the right to vote with respect to an amalgamation whether or not it otherwise carries the right to vote.

1998 cC-35.1 s104

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#### Filing of articles

105. (1) Where an amalgamation agreement is approved under section 104, the amalgamating co-operatives and corporations shall send to the registrar articles of amalgamation in the required form.

(2) The articles of amalgamation shall have attached to them an affidavit of a director or an officer of each amalgamating co-operative and corporation stating that

(a) the amalgamated co-operative will be able to pay its liabilities as they become due; and

(b) a creditor will not be prejudiced by the amalgamation where adequate notice has been given to all known creditors of the amalgamating co-operatives providing that the amalgamated co-operative is operating on a co-operative basis and is incorporated under this Act.

1998 cC-35.1 s105

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#### Effect of certificate

106. (1) Where the registrar receives articles of amalgamation and is satisfied that the conditions described in sections 103 and 104 are met, he or she shall issue a certificate of amalgamation in accordance with section 129.



(2) An amalgamated co-operative continues to be liable for the obligations of each amalgamating co-operative.

1998 cC-35.1 s106; 2001 c42 s10

## PART XIV

### RECEIVERS AND WINDING UP

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#### Function

107. (1) A receiver of property of a co-operative may, subject to the rights of secured creditors,

- (a) receive the income from the property and pay the liabilities connected with the property; and
- (b) realize the security interest of those on whose behalf he or she is appointed.

(2) Notwithstanding subsection (1), a receiver who is not appointed manager of a co-operative shall not carry on the business of the co-operative.

1998 cC-35.1 s107

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#### Receiver-manager

108. Where a receiver of a co-operative is also appointed as manager of the co-operative, he or she may carry on the business of the co-operative to protect the security interest of those on whose behalf the receiver-manager is appointed.

1998 cC-35.1 s108

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#### Directors powers cease

109. Where a receiver-manager is appointed by the court or under an instrument, a director of the co-operative shall not exercise directors' powers that the receiver-manager is authorized to exercise until the receiver-manager is discharged.

1998 cC-35.1 s109

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#### Duty

110. (1) A receiver or a receiver-manager appointed by the court shall act in accordance with the directions of the court.

(2) A receiver or a receiver-manager appointed under an instrument shall act in accordance with that instrument and directions that the court may make under section 111.

(3) A receiver or a receiver-manager shall

(a) act honestly and in good faith; and

(b) deal with property of the co-operative in his or her possession or control in a commercially reasonable manner.

1998 cC-35.1 s110

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#### Directions of court

111. On the application of a receiver or a receiver-manager appointed by the court or under an instrument, or upon the application of an interested person, the court may make an order it thinks appropriate, including an order

(a) appointing, replacing or discharging a receiver or a receiver-manager and approving his or her accounts;

(b) determining the notice to be given to a person or dispensing with notice to a person;

(c) fixing the remuneration of the receiver or receiver-manager;

(d) requiring the receiver or receiver-manager or a person by or on behalf of whom he or she is appointed, to make good a default in connection with the receiver's custody or management of the property and business of the co-operative, or to relieve a receiver or a receiver-manager or a person from a default on terms that the court thinks appropriate;

(e) confirming an act of the receiver or receiver-manager; and

(f) giving directions on another matter relating to the duties of the receiver or receiver-manager.

1998 cC-35.1 s111

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#### Requirements

112. A receiver or a receiver-manager shall

(a) immediately notify the registrar of his or her appointment or discharge;

(b) take into his or her custody and control the property of the co-operative in accordance with the court order or instrument under which he or she is appointed;

(c) open and maintain a bank account in his or her name as receiver or receiver-manager of the co-operative for the money of the co-operative coming under his or her control;

(d) keep detailed accounts of all transactions carried out by him or her as receiver;

(e) keep accounts of his or her administration and he or she shall have those accounts available during usual business hours for inspection by the directors of the co-operative, the registrar or a person authorized by the registrar;

(f) prepare at least once in every 6 month period after the date of his or her appointment, financial statements of his or her administration, as far as is practicable;

(g) on completion of his or her duties, make a final account of his or her administration; and

(h) file with the registrar a copy of the financial statement and the final account within 15 days of the preparation of that financial statement or making of the final account.

1998 cC-35.1 s112

## PART XV

### DISSOLUTION AND LIQUIDATION

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#### Application

113. (1) Sections 113 to 118 do not apply to a co-operative that is bankrupt or insolvent within the meaning of the Bankruptcy and Insolvency Act (Canada ).

(2) Where a co-operative is found in a proceeding under the Bankruptcy and Insolvency Act (Canada ) to be bankrupt within the meaning of that Act, a proceeding taken under sections 113 to 118 to dissolve or to liquidate and dissolve the co-operative shall cease.

