

BILL NO. 90

(as passed, with amendments)



*2nd Session, 58th General Assembly
Nova Scotia
50 Elizabeth II, 2001*

Government Bill

Co-operative Associations Act (amended)

CHAPTER 41 OF THE ACTS OF 2001

The Honourable Gordon D. Balsler
Minister of Economic Development

[First Reading](#): November 13, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: November 15, 2001

[Third Reading](#): November 20, 2001 (WITH COMMITTEE AMENDMENTS)

Royal Assent: November 22, 2001



An Act Amend Chapter 98

of the Revised Statutes, 1989, the Co-operative Associations Act

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 98 of the Revised Statutes, 1989, the *Co-operative Associations Act*, is amended by

(a) striking out "Association" in the first line of clause (a) and substituting "association";

(b) repealing clause (e) and substituting the following clause:

(e) "housing association" means an association that has as its primary purpose the provision of housing accommodation for occupancy by its members as nearly as possible at cost or that is operated in such a manner;

(c) striking out "Industry, Trade and Technology" in the first and second lines of clause (j) and substituting "Service Nova Scotia and Municipal Relations";

(d) striking out the period at the end of clause (m) and substituting a semicolon; and

(e) adding immediately after clause (m) the following clause:

(n) "special resolution" means a resolution passed, at a special or annual meeting of the association in respect of which notice specifying the intention to propose the resolution as a special resolution has been given in the manner provided by the by-laws of the association, by

(i) not less than two thirds of the votes cast by such members of the association entitled to vote as are present in person at the meeting, or

(ii) such greater proportion of the votes cast as the by-laws require,

and approved by the Inspector and filed with the Registrar.

2 Subsection 5(2) of Chapter 98 is amended by

(a) repealing clause (b) and substituting the following clause:

(b) may on the Inspector's own motion, and shall, upon requisition in writing signed by

(i) fifty per cent of the members where there are ten or fewer members of the association, or

(ii) six members or ten per cent of the members, whichever is the greater number, where there are more than ten members of the association,

each of whom must have been a member of the association for at least twelve months preceding the date of the requisition, investigate, inspect, inquire and examine into the affairs and business of any association and report thereon to the board or to the members, or to both, whichever in the Inspector's opinion is appropriate;

and

(b) striking out "assocation" in the second line of clause (c) and substituting "association".

3 Section 9 of Chapter 98 is repealed.

4 Chapter 98 is further amended by adding immediately after Section 16 the following Sections:

16A Subject to this Act, an association has the capacity, rights, powers and privileges of a natural person.

16B The articles of incorporation of an association incorporated on or after the thirteenth day of November, 2001, shall state whether or not the association is a non-profit association within the meaning of Section 61A.

5 Subsection 18(3) of Chapter 98 is amended by striking out "repect" in the fourth line and substituting "respect".

6 The heading immediately before Section 24 of Chapter 98 is amended by striking out "AND SHARES" and substituting ", SHARES AND LOANS".

7 (1) Section 24 of Chapter 98 is amended by adding immediately after subsection (2) the following subsection:

(2A) Every association that has loan capital or that borrows from its members shall keep a loan register and maintain in the register a current statement of the loan capital of each member and the amount outstanding of any money borrowed from each member.

(2) Section 24 of Chapter 98 is further amended by adding immediately after subsection (4) the following subsection:

(4A) The loan register shall be kept at the registered office of the association and, subject to such reasonable restrictions as the association may in general meeting impose, a member may inspect the portion of the register in which particulars of the member's loan capital or the amount borrowed from the member are entered.

(3) Subsection 24(5) of Chapter 98 is amended by striking out "and the share" in the first line and substituting ", the share register and the loan".

8 (1) Clause 28(3)(b) of Chapter 98 is amended by striking out "five hundred" in the third line and substituting "two thousand";

(2) Subsection 28(4) of Chapter 98 is amended by striking out "five hundred" in the third line and substituting "two thousand".

