



**Supporting Cooperatives to Thrive: Modernizing
the Legislative Framework for Cooperative
Corporations in British Columbia**

November 2022



Ministry of
Finance

Introduction

The *Cooperative Association Act* (the Act) provides rules for the incorporation and corporate governance of cooperative associations.

Cooperative associations have a long history in BC having been permitted since 1896 with the *Co-operative Associations' Act*. The Act has been periodically reviewed since that time. The most recent version of the Act was introduced in 2001. Since that date, statutes governing societies, companies, and partnerships have all been reviewed and modernized. Stakeholders in the cooperative sector have requested a similar review and modernization of the Act.

A review of the Act was announced in June and the public sent in submissions on how to improve the Act. More than twenty submissions were received between July and September 2022. The suggestions and feedback from those submissions are summarized in this discussion paper for further comment and input.

How to Participate

Written submissions are requested by April 30, 2023.

You may send comments by mail or email to:

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Email: Coop.Consultation@gov.bc.ca

A cooperative can be described as a “social enterprise”: a for profit or not-for-profit organization that solves social problems using business solutions.

The Ministry will be holding roundtables during this consultation period. Should you wish to participate, please respond via the mail or email to indicate your interest as well as your topics of interest.

Collection of Personal Information

We are collecting your personal information to send you an invitation to roundtable discussions for the *Cooperative Association Act* Consultation. If you have questions about our collection of your information, please contact us at coop.consultation@gov.bc.ca.

Public Nature of Consultation

The Ministry of Finance may share comments it receives with other branches of government, including BC Registries and Online Services which is responsible for the administration of the *Cooperative Association Act*. Freedom of information legislation may require that responses be made available to members of the public who request access.

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What is a Cooperative?

The International Cooperative Alliance defines a cooperative as: “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise.”¹

The cooperative structure is used by communities to provide a product or service while creating local employment and maintaining local, democratic control by the cooperative’s members. The structure was formalized in England in the 1800s. Unlike other business organizations that are essentially a union of capital, a cooperative is a union of persons concerned with providing service and savings to members, as opposed to creating profit for investors. Though profit may be redistributed through dividends to members, a cooperative can also be set up as a non-profit. Membership shares in the cooperative may not be freely traded and each member has one vote. Investment shares can be offered; however, a greater number of investment shares does not result in a greater number of votes. In fact, an investment shareholder will have only a limited ability to vote for a portion of the board of directors, if the cooperative chooses to give investment shareholders any voting rights at all. Cooperatives are often described as the most democratic corporate form with ownership concentrated in the hands of members, not investors.

The net savings of a cooperative business are kept in the local community by being reinvested in the cooperative or paid out to members as dividends.

Legislative Foundation

Cooperative Principles:

Cooperatives are guided by seven internationally accepted principles that date back to one of the first cooperatives founded in 1844 in England. In 1996, these principles were adopted by the International Cooperative Alliance (ICA), which considers itself the guardian of the statement on cooperative identity. The ICA provides the following updated description of the cooperative principles:

Voluntary and Open Membership	Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
Democratic Member Control	Cooperatives are democratic organizations controlled by their members, who actively participate in setting policies and decision making. People serving as elected representatives are accountable to the membership. Members have equal voting rights (one member, one vote).
Member Economic Participation	Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is the common property of the cooperative. Members usually receive limited compensation, if any, on capital

¹ International Cooperative Alliance. *What is a Cooperative*, (accessed October 14, 2022) <https://www.ica.coop/en/cooperatives/what-is-a-cooperative>.

	<p>contributed as a condition of membership. Members allocate surpluses for any or all the following purposes:</p> <ul style="list-style-type: none"> • developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; • benefiting members in proportion to their transactions with the cooperative; and • supporting other activities approved by the membership.
Autonomy and Independence	Cooperatives are autonomous, self-driven organizations controlled by their members. If they enter into agreements with other entities/corporations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.
Education, Training and Information	Cooperatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their cooperative. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of cooperation.
Cooperation among Cooperatives	Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.
Concern for Community	Cooperatives work for the sustainable development of their communities through policies approved by their members.

