

Organising Forestry Co-operatives in British Columbia: The Legal and Policy Framework

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Provided by the ELC with the assistance of

**The British Columbia Institute for
Co-operative Studies**



**BC Institute for
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UNIVERSITY OF VICTORIA



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Law Centre**
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**ORGANISING FORESTRY
CO-OPERATIVES IN BRITISH COLUMBIA:
The Legal & Policy Framework**

Produced by the Environmental Law Centre for the BC Institute for Co-operative Studies

Researched and written by Aaron Welch, with the assistance of Mann Vergan and Celine Berniard on the Touch Wood Industries Co-operative Case Study, and Tamara Vrecko on the Harrop-Procter Co-operative Case Study

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Preface

The Environmental Law Centre (“ELC”) is a student run, non-profit organisation dedicated to research and education on environmental issues from a public interest perspective. Education, outreach, networking, and research programmes provide students with hands on experience and opportunities for working in environmental law. The ELC draws its student-body primarily from the University of Victoria law school, but is open to any student with an interest in environmental law.

This paper is a production of the ELC on behalf of the British Columbia Institute for Co-operative Studies. The purpose of this paper is to provide general and legal information to persons interested in organising a co-operative business venture. This paper specifically deals with legal requirements facing those persons interested in establishing forestry co-operatives. Topics range from the general requirements that a business planning to incorporate under the *British Columbia Cooperative Association Act* must meet to specific licensing requirements for a tree farm or community tenure in forest land. There will also be some discussion of marketing value-added merchandise and other natural products, such as mushrooms or herbal products, which could be suitably combined with forestry. Other topics include security regulations, liability, and the tax implications of forming a co-operative.

The information contained in this handbook is not legal advice, but information provided by students who are not qualified to practice law. The information contained in this handbook is current to the date of printing—Spring 2001. The sections quoted are from the new *BC Co-operative Association Act*, Bill 98, which came into force January 2001. The sections in brackets refer to the corresponding section in the previous *BC Co-operative Association Act*. It should also be noted that this information applies to co-operatives incorporating in British Columbia only, as variations in co-operative law exist among provinces.

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Organising Forestry Co-operatives in British Columbia: The Policy and Legal Framework

CO-OPERATIVES

1.1 What is a Co-operative?

A co-operative is a legally incorporated business. It exists along with companies, sole proprietorships, and societies as a business entity, yet it is unique and different in significant ways. A co-operative is a business organisation owned by the members who use the services and products the co-operative provides. Co-operatives are also governed by the democratic principle of “one member, one vote,” regardless of the investment held by that member in the co-operative. Accordingly, all members have an effective say in the policy and decision-making process through an elected board of directors. In addition, members receive a share of the co-operative’s annual surplus based on their individual use of the co-operative, not their ownership of shares.

If the co-op is created to provide work, the workers are the member-owners. If the co-op is created to purchase goods and services, the consumers (buyers) are the members. Co-ops can be either for-profit or not-for-profit enterprises. In Canada, most co-ops in the healthcare, childcare, and housing sectors are not-for-profit co-ops. While some co-ops (such as family housing co-ops) receive some government funding, co-operatives are NOT government organisations. Co-ops are community initiated organisations and businesses. Co-operatives enhance the potential for communities to develop and diversify their economies.

Co-operatives provide a creative alternative to traditional business. By working together, co-operative members can achieve better purchasing power, more dynamic joint marketing, less individual risk, and other advantages. Co-operative members decide how to share in the risks and rewards of their business activities among themselves and within their communities (Ministry of CDCV, n.d.). Particularly in the area of forestry, BC communities want more say in forest resource management to reflect their local priorities and to strengthen existing community economies. Co-operatives also

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play an important role in encouraging new ventures such as value-added manufacturing or botanical forest products industries. In addition, co-operatives provide an environmental alternative to modern day corporate logging by providing an opportunity to test alternative harvesting practices, new management approaches such as ecosystem-based forestry, and alternatives to the provincial stumpage system (Ministry of Forests, 1999).