9 Subsection 33(1) of Chapter 98 is amended by striking out "provisional" in the fourth line and substituting "first".

10 Subsection 36(4) of Chapter 98 is amended by striking out "association" in the tenth line and substituting "association".

11 (1) Subsection 40(1) of Chapter 98 is amended by

(a) striking out "and the Inspector approves," in the third and fourth lines; and

(b) striking out ", provided however that the auditor or auditors so appointed must be approved by the Inspector" in the sixth, seventh and eighth lines.

(2) Subsection 40(2) of Chapter 98 is amended by striking out ", with the approval of the Inspector," in the third and fourth lines.

(3) Subsection 40(3) of Chapter 98 is amended by striking out ", with the approval of the Inspector," in the second line.

(4) Subsection 40(7) of Chapter 98 is amended by

(a) striking out "; or" at the end of clause (c) and substituting a period; and

(b) striking out clause (d).

(5) Subsection 40(13) of Chapter 98 is amended by striking out "Minister" in the first line and in the third line and substituting in each case "Inspector".

12 Section 42 of Chapter 98 is amended by striking out "accompanied by a copy of the audited financial statements for the preceding fiscal year" in the fourth, fifth and sixth lines.

13 Subsection 44(13) of Chapter 98 is amended by

(a) striking out "Unless an agreement has been made under Section 61 any" in the first and second lines and substituting "Any"; and

(b) striking out "the regulations" in the fourth line and substituting "Section 61 or 61G".

14 Subsection 45(6) of Chapter 98 is amended by striking out "subsection (13) of Section 44" in the second line and substituting "Section 61 or 61G".

15 Subsection 46(1) of Chapter 98 is amended by striking out "Minister" in the first line and in the third line and substituting in each case "Registrar".

16 (1) Subsection 52(3) of Chapter 98 is amended by adding immediately after clause (b) the following clause:

(ba) borrow money on the security of the property of the association;

(2) Subsection 52(4) is repealed and the following subsection substituted:

(4) The liquidator may retain lawyers, accountants, engineers, appraisers and other professional advisers.

17 Subsection 53(3) of Chapter 98 is amended by striking out "in each of the first four weeks" in the fourth line and substituting ", once in the first week and once in the fourth week".

18 Subsection 56(1) of Chapter 98 is amended by

(a) striking out "one" in the sixth line and substituting "five";

(b) striking out "one" in the eighth line and substituting "five";

(c) striking out "five" in the ninth line and substituting "ten"; and

(d) striking out "five" in the eleventh line and substituting "ten".

19 Section 61 of Chapter 98 is repealed and the following Section substituted:

61 (1) When an association, other than a non-profit association referred to in Section 61A, is dissolved or wound up and

(a) all debts payable by the association; and

(b) all expenses of or incidental to the winding up and the realization of the assets of the association,

are paid and there is any balance remaining, the balance shall, subject to subsections (2), (3) and (4) be paid by the liquidator in accordance with any provisions respecting the paying out of the remaining balance set out in the articles or by-laws of the association.

(2) Where an association to which subsection (1) applies is an association that, on the thirteenth day of November, 2001, had provisions respecting the paying out of the remaining balance set out in the articles or by-laws of the association, the remaining balance shall be paid out in accordance with those provisions.

(3) Where an association to which subsection (1) applies is an association that, on the thirteenth day of November, 2001, did not have provisions respecting the paying out of the remaining balance set out in the articles or by-laws

of the association or, where it has become impracticable for an association to which subsection (2) applies to comply with the provisions referred to in subsection (2), the association may, before being dissolved or wound up

(a) apply to the Inspector in accordance with the regulations for approval of the manner in which the remaining balance is to be paid; or

(b) by special resolution provide that the remaining balance is to be paid to a fraternal, charitable, community or developmental organization not having the purpose of carrying on any trade, industry or business and carrying on without purpose of gain to any member or to a non-profit association referred to in Section 61A,

and the balance shall be paid by the liquidator in the manner approved by the Inspector pursuant to clause (a) or to such organization or organizations as are provided for pursuant to clause (b).