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Currently, the *Cooperative Association Act* (the Act) does not directly address or list all these principles. However, section 8 describes what operating on a cooperative basis means:

- it is non-discriminatory regarding membership;
- each member has a right to one vote;
- members contribute capital;
- members receive limited or no capital;
- surplus funds are used for cooperative, community welfare purposes or paid out as dividends/patronage return; and
- education is provided on the principles and techniques of the cooperative enterprise.

The principle of cooperation among cooperatives is absent from the Act and similarly, the principle of concern for community receives little recognition. Some of those who provided comments suggested that the seven cooperative principles should have a more central role in the Act and that the term “cooperative basis” be strengthened and defined.

Default Provisions

The *Cooperative Association Act* is distinct from BC’s three other corporate acts (the *Business Corporations Act* for companies, the *Societies Act* for non-profits and the *Credit Union Incorporation Act* for credit unions) for many reasons, but partly because it has fewer default provisions. Default

² International Cooperative Alliance. *Cooperative Identity, Values and Principles*,(accessed October 14, 2022) <https://www.ica.coop/en/whats-co-op/co-operative-identity-values-principles>.

provisions establish a requirement but allow an entity to diverge from that by passing different rules (equivalent to the bylaws of a society and articles of a company). A rewrite of the *Societies Act* in 2016 increased the number of default provisions. An example of a current default provision is the special resolution vote threshold that requires $\frac{2}{3}$ (for non-housing cooperatives) of votes in favour to pass if the cooperative's rules are silent. However, a cooperative can increase the number of votes required to pass the special resolution in its rules up to a $\frac{3}{4}$ threshold.

It was requested that the Act contain more default provisions to avoid the need for complicated rules. Amending current provisions to provide defaults may be advantageous for many cooperatives as they will have no need to pass a resolution unless the cooperative decides to make a special or unusual rule.

The rule for director remuneration in the Act illustrates how default provisions could improve the Act. The Act currently states:

The association in general meeting must determine the remuneration of the directors, and what will be allowed to them for expenses.

This section is contrasted with more clear default rule in the *Societies Act*:

Unless permitted by the bylaws, a society must not pay to a director of the society remuneration for being a director.
[emphasis added]

Co-ops and credit unions employ more than 19,000 British Columbians and contribute more than \$2 billion to the province's gross domestic product.

Under the *Societies Act*, the default is no remuneration and a society must takes steps to allow remuneration if it desires. The current Act is less clear than the *Societies Act* approach.

Language

Several submissions suggested that the Act be revised so that it would be modernized and more user friendly. It was also pointed out in several submissions that the Act contains references to outdated communication methods and needs to be updated to reflect modern business practices such as email communication and electronic records. Accordingly, some suggested a periodic review of the Act to make sure it stays current.

Questions for consideration:

1. Is the section 8 meaning of cooperative basis sufficient? If not, what should be added, removed or changed?
2. Would incorporating the International Cooperative Alliance's principles into the Act improve the Act? Should the principles be strengthened or provided greater importance within the Act?
3. Are there other values that the Act should be updated to reflect?

4. Should the Act have more default rules, setting a standard that cooperatives can deliberately diverge from?
5. Are there any provisions that should be rewritten into a default provision?
6. Should the Act require that it be reviewed at regular intervals?

Additionally, please see the discussion on page 15 on updating the principles to reflect Indigenous perspectives.

Corporate Governance: Member's Rights

Like BC's other corporate statutes, the Act sets up cooperatives to be self-governing entities. This means that cooperatives are run by their members. Members have the power to elect and remove directors and bring forward matters for vote at the annual general meeting or requisition special general meetings. The key though, is that these mechanisms are conducted on the one member, one vote principle.

As the cooperative model is set up by the Act to be a self-governing entity, there is currently no role for a government body to enforce the provisions of the Act; disputes are taken to court. Enforcement by government would be a large shift for corporate governance and run counter to the self-governing corporate structure. It would also necessitate increased filing fees for cooperatives to offset enforcement costs.

There are self-enforcement tools in the Act; however, we have heard that these tools can be costly and difficult to use. In particular, we heard about problems with member rights, the Civil Resolution Tribunal's jurisdiction and other concepts such as member councils.