1998 cC-35.1 s113

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#### Authorization of dissolution by members

114. (1) The members and preferred shareholders of a co-operative may, where that co-operative has no property, assets, debts and liabilities, by special resolution authorize the dissolution of the co-operative.

(2) The directors shall give a notice of a general meeting of members and of preferred shareholders as required by section 74 to members and preferred shareholders for the purpose of authorizing a dissolution under subsection (1).

(3) Each preferred share of the co-operative carries the right to vote with respect to dissolution whether or not it otherwise carries the right to vote.

(4) Where the registrar receives a notice of a dissolution authorized under this section, he or she shall, if satisfied that the co-operative has no property, assets, debts and liabilities, issue a certificate of dissolution with respect to that co-operative.

(5) The co-operative stops existing on the date shown in the certificate of dissolution.

1998 cC-35.1 s114

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#### Dissolution where property or liabilities

115. (1) A co-operative that has property or liabilities or both may be dissolved by special resolution of members and preferred shareholders whether or not the preferred shareholders have the right to vote provided that by that special resolution, the members and preferred shareholders authorize the directors to cause the co-operative to liquidate and dispose of property and to discharge liabilities.

(2) A dissolution approved under subsection (1) shall set out

- (a) the property, assets, debts and liabilities of the co-operative;
- (b) the number of members; and
- (c) the nature and extent of the members' interest in the co-operative.

(3) Where members and preferred shareholders pass a special resolution under subsection (1), the co-operative shall publish a notice of that special resolution in a newspaper having general circulation in the area where the registered office of the co-operative is located.

(4) After passing a special resolution under this section the co-operative may appoint a liquidator to deal with the liquidation of property and assets and the payment of debts and liabilities or may carry out those functions itself.

(5) After passing a special resolution under this section the funds of or funds derived from liquidated property and assets of the co-operative, including a statutory reserve, shall be applied as follows:

- (a) first to pay the debts and liabilities of the co-operative;
  - (b) second to pay members funds which they are entitled to including the return of original share capital; and
  - (c) third to pay to
    - (i) a non profit corporation, society, organization or co-operative established for charitable or benevolent purposes,
    - (ii) a co-operative established with similar objects, or
    - (iii) a fund to be used for the development of co-operative societies.
- (6) The registrar may require from a co-operative a return or other evidence showing
- (a) the progress of the dissolution;

- (b) the debts and liabilities of the co-operative; and
- (c) other information that the registrar may require.

(7) Where the registrar is satisfied that a co-operative has complied with this section and that the co-operative no longer has assets, property, debts or liabilities he or she may dissolve the cooperative by issuing a certificate of dissolution.

(8) In subsection (2), interest means the interest of a member or shareholder in a co-operative and includes shares, member loans and obligations that

- (a) arise under the by-laws of the co-operative;
- (b) are owed by the co-operative to the member or shareholder; and
- (c) are owed by the member or shareholder to the co-operative.

1998 cC-35.1 s115

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#### Dissolution by registrar

116. (1) Where a co-operative

- (a) has not started business within 2 years after the date shown on its certificate of incorporation;
- (b) has not carried on business for 2 consecutive years; or
- (c) fails to send a return, notice, document or required fee to the registrar as required under this

Act;

the registrar shall in writing request that the co-operative comply with the Act.

(2) Where a co-operative does not comply with subsection (1), the registrar, unless cause to the contrary has been shown by the co-operative, may

- (a) if satisfied that that co-operative has no assets, property, debts or liabilities, dissolve the co-operative and issue a certificate of dissolution; or
- (b) apply to the court for an order dissolving the co-operative in which case the court may make an order that it considers necessary and appropriate to carry out the dissolution.

(3) A co-operative stops existing on the date shown on a certificate of dissolution issued by the registrar under this Part.

1998 cC-35.1 s116

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#### Dissolution for failure to account

117. (1) Where a co-operative does not provide a copy of the annual financial statements to its members

- (a) at an annual or special meeting called for that purpose; or
- (b) within a period of 12 months after the close of its fiscal year,

the registrar may call a special meeting of the co-operative for the purpose of considering the business transacted during the preceding fiscal year and for the furnishing to the members and to the registrar a copy of the annual financial statement.

(2) The registrar may, at a meeting called under subsection (1), order that members pass a resolution to comply with sections 89 and 90 and may review the financial position of the co-operative, and consider the interests of the members to ascertain whether members wish to continue the co-operative.

(3) Where

- (a) a quorum of members is not present at a special meeting called under subsection (2); or
- (b) the members do not pass a resolution to carry on the business of the co-operative and to comply with sections 89 and 90,

the registrar may notify the directors that, unless sections 89 and 90 are complied with within 30 days from the date of the notice, the co-operative will be struck off the register and dissolved.

(4) Notwithstanding subsection (3), the registrar may extend the period for compliance with sections 89 and 90.