(4) Where

(a) an association referred to in subsection (3) does not act pursuant to either clause (a) or (b) of subsection (3) before being dissolved or wound up; or

(b) the Inspector does not approve an application made pursuant to clause (a) of subsection (3),

the balance shall be paid by the liquidator to a fraternal, charitable, community or developmental organization or other organization not having the purpose of carrying on any trade, industry or business and carrying on without purpose of gain to any member or to a non-profit association referred to in Section 61A, in the manner and proportions set out in the regulations.

(5) Notwithstanding subsection (2), an association referred to in subsection (2) may, before being dissolved or wound up, provide by unanimous resolution of the members that the remaining balance is to be paid to a fraternal, charitable, community or developmental organization not having the purpose of carrying on any trade, industry or business and carrying on without purpose of gain to any member or to a non-profit association referred to in Section 61A, and the balance shall be paid by the liquidator to such organization or organizations as are provided for in the resolution.

20 Chapter 98 is further amended by adding immediately after Section 61 the following heading and Sections:

NON-PROFIT ASSOCIATIONS

61A For the purpose of this Act, an association is a non-profit association if

(a) its articles or by-laws specify that it is a non-profit association;

(b) it is an association that, on the thirteenth day of November, 2001,

(i) had articles or by-laws that provided it was to be operated on a non-profit basis or that it was to carry on its activities without purpose of gain to any of the members, or

(ii) had articles or by-laws that provided that upon dissolution the property of the association, after satisfaction of its debts, liabilities and expenses, was not to be disposed of or distributed among the members or was to be paid to a non-profit association or a fraternal, charitable, community, developmental or other such organization that is carried on without purpose of gain to any of the members;

(c) it is a housing association that has received from the Government of Canada or the Province, or an agency of either of them, a subsidy or assistance that assisted with or reduced housing costs;

(d) it is a housing association that operated under an agreement with Canada Mortgage and Housing Corporation that provided it was to be operated on a non-profit basis or that upon dissolution or wind up the property of the association, after satisfaction of its debts, liabilities and expenses, was not to be disposed of or distributed among

the members or was to be paid to a similar association or a fraternal, charitable, community, developmental or other such organization that is carried on without purpose of gain to any of the members;

(e) it files income tax returns as a not-for-profit corporation; or

(f) it is an association or in a class of associations that are prescribed to be non-profit in the regulations.

61B Notwithstanding any enactment, no non-profit association may be converted into or continued as any other kind of association or corporation.

61C No non-profit association may pay any dividends on share capital or interest on share capital to its members.

61D (1) A profit resulting from revaluation or sale of real or personal property of a non-profit association 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 association; or

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

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

61E No member of a housing association that is a non-profit association shall be entitled to a profit or capital gain because of the occupancy, transfer or surrender of a unit of housing of the association or because of a transfer or termination of membership in the association.

61F (1) A non-profit association shall operate without profit for its members and any profit or other revenues received by the association shall be used to promote its objects.

(2) No part of the income or property of a non-profit association shall be paid to or otherwise made available for personal benefit to a member of that association.

(3) Nothing in this Section prohibits a non-profit association from

(a) paying a reasonable amount to a member for services provided to the association if the provision of the services and the amount to be paid for them were approved by the board in advance of the services being provided; or

(b) where the association is a housing association, paying reasonable compensation to a member for improvements to a housing unit if the improvements and the amount to be paid for them were approved by the board in advance of the improvements being made.

61G (1) When a non-profit association is dissolved or wound up, any property of the association remaining after payment of all debts payable by the association and all expenses of or incidental to the dissolution or winding up and the realization of the assets shall be distributed to a fraternal, charitable, community, developmental or other non-profit organization including another non-profit association.