Requisitioning Meetings

Several submissions referenced the difficulty for members of large cooperatives to acquire the necessary number of signatures to requisition a meeting under section 150. This provision requires directors to call a special general meeting if the required signatures are gathered. For a cooperative with more than 5,000 members, at least 5 per cent of members need to sign a written requisition. If a cooperative has a million members, this translates into a requirement of 50,000 members having signed the requisition. Currently, section 150 provides that a higher proportion of signatures is required for smaller cooperatives. As a result, for cooperatives of 100 members or fewer, signatures from 20 per cent of members are required. For those with over 100 members but fewer than 5,000, signatures of 10 per cent of members are required and for those with more than 5000 members, the requirement is that there be 5 per cent of member signatures. It seems likely that when this was drafted, a cooperative of nearly 6 million members (as was the case with Mountain Equipment Coop) was not contemplated. Creating a new category for particularly large cooperatives seems in line with how this provision is already crafted and would account for the possibility of mega sized cooperatives.

Civil Resolution Tribunal (CRT)

Currently, members of housing cooperatives and community service cooperatives can bring certain complaints to the Civil Resolution Tribunal. For-profit cooperatives cannot use the Civil Resolution Tribunal.

The Civil Resolution Tribunal's jurisdiction for housing and community service cooperative disputes is limited to disputes regarding access to records, interpretation of rules or decisions concerning members. Specifically excluded from jurisdiction are matters relating to membership termination or dissolution of the cooperative. For these other matters, there are several remedies and avenues available via application to the Supreme Court of BC.

Originally, it was thought that for-profit cooperatives could afford to access mediators or court remedies, and thus access to the more affordable CRT option was not necessary. It is worth noting that, in the case of housing cooperatives, a membership termination issue places a member's housing in jeopardy, hence their original exclusion from CRT jurisdiction.

Several submissions received suggested that the range of matters that can be brought to the CRT be expanded due to the complication and expense of pursuing court remedies. Another submission suggested that having several dispute resolution mechanisms with different areas of jurisdiction is confusing and unclear to many members and these should be clarified and simplified.

Member's Council

One submission called for creating more positive opportunities for members to participate in governance. A members' council is a corporate structure that has been used in Europe to provide members of cooperatives with a larger voice. Members' councils draw from members experience to provide input to the board. Their task is not to supervise or control the cooperative, but to keep the organization in line with the cooperative objective.³ Use of members' councils is still not widespread; however, it may be worth exploring if this can enhance the members' rights.

Member Forums

Another submission suggested large cooperatives should be required to provide members with a social media discussion site that is managed at arms-length from the management and board and that large cooperatives be restricted from using board management consulting companies. Likewise, another submission emphasized the importance of ensuring members can communicate with each other during board election campaigns.

Questions for consideration:

7. Should the rights of coop members be strengthened by making more accessible remedies? Which remedies would be helpful?
8. Are there other ways to strengthen members rights that have not been canvassed above?
9. Do the requirements for special resolution by coop members to enact rules and approve other decisions of the board provide stability or do they hinder the activities of a cooperative?
10. Are the member remedies sufficient to resolve disputes?
11. Should the requisition threshold be lowered for very large cooperatives (e.g., 2 per cent of signatures for a cooperative with over 10,000 members)?

³ George APOSTOLAKIS & Gert VAN DIJK, 2018. "Cooperative organizations and members' role: A new perspective," CIRIEC Working Papers 1804, CIRIEC – Université de Liège, <https://www.ciriec.uliege.be/wp-content/uploads/2018/07/WP2018-04.pdf>.

12. If the directors refuse to call a meeting, in the face of a valid requisition, should the requisitioner be permitted to call a meeting themselves, as in the *Societies Act*?
13. Is current access to the Civil Resolution Tribunal sufficient? Should the jurisdiction of the CRT be expanded, including to address termination of membership in housing cooperatives?
14. Should it be easier for members to bring matters before the attention of the membership? Or to remove directors?
15. Should the use of members' council structures be explored?
16. Should a requirement for (large) cooperatives to establish member forums for member discussions be explored?

Corporate Governance: Directors

Integral to a self-governing structure and to the cooperative model, every member has a vote in determining the outcome of the election of directors in the annual general meeting (AGM).

Compensation

One submission received stated that information regarding director compensation should be provided to the membership.

British Columbia is the only jurisdiction to require that compensation for directors be determined during the annual general meeting. Other jurisdictions either:

- are silent,
- do not allow compensation for directors unless provided for in the bylaws,
- require that such compensation be laid out in bylaws or
- allow directors to determine their own remuneration unless the rules provide otherwise.