Canada has 92 forestry co-operatives most of which are primarily involved in wood cutting. Forestry co-operatives in Quebec represent over 70% of all forestry co-ops in Canada. Seventy-four of the 92 forestry co-operatives are worker co-ops. Business volume for 1996 totaled \$387.4 million and employment was provided for 9,276 co-op members (Co-operatives Secretariat, 1998).

Summary of Forestry Co-operatives Reporting in Canada, 1996

	West	Ontario	Quebec	Atlantic	Canada
Number of Co-operatives	7.0	-	63	22	92
Membership (thousands)	412.0	-	5,968	2,896	9,276
Full-Time Employees	303.0	-	4,256	112	4,671
Part-Time Employees	13.0	-	55	125	193
Salaries & Wages (\$M)	6.7	-	94.8	2.8	104.3
Volume of Business (\$M)	8.1	-	347.2	32.0	387.3
Assets (\$M)	1.5	-	195.0	4.4	200.9
Members' Equity (\$M)	0.9	-	71.5	2.3	74.7

Source: Co-operatives Secretariat (1998) . *Resource File*.

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In British Columbia, co-operatives are found in many business and community sectors, such as forestry, fisheries, childcare, housing, entertainment, tourism, transportation, and high-tech. They enhance the potential for communities to develop and diversify their economies. In 1998, there were 679 registered co-operatives in BC. This is an increase of 35% from 1990, when there were 503 co-operatives registered. Today co-operatives employ more than 13,000 British Columbians (Ministry of CDCV, Website).

1.2 Co-operative Principles and Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. A co-operative is 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. While a co-operative is subject to similar licensing and incorporation requirements as corporations, they differ in their allocation and distribution of earnings. In a co-operative, earnings are usually allocated among the members on the basis of the amount of business each member did with the co-operative during the year (USDA, 1997). This is called a patronage refund or return. Typically, a member will receive their earnings partly in cash and the remainder as an addition to their equity in the co-operative. This helps to finance the co-operative's ongoing activities and provides funds for growth.

Co-operatives worldwide generally operate using the same principles as those adopted in 1995 by the International Co-operative Alliance. These principles are¹:

1. *Voluntary and Open Membership* — Co-operatives are voluntary organisations, 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.

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2. *Democratic Member Control* — Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives, members have equal voting rights (one member, one vote) and co-operatives at other levels are organised in a democratic manner.
3. *Member Economic Participation* — Members contribute equitably to, and democratically control, the capital of their co-operative. Usually, at least part of that capital is usually the common property of the co-operative. They typically receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.
4. *Autonomy and Independence* — Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.
5. *Education, Training, and Information* — Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public — particularly young people and opinion leaders — about the nature and benefits of co-operation.

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6. *Co-operation among Co-operatives* — Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional, and international structures.
7. *Concern for Community* — While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

In British Columbia, section 8(2) of the *Cooperative Association Act* (BCCAA) defines an association, which carries on business on a “co-operative basis” as being substantially organised, operated, and administered on the following principles and methods:

- membership is open in a non-discriminatory manner to everyone who can use the association’s services and accept the responsibilities of membership;
- each member or delegate has one vote;
- members contribute to the capital of the association;
- members receive limited or no return on capital provided as a condition of membership to the association;
- surplus funds are used for any (or all) of the following purposes:
 1. developing the association;
 2. providing or improving services to members;
 3. establishing reserves;
 4. paying dividends;
 5. community welfare or the propagation of co-operative enterprise;
 6. distribution to the members as a patronage return; and,
- education is provided on the principles and techniques of co-operative enterprise.

As a result of the principles in the BCCAA, co-operatives provide an effec-

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tive form of organisation for a business, especially in relation to forestry. A forestry co-operative can be flexible enough to allow communities to manage their timber resources efficiently depending on their different values and needs. A co-operative allows the business to focus on all aspects of resource management instead of focusing on a single resource. This flexibility is often in stark contrast to a larger corporation's primary focus on a single resource and the corporation's emphasis on the "bottom line." Employment, community support, awareness of resource development potential, and resource conservation are all objectives of community forest co-operatives (Harvey, 1995). This is because the decisions made by the co-operative reflect the opinions and needs of its members, who are in turn members of the community. Thus the values of the co-operative mirror the values of the surrounding population.