(2) The articles or by-laws of a non-profit association may designate the organizations to which the property of the association is to be distributed pursuant to subsection (1).

(3) Where the articles or by-laws of a non-profit association do not designate any organization pursuant to subsection (2) or where a designated organization has ceased to exist or be eligible pursuant to subsection (1), the property of the association shall be distributed to organizations eligible to receive it pursuant to subsection (1) in the manner and proportions set out in the regulations.

21 Subsection 64(1) of Chapter 98 is amended by

- (a) adding "including requirements respecting qualifications for admission of members that are to be included in the by-laws of an association" immediately after "association" in the first and second lines of clause (c);
- (b) adding immediately after clause (c) the following clauses:
 - (ca) respecting the making of by-laws by associations and the amendment or repeal of by-laws;
 - (cb) respecting minimum requirements of matters to be included in the by-laws of associations;
 - (cc) respecting applications made pursuant to clause (a) of subsection (3) of Section 61;
 - (cd) respecting the manner and proportions in which the balance remaining after dissolution or wind-up of an association is to be paid pursuant to Section 61;
 - (ce) respecting matters that the Inspector shall consider or conditions that apply to the exercise of the Inspector's discretion when the Inspector decides on applications made pursuant to subsection (3) of Section 61;
 - (cf) prescribing associations or classes of associations that are non-profit associations for the purpose of Section 61A;
 - (cg) respecting the manner and proportions in which the property remaining after dissolution of a non-profit association is to be distributed pursuant to Section 61G;
 - (ch) respecting circumstances in which associations are deemed to be non-profit associations or to have been carrying on business as non-profit associations;
- (c) striking out "directors" in clause (g) and substituting "directors";
- (d) adding "and the disposition or transfer of shares" immediately after "shares" in clause (i); and
- (e) adding immediately after clause (j) the following clause:
 - (ja) prescribing the manner in which a reserve fund established pursuant to Section 61D shall be invested;

22 The Schedule to Chapter 98 is amended by striking out "*provisional*" in both of the Notes and substituting in each case "*first*".

23 Chapter 98 is further amended by striking out "extraordinary" wherever that word appears in Chapter 98 and substituting in each case "special".

24 Subsection 2(1) of Chapter 418 of the Revised Statutes, 1989, the *Securities Act*, as amended by Chapter 15 of the Acts of 1990 and Chapter 32 of the Acts of 1996, is further amended by

- (a) adding immediately after clause (h) the following clause:
 - (ha) "co-operative" means an association within the meaning of the *Co-operative Associations Act*;
- (b) adding immediately after clause (ac) the following clause:
 - (aca) "patronage dividend" means an amount that a co-operative allocates among and credits or pays to members of the co-operative based on the business done by each member with or through the co-operative, at a rate in relation to the quantity, quality or value of the goods or services acquired, marketed, handled, dealt in or sold by the co-operative on behalf of the member, allocated in the form of cash, shares or other forms of equity including member loans and debentures of the co-operative;

(c) adding immediately after clause (afb) the following clause:

(afc) "price check-off" means the allocation by a co-operative of a percentage or portion of the price paid to members of the co-operative for goods or services sold through or to the co-operative, to the purchase of shares or other forms of member equity including member loans and debentures of the co-operative;

and

(d) adding immediately after clause (aha) the following clauses:

(ahb) "producer co-operative" means a co-operative that collectively markets or sells the goods of its producer members;

(ahc) "producer members" means the members of a co-operative who produce, harvest or manufacture goods for the co-operative;

25 (1) Subsection 41(1) of Chapter 418, as amended by Chapter 15 of the Acts of 1990, is further amended by adding immediately after clause (am) the following clause:

(ama) a trade in a security made by a co-operative in the course of a distribution by the co-operative of the security to a member of the co-operative or to a purchaser who becomes a member of the co-operative by virtue of the trade unless

(i) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative purchased by the member or the purchaser in the preceding three hundred and sixty-five days exceeds one thousand dollars, or