(5) Where a co-operative does not comply with sections 89 and 90 within the 30 day period under subsection (3) or set by the registrar under subsection (4), the registrar may, where he or she is satisfied that the co-operative does not have property, assets, debts or liabilities, issue a certificate of dissolution, or may apply to the court for an order dissolving the co-operative in which case the court may make an order that it considers necessary and appropriate to carry out the dissolution.

1998 cC-35.1 s117

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#### Dissolution by court order

118. (1) The registrar or an interested person may, after giving the co-operative 3 months' notice of the proposed application, apply to the court for an order dissolving a co-operative, where the co-operative

- (a) obtained its incorporation by fraud or mistake;
- (b) exists for an illegal purpose;
- (c) has wilfully, after notice by the registrar, failed to comply with this Act or the by-laws of the co-operative;
- (d) is not operating on a co-operative basis; or
- (e) has the number of its members reduced below the minimum number required in this Act for the incorporation of a co-operative.

(2) Where a person applies to the court under this section, he or she shall give the registrar notice of his or her application and the registrar may appear and be heard in person or by counsel.

(3) Where the court receives an application under this section, it may order that the co-operative be dissolved and liquidated.

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#### Appointment of liquidator

119. (1) Where making an order for the liquidation and dissolution of a co-operative, or at any time afterward, the court may appoint a corporation or a person, including a director, officer or member of the co-operative, as liquidator of the co-operative.

(2) Where the office of the liquidator appointed under subsection (1) is or becomes vacant, the property of the co-operative is under the control of the court until the office of the liquidator is filled.

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#### Cessation of business

120. (1) The liquidation of a co-operative commences where

- (a) a special resolution for dissolution of the co-operative is made; and
- (b) the court makes an order to liquidate and dissolve the co-operative.

(2) Notwithstanding paragraph (1)(a), a co-operative shall immediately give notice to the registrar of a special resolution for dissolution and that resolution shall not be considered as made unless first approved by the registrar.

(3) From the date of the commencement of its liquidation

(a) a co-operative continues in existence, but shall cease to carry on its business except as may be required, in the opinion of the liquidator, for an orderly liquidation; and

(b) a transfer of shares, other than a transfer made to or with the approval of the liquidator, and an alteration in the status of the members made after the commencement of the liquidation is void.

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#### Liquidator duties

121. (1) When appointed by a co-operative or by the court, a liquidator shall immediately give notice of his or her appointment

- (a) to the registrar; and
  - (b) to each claimant and creditor known to the liquidator.
- (2) A liquidator shall, when appointed,
- (a) immediately publish notice of his or her appointment in a newspaper published or distributed in the place where the co-operative has its registered office;
  - (b) place in the notices under paragraphs (1)(b) and (2)(a) a provision requiring a person
    - (i) indebted to the co-operative, to pay to the liquidator at the time and place specified money owed to that co-operative,
    - (ii) possessing property of the co-operative, to deliver it to the liquidator at the time and place specified, and
    - (iii) having a claim against the co-operative, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice;
  - (c) take into his or her custody the property of the co-operative;
  - (d) open and maintain a trust account for the money of the co-operative;
  - (e) keep accounts of the money of the co-operative received and paid out by him or her;
  - (f) maintain separate lists of the members, creditors and other persons having claims against the co-operative;
  - (g) where he or she determines that the co-operative is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;
  - (h) deliver to the registrar, at least once in every 12 month period after his or her appointment or more often as the registrar may require, financial statements of the co-operative in the form that the liquidator thinks appropriate;
  - (i) pay the costs of liquidation out of the property of the co-operative and pay or make adequate provision for all claims against the co-operative;
  - (j) have the final accounts approved by the registrar, or where applicable, by the court; and
  - (k) distribute the remaining property in accordance with subsection 115(5).

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## Powers of liquidator

### 122. (1) A liquidator may

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisors whom he or she considers advisable for the purpose of carrying out the liquidation;



(b) bring, defend or take part in a civil, criminal or administrative action or proceeding in the name and on behalf of the co-operative;

(c) carry on the business of the co-operative as required for an orderly liquidation;

(d) sell by public auction or private sale a property of the co-operative;

(e) do all acts and execute documents in the name and on behalf of the co-operative;

(f) borrow money on the security of the property of the co-operative;

(g) settle or compromise claims by or against the co-operative; and

(h) do all other things that he or she considers necessary for the liquidation of the co-operative and distribution of its property.

(2) Where a liquidator has reason to believe that a person has in his or her possession or under his or her control or has concealed, withheld or misappropriated property of the co-operative, he or she may apply to the court for an order requiring the person to appear before a judge of the court to be examined at the time and place designated in the order.

(3) Where an examination under subsection (2) discloses that a person has concealed, withheld or misappropriated property of the co-operative, the court may order the person to restore the property to pay compensation to the liquidator on behalf of the co-operative.