The status quo requires the association to determine the director remuneration at the AGM. The result should be documented in the minutes of the AGM and subsequently be accessible to members. However, submissions indicated difficulty accessing this information. The Act could be improved by setting out explicit director remuneration requirements as is the case with the *Societies Act*.

Duties

Currently, duties of directors are provided in section 73 and 84 and require that directors manage and supervise the operation of the business and that directors “act honestly and in good faith with a view to the best interests of the association,” as well as in accordance with the Act and regulations. The best interests of the association is the standard fiduciary duty that all directors of corporations owe to their corporations (companies in the *Business Corporations Act*, and societies in the *Societies Act*).

Two submissions suggested adding additional duties for the directors that would require the director to consider the cooperative basis and principles upon which their cooperative is operated. One submission specifically referenced section 51.93 and 51.993 of the *Business Corporations Act* that provides duties for two other types of social enterprises: community contribution companies and benefit companies. For example, directors of a community contribution company must also act with a view to the company’s community purposes, while directors of a benefit company must also conduct the business in a responsible and sustainable manner and promote the company’s public benefits.

Residency Requirements

Section 72 of the Act requires that a cooperative have at least three directors, with a majority of those directors ordinarily resident in Canada, and that at least one director be ordinarily resident in British Columbia. Alberta, Ontario and the federal *Cooperatives Act* also have residency requirements for directors of the board.

A few submissions suggested this be maintained or strengthened, while another suggested that this be eliminated as a way to encourage more international cooperatives to register in BC. To compare, the

Societies Act also requires that one director be a resident in British Columbia while the *Business Corporations Act* has no residency requirement.

As an aside, director residency requirements are supported by Transparency International Canada and Canadians for Tax Fairness as important to prevent money launderers from using corporate bodies to obscure the source of illegal funds.⁴ One submission pointed out that a residency requirement aligns with the community-based nature of cooperatives.

Board Elections and the Annual General Meeting (AGM)

Currently, cooperative associations are permitted to determine their own procedures for election or appointment of directors. This is quite different than some jurisdictions, such as Manitoba, where limits are imposed on the length of a director's term of office. All jurisdictions require that their board of directors be elected at the AGM. The Act requires that comprehensive financial statements detailing profits, losses, surplus, and balance sheet be provided at the AGM as well as an auditor report (unless the cooperative voted to waive the auditor requirement) and that these financial statements be current.

All jurisdictions require the first AGM to be held within a certain amount of time. This is to ensure members of the cooperative can consider cooperative matters on a timely basis. In BC, the AGM must be held within four months of its financial year end and, in the case of a newly formed cooperative, within its first 3 months of existence. Submissions suggested that both time periods be extended to increase flexibility.

Other submissions focused on the process for director elections. One submission suggested that the Act would better align with current practices of large cooperatives if elections could be held in writing (through mail or email) while some submissions voiced concerns with this practice leading to a delayed AGM where the election results were to be announced.

Another concern raised in several submissions was the practice of large cooperative boards "vetting" director candidates and labelling candidates as either recommended or not recommended. According to one submission, this has led to concentration of board power with entrenched groups and results in difficulty for other voices to be heard and represented. To counteract this, we heard the following suggestions:

- Prohibit prior vetting or labelling of director candidates.
- Require that qualifications to become directors be more clearly laid out in the rules of the cooperative.
- Require cooperatives to give members sufficient advance information on board candidates and proposed resolutions prior to the start of the voting period.
- Provide members with an ability to communicate with each other during board election campaigns.

⁴ Transparency International Canada, Canadians for Tax Fairness, Publish What you Pay Canada, 2022. "[Show-washing, Inc: How Canada is marketed abroad as a secrecy jurisdiction.](https://www.taxfairness.ca/sites/default/files/2022-06/report-snow-washing-inc-how-canada-is-marketed-abroad-as-a-secrecy-jurisdiction-march-2022.pdf)"
<https://www.taxfairness.ca/sites/default/files/2022-06/report-snow-washing-inc-how-canada-is-marketed-abroad-as-a-secrecy-jurisdiction-march-2022.pdf>.