1.3 Opportunities for Co-operatives in the Forest Industry

Two forces have traditionally dominated the province's forestry sector – large corporations and the government. In BC, the province has historically retained substantial ownership of the forest land base. Control over resources, however, has passed into the hands of a relatively small number of forest companies. In fact, Global Forest Watch Canada reports that only 10 corporations own the majority of the harvesting rights to BC's forests (GFW, 2000). The system of property rights currently in place – forest tenures – has remained essentially the same for most of the twentieth century. The tenure system began as a way of promoting the forest industry. Under these tenure systems, companies lease long-term property rights in trees. Most of these licenses confer on the company exclusive harvesting rights for a geographical area (Tollefson, 1998). The government encouraged the timber industry because of fears of discouraging investment and slowing development. This has resulted in the driving force of forest policy being corporate economic growth (M'Gonigle, 1998).

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The main problem with the corporate model is the separation of control from employees and communities. Directors of corporations are responsible to the shareholders. Most shareholders have no involvement whatsoever in the business of the corporation. Their main concern is the dividend that they receive each year. This means that in order to keep investors interested in the company, profits must be the focal concern, not ensuring long-term employment or sustainable forest practices. This separation of control and community has caused increased use of technology and automation, which has led to the loss of jobs in the forest sector. It has also led to forest practices that have raised serious questions as to the sustainability of the province's forest resources.

The Forest Practices Code (FPC) plays an important role in the provincial government's overall land-use strategy because forestry remains a dominant concern of provincial land planning. The government has always worked very closely with representatives of the forest industry, but in the past the legislation governing forestry was often focused on the promotion of the timber industry's agenda. Unfortunately, there was an unconscious acceptance of the systematic assumptions on which the existing corporate and bureaucratic institutions were founded. This assumption is that current practices within the industry are adequate and that the industry will effectively regulate itself. One example of this is the provincial government's resistance to lowering the Annual Allowable Cut (AAC), despite evidence of its lack of sustainability. This is due to the corporate timber industry's insistence that their profit margin not be reduced, as this will result in job losses. However, most co-operatives focus on sustainable forestry and value-added alternatives, which not only promote business within the province but also provide new and innovative ideas to BC's forestry industry. Accordingly, co-operatives offer an excellent solution to maintaining jobs within the province.

Current forest practices leave little room for any industry or activity other than forestry to co-exist in an area designated for timber harvesting. To build a solid economic base, long-term policies are needed that support growing

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industries, like tourism and recreation, and encourage value-added manufacturing and economic diversity. To create more jobs, the focus should shift to ecosystem-based logging methods, which generate up to three times as many jobs per unit of wood cut (Sierra Club, 1998). The province should also increase value-added manufacturing such as furniture, door, and window frame manufacturing. This would create more jobs and build stronger local communities. A co-operative structure is an ideal mechanism to meet these goals.

Since forests are on public lands, it would seem logical that those forests are of benefit to the surrounding community, not distant shareholders. Co-operatives are a means for local communities to retain control over the management of forestland. When a forestry co-op is responsible for the harvesting of timber, its practices will reflect the values of the members who make up the co-operative and also those of the surrounding community. Since the continued livelihood of the local population is dependent on the long-term operation of forestry in the area, the methods used are more likely to be sustainable. Also, the more sustained use that can be made from any given area of forest, the more profit and employment that can be generated. Forestry co-operatives can encourage different employment sectors to coexist and can recognise that the forests have value beyond timber extraction.

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ORGANISING A PRODUCER CO-OPERATIVE

2.1 Establishment and Operation

Naming Your Co-operative

The first step in incorporation is to decide on a name. In order to receive approval of the name, an application must be made to the Names Unit of the Registrar of Companies. However, approval of a name by the Registrar does not provide a proprietary right or interest in the name. It is intended to protect the public interest by preventing similar names of corporations, which might confuse or mislead, and also to provide a record, which allows the public to determine which individuals are associated with a firm name (Ministry of FCR, 1998). The approval of any name is at the discretion of the Registrar. Three different names should be provided to the Registrar in descending order of preference. These names can be checked for conflict prior to filing by searching telephone listings, business directories, and other publications (Ministry of FCR, 1997).