(4) A liquidator shall not purchase, directly or indirectly, a part of the stock-in-trade, debts or assets of the co-operative.

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## Duties and powers of liquidator

123. (1) Where a liquidator is appointed under this Part, the powers of the directors vest in the liquidator.

(2) A liquidator may delegate powers vested in him or her under subsection (1) to the directors or members.

(3) Where the members of a co-operative appoint a liquidator, they may, at that time or at a subsequent general meeting and in accordance with this Part, pass a resolution giving directions to the liquidator with respect to the disposal of the property of the co-operative.

(4) Notwithstanding subsection (3), an interested person may apply to the court for directions with respect to a liquidator and the mode, terms and conditions on which he or she may dispose of the whole or a part of the property of a co-operative.

(5) In all proceedings connected with a co-operative, a liquidator shall be described as the liquidator of that co-operative under its name of incorporation and not by his or her individual name.

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### Costs of liquidation

124. (1) A liquidator shall pay the costs of liquidation out of the property of a co-operative and shall pay or make adequate provision for all claims against the co-operative.

(2) After the date specified by a liquidator for distribution under subparagraph 122(2)(b)(iii), he or she may distribute all or part of the assets of a co-operative among the parties entitled to the assets having regard to the claims of which the liquidator has notice.

(3) A liquidator is not liable for assets of a co-operative distributed under subsection (2) to a person for whom a notice of claim has not been submitted to the liquidator at the time of distribution.

(4) When distributing the assets of a co-operative under this section, a liquidator shall pay, in priority to the claims of the ordinary or general creditors of the co-operative, the wages or salaries of all persons, other than directors, employed by the co-operative at the time of the commencement of the liquidation or within 30 days before.

(5) Notwithstanding subsection (4), wages or salaries paid under that subsection shall not be greater than 3 months' wages or salary, and those persons are entitled to rank as ordinary or general creditors of the co-operative for a residue of their claims.

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### Final account

125. (1) After paying or making adequate provision for all claims against a co-operative, a liquidator shall apply to the registrar or where applicable, to the court, for approval of his or her final accounts and for permission to distribute in money or in kind the remaining property of the co-operative in accordance with subsection 115(5) and the by-laws.

(2) Where a liquidator has not paid or made adequate provision for all claims against a co-operative within one year of his or her appointment, he or she shall apply to the registrar or where applicable, the court, for an extension of time to complete his or her responsibilities, setting out the reasons for the extension of time.

(3) Where the registrar or court approves the final accounts made by a liquidator under subsection (1), the registrar or the court shall

(a) issue directions with respect to the custody or disposal of the documents and records of the co-operative; and

(b) discharge the liquidator.

(4) Where a liquidator is discharged under subsection (3), the registrar shall issue a certificate of dissolution with respect to the dissolved co-operative.

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#### Custody of records

126. A person who has been granted custody of the documents and records of a dissolved co-operative shall retain those documents and records for 6 years following the date of its dissolution or until the expiry of another shorter period that the registrar may set under paragraph 125(3)(a).

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#### Unknown claimants

127. (1) On the dissolution of a co-operative, a liquidator shall convert into money the portion of the property distributable to a creditor or shareholder who after a reasonable investigation cannot be found and shall deposit the money in a credit union, a chartered bank or the Co-operative Trust Company of Canada.

(2) A payment under subsection (1) shall be considered to be in satisfaction of a debt or claim of that creditor or shareholders.

(3) Where a creditor establishes within 3 years after the dissolution of a co-operative that he or she is entitled to money paid to a credit union, chartered bank or the Co-operative Trust Company of Canada under subsection (1), the credit union, chartered bank or the Co-operative Trust Company of Canada shall pay the amount of his or her claim out of the money deposited.

(4) Where money deposited under this section is not distributed within 3 years after the dissolution of a co-operative, subject to the approval of the registrar, the credit union, chartered bank or the Co-operative Trust Company of Canada shall distribute the money in accordance with subsection 115(5) and the by-laws of the co-operative.

1998 cC-35.1 s127

#### PART XVI

#### REGULATIONS AND MISCELLANEOUS

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#### Regulations

128. The Lieutenant-Governor in Council may make regulations

(a) prescribing standards and requirements respecting the accounts and audits of co-operatives including variations of those requirements and standards which may be made;

(b) respecting registration of co-operatives including extra provincial co-operatives;

- (c) respecting the application of this Act to partnerships and joint ventures involving co-operatives including investments in those;
- (d) respecting the issuance of preferred shares;
- (e) respecting the execution, certification, authorization, correction and alteration of returns and documents required under this Act and the filing, registration or other administrative procedures applicable to returns and documents;
- (f) prescribing businesses in which a co-operative may not engage or which require the prior approval of the registrar before being engaged in;
- (g) respecting borrowing and financing by a co-operative or a member and restrictions which may apply;
- (h) respecting the payment of dividends and limits on those payments and respecting the payment of interest and surplus to members;
- (i) respecting the continuance of a co-operative and changes which may be made to the articles and business of a co-operative upon continuance;
- (j) respecting membership in a housing co-operative and the occupancy of residential units owned by a housing co-operative;
- (k) respecting reserve funds; and
- (l) generally to give effect to the purpose of this Act.