- Require that board members need to be cooperative members for a predetermined period of time before being permitted to be board members as way to ensure that board members represent the views of long-time members.

Another concern included a lack of an arms-length relationship between board members and the senior officers of the cooperative that must report to them and that senior officer compensation be more clearly disclosed.

Questions for consideration:

17. Should the directors have additional duties such as to manage the business on a cooperative basis or in a way that upholds the cooperative principles? Should other qualifications or requirements of directors be removed or added?
18. Should the Act set out explicit director remuneration disclosure requirements?
19. Should there be additional provisions, beyond existing conflict of interest rules, to allow members to know or have a say in how directors are compensated or are the current provisions adequate? Should there be similar rules for senior officer compensation disclosure?
20. Should there be more flexibility on the deadline to hold the annual general meetings?
21. Should there be a prohibition on boards setting eligibility requirements for directors?
22. Should there be a consequence or prohibition on boards that do not call an annual general meeting after running a board election?
23. Should there be more flexibility in allowing resolutions to be passed outside of a general meeting, perhaps via email?
24. Should board elections be permitted to occur via email?
25. Should there be safeguards to ensure an arms length relationship between senior officers and board members and how should this be accomplished?

Corporate Governance: Records

Cooperatives are obligated to maintain corporate records, including financial statements. The Act requires that access to these records be provided to directors, cooperative members and members of the public though some records are only available to directors and members. The following documents are only available for directors to access: minutes of director's meetings, copies of documents approved by directors in the past ten years, copies of mortgages created or assumed by the cooperative, records of amalgamations or mergers with other cooperatives.

One submission suggested that there should be more transparency of cooperative records for members, including financial records, meeting minutes and policy documents. Another submission suggested that cooperatives need explicit permission to destroy records after a period of ten years, as provided for in the *Societies Act*. It was also pointed out in a submission that disclosure requirements need to be reviewed to ensure consistency with the *Personal Information Protection Act*, especially when responding to requests for member lists.

Questions for consideration:

26. Can transparency of cooperative records be enhanced? If so, how?

Corporate Structure

Mutualization of other Corporate Entities

One submission suggested a process should be created whereby another type of business entity, such as a company, can convert into a cooperative. This could involve each shareholder becoming a member with an option to convert a large number of shares into investment shares. This would be an unusual step for corporate legislation in BC, as well as across Canada. While member-funded societies can convert into a company, there are no other provisions in BC for other corporate entities to convert into different forms.

Continuation and Restoration

One submission suggested that cooperatives be allowed to continue into another jurisdiction, similar to companies under the *Business Corporations Act*. This is permitted under section 187 for cooperatives other than housing cooperatives and community service cooperatives. Another submission suggested that cooperatives should be able to be restored without seeking a court order. This is already the established process for societies and companies.

Membership Shares

All incorporated cooperatives must have a single class of membership shares with a minimum share amount required for membership. Government bodies, first nations and corporations can be issued membership shares as well as individuals. The Act explicitly states that each member has one vote.

Investment Shares

The Act provides that one or more classes of investment shares may be issued. These shares are not permitted to vote on a matter that is subject of a special or ordinary resolution of members. However, the Act allows cooperatives to set in their rules to give investment shareholders a vote on up to 20 per cent of the directors or specified contingent events. In those cases, each investment share has one vote.

In comparison, some jurisdictions in Canada do not allow investment shares any voting rights, limit voting rights to certain matters or provide that all issued shares have only one vote, regardless of class of shares.

Issuing investment shares may allow a cooperative to access capital or funding and, as a result, can be very helpful for a cooperative that wants to grow or expand. Some submissions received have asked for more flexibility in issuing investment shares, including eliminating timing requirements and allowing investment shares to be issued in a series within a class.

The Act allows a cooperative to reduce its share capital but only upon application to the court if certain conditions are met. One submission received suggested that an application to court should not be required and pointed out that it is not required for companies under the *Business Corporations Act*. The *Business Corporations Act* allows companies to reduce capital by special resolution provided the reduction does not render the company insolvent.