In assessing names, the Registrar analyses them in accordance with their constituent components. The form of name acceptable in principle consists of a distinctive element, a descriptive element, and a corporate designation. The *distinctive* element serves to differentiate names. It is the most important element to be examined and makes up the first part of the name. Coined and made up words are acceptable, as is a name or geographical location. The *descriptive* element is useful in describing the nature of the business, for example “forestry” or “timber.” The *corporate designation* informs the public of the type of business and is the last word of a name. An association formed under the *BCCAA* must include the word “co-operative,” or “co-op” (spelt with or without the hyphen) in its name, according to s. 23 of the *Act*. It may also use any *one* of the following words: “association,” “society,” “union,” “exchange,” or a similar word approved by the Registrar. The name must not

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include the words “company” or “limited” or the words “not for profit” or “non-profit.” In addition, s. 25 of the *Act* prohibits any business or activity from using the words “co-operative” or “co-op” unless it is registered under the *BCCAA* or is a federally incorporated co-operative. The fee for filing a name approval request form is \$30.

The name of the association must be affixed to the outside of every office or place in which the business of the association is carried on. The name must also be mentioned in all notices, advertisements, and official publications and all bills, invoices, receipts, and letters of credit of the association, according to s. 26 of the *BCCAA*.

Incorporating Your Co-operative

Once a name has been approved, the association should be incorporated. In British Columbia, co-ops must be incorporated and registered under the province’s *Cooperative Association Act*. Under s. 10 of the current *Act* (1999), any three or more people or eligible organisations can form an association. The former *Act* (1996) (s. 2) required five people to form a co-operative. In order to incorporate a co-operative association, four documents are needed:

1. Memorandum of Association—as set out in s. 12.
2. Rules of Association—as set out in s. 13.
3. Notice of Registered Office—s. 27.
4. List of First Directors—s. 73.

These four documents must be sent with the appropriate fee to the Registrar of Companies at the BC Ministry of Finance and Corporate Relations. Note that the position of Superintendent of Co-operatives has been eliminated in the current *BCCAA*. Currently the fee for incorporation is \$250. Once approved, the BC Registrar of Companies will issue a certificate of incorporation and the co-operative will be entered into the corporate register. On average, this process takes up to three months (Ministry of CDCV, 1999). Once a certificate is

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issued a co-op's documents become legally binding. They form the foundation of a co-operative's activities.

Each document will be discussed separately.

The Memorandum of Association

The Memorandum provides information about a co-op's name, its founding members, the value of their purchased shares, and a statement indicating the limited liability of the co-op's members. Those persons interested in forming an association must subscribe their names to a memorandum relating to their business and send a duplicate copy to the Registrar with the proper fee. The memorandum must contain the following:

- the name of the association and the location of the association's registered office;
- a list of every subscriber to the memorandum and the number of membership shares and investment shares taken by each subscriber—s.12(a)²;
- the purpose of the association and every restriction, if any, on the business to be carried on by the association or the powers of the association—ss.12(c)(d)³;
- a statement of the par value of the co-operative's membership shares or a statement that its membership shares are without par value—s.12(f); and,
- a statement of the maximum number of membership shares that the association is permitted to issue or that the association is permitted to issue an unlimited number of membership shares—s.12(g).

Rules of Association

The rules set out how a co-op's founding members wish to govern their business activities. Some rules are required by statute, but others can be written to reflect the unique needs of each co-operative. The rules should outline the requirements for membership and directors, provide information about shares

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in the association, and set out practices for meetings and voting. The rules should also provide detailed financial information and the methods of accounting that the association plans to use.

It is customary for the first rule to define the “terminology” to be used throughout the rest of the document. When drafting rules unique to an association, it is important to use clear and consistent wording throughout the document. This helps to avoid future misunderstandings and disputes over vague or inconsistent language. The following matters must be provided for in the rules:

1. terms of admission to membership—s. 29;
2. a designation of a class of shares as membership shares—s. 30;
3. a statement of the minimum number of membership shares that must be purchased to join the co-op—s. 30; and,
4. a provision for the election or appointment of the directors of the association other than the first directors—s. 74(1).