(ii) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative owned by the member or the purchaser exceeds ten thousand dollars;

(amb) a trade which is a distribution but for clause (a), (b) or (c) of subsection (7C) of Section 77;

(2) Section 41 of Chapter 418 is further amended by adding immediately after subsection (1) the following subsections:

(1A) In applying clause (ama) of subsection (1), where the security is distributed

(a) in respect of a patronage dividend declared by the co-operative;

(b) in respect of the operation of a price check-off;

(c) in respect of a sale to a member of a producer co-operative; or

(d) pursuant to a prospectus,

the security shall not be taken into consideration.

(1B) Subject to the regulations, a co-operative shall file with the Director

(a) within sixty days after the calendar year end, a report prepared and executed in accordance with the regulations, describing all distributions of securities of the co-operative made in reliance on clause (ama) of subsection (1), other than distributions referred to in subsection (1A), if the total aggregate subscription price of the securities distributed in the calendar year exceeds two hundred thousand dollars; and

(b) a copy of an offering memorandum that is sent or delivered to a member of a co-operative or a purchaser in connection with a distribution made in reliance on clause (ama) of subsection (1), other than a distribution

referred to in subsection (1A), at least ten days before the trade that is the first trade in respect of which the offering memorandum is sent or delivered.

(3) Clause 41(2)(h) of Chapter 418 is repealed.

26 (1) Subsection 77(1) of Chapter 418, as amended by Chapter 15 of the Acts of 1990, is further amended by

(a) striking out the period at the end of clause (ag) and substituting a semicolon; and

(b) adding immediately after clause (ag) the following clause:

(ah) the trade is made by a co-operative in the course of a distribution by the co-operative of a security to a member of the co-operative or to a purchaser who becomes a member of the co-operative by virtue of the trade unless

(i) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative purchased by the member or the purchaser in the preceding three hundred and sixty-five days exceeds one thousand dollars, or

(ii) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative owned by the member or the purchaser exceeds ten thousand dollars.

(2) Section 77 of Chapter 418 is further amended by adding immediately after subsection (1) the following subsections:

(1A) In applying clause (ah) of subsection (1), where the security is distributed

(a) in respect of a patronage dividend declared by the co-operative;

(b) in respect of the operation of a price check-off;

(c) in respect of a sale to a member of a producer co-operative; or

(d) pursuant to a prospectus,

the security shall not be taken into consideration.

(1B) Subject to the regulations, a co-operative shall file with the Director

(a) within sixty days after the calendar year end, a report prepared and executed in accordance with the regulations, describing all distributions of securities of the co-operative made in reliance on clause (ah) of subsection (1), other than distributions referred to in subsection (1A), if the total aggregate subscription price of the securities distributed in the calendar year exceeds two hundred thousand dollars; and

(b) a copy of an offering memorandum that is sent or delivered to a member of a co-operative or a purchaser in connection with a distribution made in reliance on clause (ah) of subsection (1), other than a distribution referred to in subsection (1A), at least ten days before the trade which is the first trade in respect of which the offering memorandum is sent or delivered.

(3) Section 77 of Chapter 418 is further amended by adding immediately after subsection (7B) the following subsection:

(7C) The first and any subsequent trade by a member of a co-operative in a security of the co-operative previously acquired by the member pursuant to a distribution exempted from Sections 58 and 67 by clause (ah) of subsection (1) is a distribution unless the trade is made to

(a) the spouse of the member;

(b) a child of the member or the member's spouse; or

(c) a company controlled, in law and in fact, directly or indirectly, by the member, the spouse of the member, one or more children of the member, one or more children of the member's spouse or any combination of the foregoing.

27 Section 150 of Chapter 418 as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996 and Chapter 18 of the Acts of 2001, is further amended by adding immediately after clause (bab) the following clause:

(bac) prescribing requirements for, or varying the requirements in respect of, the exemptions in Sections 41, 77 and 78;

28 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.



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