Indivisible Reserves

Currently, the Act provides for cooperatives without investment shares to have an “indivisible reserve.” This means the assets cannot be distributed to members and must be transferred only to registered charities or cooperatives with similar purposes to itself. The Act allows that a provision for an indivisible reserve to be set out in the Memorandum and it can be designated an unalterable provision. This allows a cooperative to assure potential investors and funders that the funds received cannot be distributed to members. One submission suggested that the benefits of such a reserve be more clearly illustrated in the Act and be available for all cooperatives (as opposed to just community service co-operatives).

Questions for consideration:

27. Should a process be created to allow a company to convert into a cooperative? How best would this be achieved? How would shareholder contributions be converted to member rights?
28. Should non-profit cooperatives (community service cooperatives or housing cooperatives) be permitted to continue out of BC?
29. Should there be more flexibility for issuing investment shares? If yes, what type of flexibility is desired?
30. What are some other ways the Act can support growth or expansion of cooperatives?

Special Purpose Cooperatives

Currently, the Act provides a structure for general cooperatives and three special purpose cooperatives that have their own provisions: producer, housing and community service cooperatives. Some submissions requested that more special purpose cooperatives be created, or that existing ones be better defined or explained. Another submission pointed out that having a general application format allows the Act to be more succinct and easier to understand.

However, there may be some cooperative formations that the current act does not allow or capture. Multistakeholder cooperatives are a cooperative structure that recognizes distinct interests within the organization by using more than one type of member. Currently, the Act allows only one class of membership, preventing the ability to create different member groups based on interests or stakeholder status.

Other jurisdictions across Canada have several special purpose cooperatives, although they vary in both function and name. Almost every jurisdiction has a housing cooperative. In some jurisdictions, certain special purpose co-operatives have restrictions on issuing investment shares. For example, in BC and Manitoba, housing cooperatives are not permitted to issue such shares. Community service co-operatives in BC are also not permitted.

In BC and many other jurisdictions, amalgamations are permitted for general cooperatives but not for special purpose cooperatives. Some submissions suggested that allowing amalgamations between different types of cooperatives can allow a measure of flexibility that can be helpful for a failing cooperative.

Other submissions suggested there should be more recognition of the special circumstance of employees of cooperatives and that there is a need to clarify that employment of members is permissible for non-profit cooperatives. It was also suggested that a worker cooperative should be created as a special purpose cooperative. Another submission suggested that the Act could be more helpful for those new to cooperatives by providing clearer distinctions between consumer, producer, worker or multi-stakeholder cooperatives.

Reporting Association

The Act provides for two types of cooperatives that do not issue investment shares, and, as a result, these can be considered non-profit cooperatives: community service cooperatives and housing cooperatives. In some cases, the registrar can order a community service cooperative to become a “reporting association” which leads to enhanced requirements like having an audit committee and an auditor; however, this provision has not been relied on in many years.

Two submissions suggested that reporting associations be eliminated. One submission noted that a different type of non-profit cooperative adds to the complexity and resulting confusion in understanding the Act.

Questions for consideration:

31. Should there be more special purpose cooperatives?

32. Should the Act allow more than one class of membership?
33. Should reporting associations be eliminated?
34. How can the Act better distinguish between the different types of cooperatives?

Housing Cooperatives Governance

Housing cooperatives provide a housing alternative to the current real estate or rental market and, as a result, can provide significantly more affordable housing for members. Unfortunately, there are times when a member is not meeting the rules established by a housing cooperative and the cooperative must seek to terminate the membership. This is especially important for the financial stability of a cooperative if the issue is one of payment of housing fees/charges. The Act attempts to strike a balance between a member's right to be heard and the cooperative's needs for financial stability in setting out a process for terminating membership.

Currently, many describe the process for terminating membership as complicated. The three grounds for terminating membership are: 1) non-payment of fees or charges, 2) breaking a material condition of the lease, and 3) conduct detrimental to the housing cooperative. These terms are not defined, and housing cooperatives must explain what behaviour is covered by these terms in its rules.

The termination process starts by issuing a notice to pay or correct the issue, followed by a notice of a director's meeting if the debt is not paid or the problem continues. The notice must be received seven days before the meeting. The member can attend the meeting to present information or answer questions. After meeting with the member, the directors make a decision. A decision to terminate membership requires $\frac{3}{4}$ support by directors to pass. If the decision to terminate is made, the member must be provided notice of the decision, the date to move out and their right to appeal. If the termination is for grounds other than non-payment of monies owed to the cooperative, appeal can be made to the membership in a general meeting where the members will vote to confirm the directors' decision. The member can then also appeal the decision further to the BC Supreme Court. If the reason for termination is for non-payment of housing charges or other amounts owed to the cooperative, the appeal is directly to the BC Supreme Court.