Like the memorandum, the rules must be submitted in duplicate to the Registrar.

List of First Directors

The list of first directors provides information on the first Board of Directors. This list must be filed with the Registrar at the same time as the memorandum and rules of association. The list must include the full name and address of each director—s. 14. A minimum of three directors is required. The term of the first directors usually lasts until the first general meeting of the co-operative, which must be held within three months of incorporation. If the number of founding members is small, it is not uncommon for everyone to serve as directors.

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Notice of Registered Office

The notice of registered office provides an official location address where a co-operative's mail can be received. The office must be within British Columbia. The Notice must provide an actual location address, not a box number, so that legal notices and other important documents can be delivered by means other than regular mail. In addition, official records required by the *Act* must be kept on file at the co-op's registered office—s. 27. The notice of registered office must be submitted to the Registrar at the same time as the memorandum, rules, and list of first directors. Any change of address must be filed with the Registrar.

Statement of Incorporators

Although required under the former *Act*, the current *BCCAA* does not require the submission of a statement of incorporators.

2.2 The Structure of Co-operatives

Members

Co-operatives are operated and owned by their members, who are also the shareholders. Co-ops differ in the demands and expectations placed on their members. Some co-ops are highly participatory organisations that involve their members in daily operations, perhaps even requiring volunteer or paid labour. In others, a member's role may be as simple as using the services of his or her co-operative, attending general meetings, and electing the board of directors (Ministry of CDCV, n.d.).

The members of an association are the subscribers to the memorandum and are those persons and eligible organisations admitted to membership according to

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the rules of the association—s. 29. Anyone at least 16 years old may be admitted as a member if this is provided for in the rules of the association. In addition, a member may be a corporation, the government, a municipality, a First Nation, or another association—s. 32. Under the former *Act* (1996) a First Nation, municipality, or government could not join a co-operative.

Members have one vote, regardless of who or what they are or how many shares they own. An authorised individual represents government or a First Nation for meetings and voting.

The *BCCAA* allows for joint members, i.e., two or more persons who jointly hold one membership in an association (for example, a “family membership”). Joint members are jointly and separately liable for any debts to the co-op. In addition, unless the rules of the association state otherwise, only one of the joint members can vote and only one can be a director.

The *BCCAA* also allows co-ops to change their rules to divide their membership into classes. Each class may have different rights, obligations, and limitations. As noted in the Canadian Co-operative Association—BC Region document, *New British Columbia Co-op Act Passed* (n.d.), these changes allow for the creation of “multi-stakeholder co-ops.” For example, one could have a home care co-op in which both consumers and providers are members, but “despite their much smaller number, the providers are guaranteed a certain number of board seats and perhaps have a veto over certain kinds of decisions.”

It should be noted that some decisions, such as allowing for different classes of members, may be met with dissent from some members. The *BCCAA* provides more detail about dissents. To dissent, the members must give written notice of their dissent before the vote—s. 160. They are not allowed to vote on the proposal and if they do, their dissent becomes invalid. If the proposal passes and is not abandoned, the dissenting members lose their membership rights and are entitled to have their membership shares redeemed at a “reasonable value”—s. 160. Members may dissent on the following issues:

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- a resolution to issue investment shares to non-members—s.161(1)(a);
- a resolution to divide the membership into classes—s. 161(1)(b);
- a resolution to approve the association operating outside of the province—s. 161(1)(c); or,
- a resolution to dispose of the whole or most of the whole of the undertaking—s. 161(1)(d).

Investment shareholders also have the right to dissent on the following issues:

- a resolution approving an amalgamation of the association—s. 161(2)(a);
- a resolution to approve the association operating outside of the province—s. 161(2)(b); or,
- a resolution to dispose of the whole or most of the undertaking—s. 161(2)(c).

Co-op members have a number of rights, including the entitlement to vote at general meetings, to share in the surplus or profits of the Association, and to secure access to the services the co-operative provides (Ministry of CDCV, n.d.). A member may withdraw from an association or transfer his or her shares, subject to the rules—s. 33(4). Usually, this will require the approval of the directors, who may refuse to assent to a transfer of any share not fully paid if the association has placed a lien on those shares for money owing.