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## Execution and filing

129. (1) Where this Act requires that articles, by-laws or other information relating to a co-operative be sent to the registrar, unless otherwise specifically provided, the co-operative shall send to the registrar 2 copies of the articles, by-laws or information signed by a director or an officer of the corporation or, in the case of articles of incorporation, by all of the incorporators.

(2) Where the registrar receives duplicate originals of articles, by-laws or information under subsection (1) and they are accompanied by other required documents and fees, the registrar shall

- (a) endorse on each of the duplicate originals the word "Registered" and the date of registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles, by-laws or information;
- (c) file a copy of the certificate and attached articles, by-laws or information; and
- (d) send to the co-operative or its representative the original certificate and attached articles, by-laws or information.

(3) The registrar may date a certificate under subsection (2) as of the date on which he or she receives the complete articles, by-laws or information for which the certificate is issued or with respect to a certificate of dissolution, when satisfied that there has been compliance with Part XV.

(4) A signature required on a certificate under subsection (2) may be printed or otherwise mechanically produced on the certificate.

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## Fees and filing

130. The minister may set fees and establish forms for the purposes and to carry out the administration of this Act.

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## Service

131. (1) A notice or document required under this Act to be given, sent or served is, unless otherwise provided for, to be given or served personally or mailed by registered mail to the last known address of the person who is to receive that notice or document.

(2) Where a co-operative sends a notice or document to a member or shareholder in accordance with this section and the notice or document is returned on 2 consecutive occasions because the member or shareholder cannot be found, the co-operative is not required to send a further notice or document to the member or shareholder until he or she informs the co-operative in writing of his or her new address.

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## Waiver of notice

132. Where a notice or document is required by this Act to be given or sent to a person, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged with the consent in writing of the person entitled to the notice or document.

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## Certification and proof

133. (1) A director or officer of a co-operative may issue a certified copy of the whole or a part of the articles, the by-laws, the securities register, a trust indenture or another contract to which the co-operative is party or the minutes of a meeting of the directors, a committee of directors or the members.

(2) A certified copy described in subsection (1) is admissible in evidence as proof of the facts contained in the certificate or certified copy without proof of the signature or official character of the person appearing to have signed the certificate or the certified copy.

(3) An entry in a securities register of, or a security certificate issued by, a co-operative is proof that the person in whose name the security is registered is owner of the securities described in the register or in the certificate.

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Striking name

134. (1) The registrar may cancel the registration of a co-operative where

(a) he or she does not receive a return, notice or other document or fee required by this Act or the regulations to be sent to him or her;

(b) the co-operative gives notice to him or her that it has ceased to carry on business in the province;

(c) the co-operative is not entitled to carry on business under the act of incorporation of the jurisdiction in which it is incorporated;

(d) the co-operative is dissolved; and

(e) the co-operative is bankrupt within the meaning of the Bankruptcy and Insolvency Act (Canada ).

(2) Where, in the opinion of the registrar, a co-operative is in default under paragraph (1)(a), he or she shall send to the co-operative a notice advising it of that default and stating that, unless that default is remedied within 30 days after the date of the notice, the co-operative registration will be cancelled.

(3) After the expiry of the time referred to in the notice, the registrar may cancel the registration of the co-operative and he or she shall publish notice of that cancellation in the Gazette .

(4) Where the registration of a co-operative is cancelled under this Act, the registrar may, on receipt of an application in the form prescribed by regulation and on payment of a required fee

(a) re-register the co-operative; and

(b) issue a certificate noting the date of re-registration to the co-operative.

1998 cC-35.1 s134

PART XVII

EXTRA-PROVINCIAL CO-OPERATIVES

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#### Extra-provincial co-operative

135. (1) An extra-provincial co-operative means a co-operative that is incorporated as a co-operative otherwise than by an Act of the province.

(2) An extra-provincial co-operative shall register under this Act.

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#### Extra-provincial registration

136. In order to register under this Act an extra-provincial co-operative shall file with the registrar a statement setting out

- (a) the name of the co-operative;
- (b) full particulars of its incorporating documents including articles and a certificate of registration or their equivalents;
- (c) the undertaking that the co-operative will carry on in the province;
- (d) the authorized and paid-up or stated capital of the co-operative;
- (e) the full address of the head office of the co-operative outside the province;
- (f) the full address of the head office of the co-operative in the province; and
- (g) the full names and addresses of the directors of the co-operative.