There are three grounds for appeal after the directors' and members', if applicable, meetings: 1) principles of natural justice were not followed, 2) the decision to terminate membership is not based on fact, or 3) the decision does not comply with section 35 of the Act. In the case of a housing cooperative, a member who appeals the termination decision to the court can ask a cooperative to issue a cheque to the court registry for the cost of the court fees. If the member does not move out after membership is terminated, the cooperative can apply for an order of possession.

Complicating the termination of membership issue in housing cooperatives is the use of the *Law and Equity Act* to provide an equitable remedy of relief in some recent cases in the Supreme Court. In one case where membership was terminated due to a failure to pay housing charges, the cooperative was applying for an order of possession and the court found that, despite the rules of natural justice being followed, the former member could remain in the unit if he paid all amounts owing to the cooperative within two weeks.⁵ Some submissions suggested that the cooperative's ability to terminate membership should be strengthened and that the court should not interfere in the termination and order of possession process, especially when the reason for termination is financial. Notably, the financial viability of housing cooperatives may rely on members paying housing charges on time.

⁵ *False Creek Co-operative Housing Association v. Scipio*- 2015 BCSC 2419
<https://www.canlii.org/en/bc/bcsc/doc/2015/2015bcsc2419/2015bcsc2419.html>.

Several submissions received commented on the need to provide clearer provisions on membership termination so that it is not perceived to be too difficult to undertake. Also noted was the lack of clarity as to what conduct constitutes detrimental conduct. Other submissions noted the need to provide for situations where a joint member lost entitlement to occupy but is still responsible for paying housing charges. One submission received suggested that the process be modernized by explicitly allowing the use of email notification of termination decisions.

Questions for consideration:

35. Should it be easier to terminate membership in housing cooperatives? How can this process be improved?
36. Can transparency of housing cooperative records be enhanced? If so, how?

The Cooperative Model and Indigenous Communities

The Path to Decolonization

Before discussing the use of the cooperative structure in Indigenous communities, the history of cooperatives in colonization must be acknowledged. Cooperatives have a long history in Canada and, unfortunately, that history is entrenched with the colonial project. In the prairie provinces and the north in particular, cooperatives were used by provincial and federal governments to set up stores, government offices, and industrial facilities without any consultation with Indigenous communities. In some cases, membership in the cooperative was compulsory.⁶

All ministers are mandated to be guided in their work by a foundational principle of lasting and meaningful reconciliation which includes creating opportunities for Indigenous peoples to be full partners in our economy.

However, several studies have found that the cooperative structure has had some benefit for Indigenous communities and may have potential as a tool of decolonization.⁷ In a study of Indigenous cooperatives completed in 2001, the cooperative approach was found to conform well with the goals and methods of community development of Indigenous people and using this structure had some notable success in Indigenous communities, particularly in the Arctic.⁸ Arctic Cooperative Limited is composed of member cooperatives that are owned and operated by 32 community-based business in Nunavut, the Yukon and the Northwest Territories. Once imposed by government to settle the Indigenous population, they are now controlled by and serving the needs of local Indigenous communities.⁹

Some researchers have found that cooperatives have contributed significantly to Indigenous communities through access to educational programming, supporting business skill development, and fostering community action.¹⁰ Others found that cooperatives have helped address an urban Indigenous community's need for employment and access to culturally appropriate food,¹¹ provided a culturally

⁶ Ushnish Sengupta, (2015) "Indigenous Cooperatives in Canada: The Complex Relationship Between Cooperatives, Community Economic Development, Colonization and Culture" *Journal of Entrepreneurial and Organizational Diversity*, 4 (1), pp. 121-152. https://jeodonline.com/jeod_articles/indigenous-cooperatives-in-canada-the-complex-relationship-between-cooperatives-community-economic-development-colonization-and-culture/.