A member can also be expelled from membership. Under the *BCCAA*, there is a two-step process for membership termination. First, three-quarters of the directors must vote in favour of a membership termination resolution on the basis of:

1. conduct detrimental to the co-op;
2. non-payment of money owed to the co-op; or
3. breach of a material condition of an agreement between the mem-

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ber and the co-op—s. 33(4).

Second, the member can appeal the directors' decision to hold a general meeting of the members. However, only a simple majority is required to support the directors' decision, unless the membership was terminated for detrimental conduct, in which case a special resolution is required to support the directors' decision. An expelled member is entitled to a refund of the amount paid up on the member's shares and can only be readmitted to membership through another special resolution—ss. 38, 39.

An association must keep a register of members at its registered office. The register must set out the names and addresses⁴ of the members and the number and class of shares held by each member, as well as the amount paid on those shares. It must also show the date that the member was registered and the date that the member ceased to be a member—s. 124.

Directors

A co-operative is governed by a Board of Directors. The Board is elected by the membership and is a co-operative's policy making and administrative body. Directors act on behalf of the membership and are accountable to their members through general meetings and other systems of reporting. Directors have the collective right to make decisions and to operate the business. They may choose to delegate some of their administrative authority to committees. In large co-operatives with paid employees, boards may make policies and delegate the administration of those policies to management. The Board of Directors should select and hire one or several managers to control the ongoing activities of the association. The responsibilities of a manager are generally to manage the people, capital, and physical resources of the association under the direction of the board.

The first directors must be determined in writing by a majority of the subscribers to the memorandum and they must hold office until the first general meeting.

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After that, the directors must be appointed or elected according to the rules of the association. An association must have at least three directors. Under the former *BCCAA* (1996), every director was required to be a member of the association. Under the current *Act* (1999), up to 1/5 of the directors may be non-members—s. 72(4). The directors must manage or supervise the management of the association and may exercise all the powers of the association subject to the *BCCAA* and the association's rules—s.72. The members of an association vote to determine the remuneration of the directors and their expense accounts.

In addition to whichever qualifications the association chooses to require in its rules, a director must meet the following criteria:

- 18 years of age or older, which is a reduction from the former *Act*'s requirement that directors be 19 and over—s. 79(4)(a);
- must not have been found by a court in Canada or elsewhere to be incapable of managing the individual's own affairs—s. 79(4)(b);
- must not be an undischarged bankrupt—s. 79(4)(c); and,
- must not have been convicted of an offence involving fraud or mismanagement of a corporation within the past five years—s. 79(4)(d).

An association must keep a register of directors at its registered office, containing the names and addresses of the directors and the dates on which the directors started and ceased to act—s. 125. Within 14 days of an appointment or election of a new director, a notice must be filed with the registrar or the association will be subject to a fine of \$50 per day.

Directors are responsible for the appointment of officers, such as president, vice-president, secretary, and treasurer. The names of these positions are not relevant as long as the titles and duties of each position are made clear in the rules of the association. It is also the directors' responsibility to ensure that minutes are kept of all appointments of officers and resolutions and proceedings at all meetings. The directors are accountable to the membership for their

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stewardship of the co-op. Formal accountability involves reporting to general meetings on the co-op's recent performance and its current financial situation. In carrying out their responsibilities, directors serve much like trustees, charged with a legal obligation to protect the assets of the members.

In addition, directors have a legal duty to avoid conflicts of interest. Conflict of interest situations arise when a director has a personal stake in decisions that affect the co-operative, or if they benefit from "insider information" they receive as a result of their position. Directors who act outside the parameters of the law or who do not exercise due care in their decision-making may be personally liable for the harm they cause the members, the association, or third parties (Harvey, 1995). The new *Act* outlines updated disclosure and conflict of interest rules for directors. Upon becoming a director, that person must disclose any other position they hold or property that could directly or indirectly result in a conflict of interest. If the co-op enters into, or proposes to enter into, a material contract or transaction in which the director has a material interest, the director or officer must disclose that specific conflict, unless the conflict is exempted—ss.86-89. Failure to disclose is an offence.