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#### Certificate of registration

137. Where the registrar has received in respect of an extra-provincial co-operative the statements and other documents required under this Part together with the required fees and the registrar is satisfied that the extra-provincial co-operative operates on a co-operative or substantially co-operative basis, the registrar shall issue a certificate showing that the co-operative has been registered as an extra-provincial co-operative under this Act.

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## Revocation

138. (1) The registrar may revoke the registration of an extra-provincial co-operative for failing to comply with this Act.

(2) The registrar shall immediately publish in the Gazette a notice of a revocation of registration under subsection (1).

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## Cancellation

139. (1) Where an extra-provincial co-operative ceases to carry on an undertaking in the province, the co-operative shall file a notice to that effect with the registrar who shall then cancel the registration of that co-operative.

(2) Where an extra-provincial co-operative ceases to exist and the registrar is made aware of that fact by evidence satisfactory to him or her, the registrar may cancel the registration of that co-operative.

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## Withdrawal

140. An extra-provincial co-operative may withdraw its registration in writing, by advising the registrar of its interest as prescribed by regulation.

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## PART XVIII

### CONSUMERS' CO-OPERATIVES

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## Definition and application

141. (1) In this Part, "consumers' co-operative" means a co-operative incorporated or continued under this Act whose primary purpose is to purchase, procure, process, manufacture, exchange, hire and deal in goods or services for sale at retail to its members and patrons who will be the ultimate users or consumers of those goods or services.

(2) This Part applies to every co-operative that is organized or operated as a consumers' co-operative.

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## Restriction

142. (1) An employee of a consumers' co-operative shall not be a director of that co-operative.

(2) Notwithstanding subsection (1), a co-operative may by resolution pass a by-law to provide that 1/3 or fewer of its directors may be employees.

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## Reserve

143. (1) A consumers' co-operative shall set aside not less than 5% of surplus in a reserve before paying a dividend or interest on share capital.

(2) When the reserve required under subsection (1) is equal to or more than 10% of the total assets of the co-operative as shown in its audited financial statement for the fiscal year, that consumers' co-operative need not set aside a part of the surplus or book gains in a reserve.

(3) A consumers' co-operative may charge against its reserve required under subsection (1)

(a) net losses resulting from its business operations;

(b) the equity of a member that has been transferred to the reserve when the equity is paid to the member or his or her estate or where the member or estate provides proof of claim that is satisfactory to the directors; and

(c) losses resulting from revaluation or sale of its assets.

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## PART XIX

### COMMUNITY SERVICE CO-OPERATIVES

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## Definitions and application

144. (1) In this Part, "community service co-operative" means a co-operative that is incorporated or continued under this Act whose primary purpose is to carry on activities or to provide services that are primarily for the benefit of the members or the general welfare of the community.

(2) This Part applies to every co-operative that is organized or operated as a community service co-operative.

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## Consent required

145. Where the articles of a co-operative provide that it shall be a community service co-operative or that this Part is to apply to the co-operative, the co-operative shall not repeal or amend that provision without the prior consent of the registrar.

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## No interest on share accruing

146. (1) A community service co-operative shall not pay dividends or interest on share capital to its members.

(2) Surplus money of a community service co-operative shall not be given or paid to a member or patron.

(3) Surplus money of a community service co-operative shall

(a) be set aside as a reserve fund for unforeseen losses or other contingencies, or for the maintenance or further development of the services provided by the co-operative; or

(b) where the members authorize at an annual meeting, be donated to one or more organizations, associations or groups with objectives of a benevolent or charitable nature.

1998 cC-35.1 s146

## PART XX

### HOUSING CO-OPERATIVES

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## Definitions

147. (1) In this Part

(a) "housing co-operative" means a co-operative which has as its purpose the provision of residential housing accommodation on a non-profit basis to persons the majority of whom are members of the co-operative and who are ordinarily resident in that housing and the co-operative's articles shall provide that

(i) the co-operative be subject to this Part,

(ii) its activities are to be carried on without the purpose of gain for its members, and

(iii) on dissolution, its property after payment of its debts and liabilities shall be distributed to organizations, associations or groups with objectives of a benevolent or charitable nature;

(b) "housing charge" means a fee, other than a membership fee, charged by a housing co-operative to its members;

(c) "housing unit" means housing intended for residential use; and

(d) "joint member" means a person who is one of 2 or more persons who jointly hold shares in a housing co-operative.

(2) A housing co-operative shall be governed by the executive committee which shall consist of directors with the duties and powers of a board of directors under Part V.