⁷ Sengupta (2015); Thunder & James Thunder and Mark Intertas, (October 2020) *Indigenizing the Co-operative Model* Canadian Centre for Policy Alternatives, Manitoba Office, https://policyalternatives.ca/sites/default/files/uploads/publications/Manitoba_per_cent20Office/2020/10/Indigenizing_per_cent20the_per_cent20Co-Op_per_cent20Model_per_cent20Report_per_cent20-per_cent20OCT2020.pdf.

⁸ Lou Hammond Ketilson and Ian Macpherson, (2001) *A Report on Aboriginal Co-operatives in Canada: Current Situation and Potential for Growth*, Centre for the Study of Co-operatives, University of Saskatchewan, <https://usaskstudies.coop/documents/books,-booklets,-proceedings/aboriginal-co-ops.pdf>.

⁹ Sengupta (2015).

¹⁰ Hammond Ketilson and Ian Macpherson (2001).

¹¹ Oluwabusola Oluwatodimu Olaniyan, Adesuma Ero, Amy Hay & Simon Berge *The Cooperative Model Advances Indigenous Development: A Case Study of the Neechi Cooperatives Limited*, International Summit of Cooperatives (2016), https://www.uwinnipeg.ca/chair-in-cooperative-enterprises/docs/The_per_cent20cooperative_per_cent20model_per_cent20advances_per_cent20indigenous_per_cent20development_per_cent20-per_cent20Neechi_per_cent20Commons_per_cent20case_per_cent20study.pdf.

inclusive living space and a sense of community¹² and could foster indigenous development initiatives.¹³ Despite this potential, there is not a high uptake of cooperatives by Indigenous communities.

Given the potential of the cooperative model for Indigenous communities, it should be explored whether the legislation could be amended to better support its use by Indigenous communities, businesses, and entrepreneurs.

Questions for consideration:

37. What changes to the current cooperative model would better serve indigenous communities?
38. Should an Indigenous cooperative model be established that is designed to exclusively serve an Indigenous membership?
39. Would there be an interest in offering model bylaws that espouse an Indigenous perspective for easy adoption which might fit Indigenous needs more adequately than the current model bylaws?
40. Would an amendment help to preserve decision making structures that are traditional to Indigenous communities?
41. Are cooperatives being promoted as a means of economic development to the same extent as other businesses forms?
42. If you could modify the cooperative model to fit your community's needs, what would that look like? Would a different membership structure or board structure work?

Indigenous Values

Researchers Thunder & Intertas noted in 2020 that there continued to be low uptake of the cooperative structure among Indigenous communities despite the noted similarities in values between cooperative movement and Indigenous cultures. They noted several examples of values that are found in both indigenous communities and the cooperative model: relationship building, democratic organization, the seven teachings,¹⁴ the importance of education, concerns for the community. However, others have suggested that the International Cooperative Alliance principles are intentionally broad to capture a plurality of cultures and the affinity with Indigenous values are only true in a general sense. The conversation has now developed to one more appropriate in an era of reconciliation. Indigenous cultures have used collective, communal and cooperative forms of organizing for thousands of years. As a result, it is likely that there is much for the cooperative movement to learn from Indigenous culture,¹⁵

¹² Tyler Craig & Blair Hamilton (August 2014) *In Search of Mino Bimaadiziwin: A Study of Urban Aboriginal Housing Cooperatives in Canada*, Seed Winnipeg Inc., https://seedwinnipeg.ca/files/In_Search_of_Mino_Bimaadiziwin.pdf.

¹³ Thunder & Intertas (2020).

¹⁴ [Seven Grandfather Teachings First Nations Métis Inuit Student Education Resources Alberta Educators \(empoweringthespirit.ca\)](https://empoweringthespirit.ca); [Seven Teachings | Southern First Nations Network of Care | Manitoba \(southernnetwork.org\)](https://southernnetwork.org).

¹⁵ Sengupta (2015), Craig and Hamilton (2014).

suggesting that infusing current cooperative values with Indigenous values could have benefit to the movement overall.

Since a cooperative is shaped and guided by its members, it may be that legislation cannot be infused with an indigenous perspective or viewpoint in a general sense – instead this may fall to the members of the cooperative enterprise.

Questions for consideration:

43. Is there a role for legislation to include indigenous perspectives?

44. Should indigenous values be reflected in the legislation alongside the International Cooperative Alliance principles? How can the existing values be modified to be informed by Indigenous values?