The current *BCCAA* clarifies directors' legal duties. Section 84(1) of the *Act* says that a director has a duty to act honestly, in good faith, and in the best interests of the co-operative. She or he must also exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. This last standard is usually taken to mean that directors are not personally liable for decisions they make in good faith, but that they can be sued for negligence. There are, however, some liabilities that, on or before the dissolution of a co-operative, can become personal liabilities. These can include unpaid wages and employee benefits, taxes, and Workers Compensation payments (Ministry of CDCV, n.d.). (For more information on a co-op's liability, see the section "Liability and Insurance" in this paper.) To live up to their legal responsibilities, board members must attend regular board meetings, ensure that proper books and records are kept, receive and ask questions about regular reports from staff and committees, supervise and evaluate management, and act to correct

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problems when necessary.

Meetings

The first meeting of the association must be held within three months of the date of incorporation. The date, place, and time of the general meeting should be set out in the rules. After that, a general meeting must be held at least once every calendar year and within four months of the end of the association's fiscal year—s. 143. Every member must receive at least fourteen days notice of every annual general meeting and seven days notice of every general meeting, unless a special resolution is to be proposed at the general meeting, in which case fourteen days notice is required. The notices should specify the place, day, and hour of the meeting and the nature of any special business—s. 146.

The rules of an association should set out the quorum for meetings. Quorum is the number of members who must be present in order to conduct any business at a meeting of the association.

The current *BCCAA* has modernised how meetings may take place. For example, the *Act* allows for meetings by telephone or other communications media—s. 149(1)(b). In addition, the *Act* allows an association to choose and indicate in its rules how it wishes to give notice of a meeting, whether by e-mail, advertisements, or other means—s. 147. The *Act* also allows a membership meeting to be held outside BC, so long as the Registrar pre-approves it in writing—s. 148.

As for voting, the *BCCAA* permits co-ops, if they specify in their rules, to allow members the choice of voting in person or by mail. Proxy voting is prohibited unless the member lives a certain distance from the nearest meeting place. The co-op may set this distance in its rules. In addition, under the *BCCAA*, voting on special resolutions is based on votes cast, not on members present. Moreover, a majority vote on a special resolution is now two-thirds of votes cast. The co-op may set this majority higher (up to three-quarters) in its rules (CCA,

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n.d.).

Directors must call, subject to certain exemptions, a special general meeting if requested to do so, in writing, by a certain number of members. The required number of members who must make this request before the directors are legally required to call the special general meeting depends on the size of the co-op:

- if there are 100 or fewer members of the association, at least 20% of the members must request the special general meeting—s. 150(2)(a);
- if there are more than 100, but less than 5,000 members, at least the greater of 20 members or 10% of the members must request the meeting—s. 150(2)(b); or,
- if there are more than 5,000 members at least the greater of 500 members or 5% of the members must request the meeting—s. 150(2)(c).

Even if an adequate number of members make a written request for a special general meeting, the directors may refuse the request on one of the following grounds:

- the request is submitted for the purposes of enforcing a personal claim or redressing a personal grievance against the association or its officers—s. 151(2)(b)(i);
- the request is submitted for the purpose of promoting causes that are extraneous to the purposes of the organisation—s. 151(2)(b)(i);
- substantially the same proposal to be raised at the special general meeting by the requesters was considered and defeated by the membership within the past three years—s. 151(2)(b)(ii); or,
- the business of the requisitioned general meeting as stated in the requisition includes a matter outside of the powers of the members—s. 151(2)(b)(iii).

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If the members are not satisfied with the directors' decision to refuse to call the special general meeting, they may appeal the decision to the members at the next meeting of the association if they deliver a notice of appeal to the association within 14 days after they received proper notice of the directors' refusal. Under this appeal process the requested meeting will go ahead, *unless* the members pass a resolution (with a simple majority) confirming the decision of the directors to refuse to call the requested special general meeting. This means that if at the next meeting the members make no resolutions on the issue of calling the special general meeting then the special general meeting must go ahead—s. 152.