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### Joint membership

148. (1) Shares in a housing co-operative may be held jointly by members and

(a) 2 members who share a joint membership may be directors of the housing co-operative at the same time provided that this is permitted in the by-laws of the co-operative;

(b) members of a joint membership are together entitled to only one vote; and

(c) the member of a joint membership whose name appears first as the first of 2 or more members on the member register is entitled to cast the vote, but if that person fails to do so, or chooses not to do so, the member of the joint membership whose name next appears on the share certificate is entitled to cast the vote, and so on if there are more than 2 members of that joint membership.

(2) Unless otherwise agreed between the housing co-operative and the members of a joint membership, payments shall be made to the members jointly, and payment by a housing co-operative in accordance with this subsection is a valid and effective discharge of the housing co-operative responsibilities with respect to a demand by a person against it, up to the amount so paid.

(3) Where a share in a housing co-operative is held jointly,

(a) it may be held as a joint tenancy or a tenancy in common, but, if the members jointly holding the share do not specify to the housing co-operative and the by-laws do not address the matter, it shall be considered to be held as a joint tenancy; and

(b) the joint shareholders shall be jointly and individually liable for all assessments, levies, dues, fees, payments and other charges imposed or payable in respect of the membership.

(4) In the absence of an agreement to the contrary, where one member of a joint membership is obliged to and does pay more than his or her proportionate share of an assessment, levy, due, payment, fee or other charge with respect to a joint membership by reason of the default of another of the members of the joint membership, the member who paid the amount in excess of his or her proportionate share has a lien on the interest of and may recover the amount from the person who made the default.

(5) The provisions of this section apply, with the necessary changes, to persons who hold a membership interest but not a share.

(6) Notwithstanding subsection (3), a co-operative may in a by-law indicate whether jointly held shares are to be held as a joint tenancy or as a tenancy in common.

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## Application

149. (1) This Part applies to a housing co-operative that is incorporated or continued under this Act and made subject to this Part by its articles.

(2) Where the articles of a co-operative provide that it is to be a housing co-operative or that this Part is to apply to it, the co-operative shall not repeal or amend that provision without the consent of the registrar.

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## Housing charges

150. The level of housing charges in a housing co-operative shall be decided by a resolution of the members.

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## Reserves

151. (1) The directors of a housing co-operative shall set aside not less than 5% of surplus in a reserve fund.

(2) Where the reserve required under subsection (1) is equal to or more than 20% of the total assets of the co-operative as shown in its audited financial statement for the fiscal year, the directors are not required to set aside part of the surplus in a reserve fund.

(3) A housing co-operative shall invest its reserve fund required under subsection (1) as required in its by-laws.

(4) A housing co-operative shall use its reserve fund required under subsection (1) to cover unforeseen operating losses or contingencies that the directors consider are necessary to the operation of the co-operative.

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## Non-profit

152. (1) A profit resulting from revaluation or sale of real property shall

(a) be set aside as a reserve fund for unforeseen operating losses or other contingencies, or for the maintenance or further development of the services provided by the co-operative; or

(b) where the members authorize at an annual meeting, be donated by the directors to one or more local organizations, associations or groups with objectives of a benevolent or charitable nature or housing co-operatives with similar objectives.

(2) A reserve fund established under this section shall be invested in the manner prescribed by regulation.

(3) A member of a housing co-operative shall not be entitled to a profit or capital gain because of the occupancy, transfer or surrender of a unit of housing of the co-operative or because of a transfer or termination of membership in the co-operative.

(4) A housing co-operative shall not pay a dividend or interest on share capital to its members.

(5) A housing co-operative shall be carried on without profit for its members and profit or other revenues received to the co-operative shall be used to promote its objects.

(6) No part of the income of a housing co-operative shall be paid to or otherwise made available for personal benefit to a member of that co-operative.

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## Right of occupancy

153. The right to occupy a housing unit shall be granted to members of the co-operative and unless the co-operative's by-laws otherwise provide, when a member ceases to occupy a unit of housing of the co-operative, his or her membership in the co-operative shall terminate, and when his or her membership terminates, the right to occupy a unit of housing of the co-operative shall cease.

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## Member withdrawal

154. Notwithstanding another provision of this Act,

(a) a member may withdraw from membership in a housing co-operative and occupancy of a housing unit by providing not less than 3 months' written notice to that housing co-operative with that notice period to expire on the day prior to a day on which housing charges are due; and

(b) a lesser notice period than under paragraph (a) may be given by written agreement between the member and the housing co-operative, if that agreement is authorized by the board.

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## Expulsion

155. (1) A housing co-operative may in a by-law establish the grounds for termination of membership of a member under this section where that member has a right to possession or occupancy of a housing unit that is dependent on that membership and a by-law established under this section may allow termination of membership.

(2) The general provisions of this Act not included in this Part respecting termination of membership do not apply to this Part.

(3) A housing co-operative that under subsection (1) has adopted the grounds for termination of membership may by a resolution of the directors

(a) requiring a majority of 3/4 of all the directors; and

(b) passed at a meeting of the directors called to consider the resolution

terminate the membership of a member described in subsection (1) on the grounds adopted by the housing co-operative.

(4) A member whose membership is proposed to be terminated by a resolution of the directors is entitled to at least 14 days' notice of the meeting at which the resolution is to be considered, together with a statement of the grounds upon which his or her membership is proposed to be terminated, and may appear to make submissions at the meeting.

(5) Within 7 days after the date on which a resolution referred to in subsection (3) is passed by the required majority, the housing co-operative shall, in the same manner as that provided for the giving of notice of a meeting of members, notify the person whose membership is terminated of the resolution and that membership shall be considered as terminated 30 days after the member has been notified of it.

(6) A person whose membership is terminated under subsection (3) may appeal the decision of the directors at the next meeting of the housing co-operative by delivering a notice of appeal to the housing co-operative within 7 days after the date when notice was given to him or her under subsection (5).

(7) A person who, under subsection (6) appeals the termination of his or her membership shall, notwithstanding the resolution of the directors terminating his or her membership, continue to be a member of the housing co-operative unless the members at the general meeting to which the appeal is brought confirm the termination of his or her membership by a resolution requiring a majority, or by a greater majority that may be required under the by-laws.

(8) The acceptance by a housing co-operative of arrears of housing charges or other payments or compensation for the use and occupation of premises after a member has been expelled from membership or occupancy shall not operate as a waiver of the expulsion or as a reinstatement of the membership or occupancy rights or as the creation of a tenancy.

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#### No tenancy relationship

156. (1) For the purpose of determining the rights, obligations and responsibilities between a housing co-operative and its members, that relationship shall not be considered to be a landlord and tenant relationship.

(2) The Residential Tenancies Act shall not apply to

(a) the rights, obligations and responsibilities referred to in subsection (1);

(b) the housing units occupied by members;

(c) the amount of housing charges payable by members; or

(d) a person whose membership in the housing co-operative has been terminated.

(3) A housing co-operative may not distrain against a member for default in payment of housing or other charges.

(4) Unless a member has vacated or abandoned a housing unit, a housing co-operative may not regain possession of that unit except under the authority of this Part.

(5) Where a membership in a co-operative is terminated, a right of the former member to possession or occupancy of residential premises acquired by virtue of membership in the co-operative is terminated.

(6) Where a membership in a housing co-operative is terminated and the member does not go out of possession of the housing unit which that member occupies, the housing co-operative may apply to the Trial Division for an order for possession and an order for payment of arrears of housing charges and for payment of compensation for use and occupation to the date of recovery of possession by the co-operative.

1998 cC-35.1 s156

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#### Abandoned goods

157. (1) Where a member

(a) has his or her membership terminated or has vacated or abandoned the housing unit formerly occupied by him or her; and

(b) has left property in the housing unit,

the housing co-operative may apply to the Trial Division for an order authorizing it to remove the property from the housing unit and sell or otherwise dispose of it.

(2) Upon receipt of an application under subsection (1) a judge of the Trial Division who is satisfied that the housing co-operative has made a reasonable effort to locate the former member may make the requested order.

(3) Where a housing co-operative removes, sells or otherwise disposes of property under an order made under subsection (2), the housing co-operative and a person acting under an order of the judge shall not be liable in an action taken by the former member with respect to the removal, sale or disposition.

1998 cC-35.1 s157

## PART XXI

### WORKER CO-OPERATIVES

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#### Definition and application

158. (1) In this Part, "employment co-operative" means a co-operative that is incorporated, continued or registered under this Act whose primary purpose is to operate an enterprise in which its members are the workers necessary for the operation.

(2) This Part applies to every co-operative that is organized or operated as an employment co-operative.

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#### Worker by-law

159. The by-laws of an employment co-operative shall include

- (a) the conditions of admission, expulsion or suspension for members; and
- (b) a procedure for laying off members when there is a lack of work and a procedure for recall to work.

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#### Dividends and employment of directors

160. Notwithstanding another section of this Act,

- (a) where an employment co-operative allocates among and credits or pays to its members a dividend, the directors may decide to allocate the dividend by taking into account the labour contribution of each member; and



(b) the majority of directors of an employment co-operative may be employees of the co-operative.

1998 cC-35.1 s160

## PART XXII

### REPEAL AND COMMENCEMENT

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RSN1990 cC-35 Rep.

161. (1) The Co-operative Societies Act is repealed.

(2) Notwithstanding subsection (1), the Co-operative Societies Act shall continue in force and to apply to credit unions in the province until the coming into force of the Credit Union Act .

1998 cC-35.1 s161

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### Commencement

162. This Act shall come into force on a day to be proclaimed by the Lieutenant-Governor in Council.  
(In force - Jun. 11/99)

1998 cC-35.1 s162

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