It should be noted that even if members succeed in convincing the directors to call a special general meeting, resolutions which pass at special meetings, or general meetings for that matter, are given no particular force by the *BCCAA*. What this means is that “in practice there have been very real limitations on what members of a co-operative have been able to do at general meetings” (Currie, 1999, p. 37). In fact, one case provides authority that the directors of a co-operative may ignore the wishes of a majority of shareholders as long as the directors act within their powers!⁵ A Saskatchewan case also illustrates this. In *Harbin and McKone v. Lloydminster Co-operative Association*⁶ the board of directors of a co-operative chose to close one of the co-ops branches because it was losing money. At the next annual general meeting, the members passed a resolution to keep the store open. However, at their next meeting the directors ignored this resolution and closed the store. The court sided with the directors. For more information on the limits of members' powers, see the article *Collective and Individual Rights in Canada* (1988), by Lars Apland and Chris Axworthy.

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CORPORATIONS

Co-operatives, a sub-set of corporations, can be created by fulfilling the formal requirements of a federal or provincial statute. The federal statute is known as the *Canada Business Corporations Act*⁷ (CBCA); the provincial statute in British Columbia is the *Company Act*.⁸ Through incorporation, a separate, distinct legal entity is created. This means that a corporation can sue and be sued in its own name, enter into contracts just like a natural person (including contracts with its own shareholders), and hold property in its own name. Although a corporation can be more expensive to set up and maintain than other types of business organisations, they tend to have a number of advantages that can be extremely beneficial.

Both incorporated co-operatives and companies have their own legal personality and their members' liability is limited. The affairs of each are governed by statute under which incorporation and basic constitutional documents – memorandum of association or letters patent, the articles, and by-laws – are provided for. An understanding of incorporation is beneficial in order to contrast the differences from and similarities to a co-operative venture.

3.1 Benefits of Incorporating

*Limited Liability*⁹

The main benefit of the corporate structure is limited liability. The company is financed by shares, which are bought and held by shareholders. The shareholders are only liable for the debts and obligations of the company up to the amount that they paid for the shares. If the company goes bankrupt, the creditors can sell off the assets of the company (which includes what the shareholders paid for their shares), but they cannot get at the personal assets of the shareholders unless a shareholder has signed a personal guarantee for the corporate debt.

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*Immortality*¹⁰

Another benefit is that a co-operative/corporation can potentially last forever, whereas a partnership or a sole proprietorship is automatically dissolved in a number of situations, including the death of the owner or the separation of the partners. Once created, a corporation has a life of its own and “perpetual succession;” it continues to exist, in theory, forever (or until legally dissolved). Shareholders and directors may come and go but the corporation itself lives on. Many Canadian companies are well over 100 years old. Perpetual existence provides stability to a corporation, allowing for long term planning as well as access to more favorable financing terms.

Separate Legal Entity

A co-operative/corporation formed under any of the different Canadian corporation statutes has the ability to do anything that a natural person of full legal capacity can do (Business Law Clinic, 1999). In British Columbia, a company incorporated under the *Company Act* might have a prohibition on carrying on certain business in its ‘memorandum’. Any action that a company purports to take outside the limits set out in the objects clause will be *ultra vires* or outside the powers of the business and can potentially render those activities void.¹¹ The memorandum is filed publicly and is available to anyone dealing with the company. The relationships between the shareholders and the directors of the company (e.g., the power of the directors to manage the company) are usually contained in its articles, which are also publicly filed documents. In small companies, a shareholders agreement may exist, which will further delineate the rights and duties of shareholders among themselves and will normally not be publicly available.

*Capital*¹²

Raising capital is often easier for a co-operative/corporation than a sole proprietary business or partnership. Corporations were originally formed as a way to

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bring together a large number of individuals who could pool their capital and carry on a business that might be too expensive for a small partnership. Today, corporations raise money through the sale of shares. Other forms of business must rely solely on their own money and loans for capital. Reliance on these latter means of financing often limits a business's ability to expand. Corporations can also borrow money and issue or grant debentures or other security to their creditors. Corporations are often able to borrow capital at a much lower rate than other forms of business. This is probably because financial institutions and other sources of financing perceive loans to corporations as being less risky investments.

Tax Advantages¹³

A corporation is taxed separately from its owners. It is generally taxed at a lower tax rate, which can be lower than the personal tax rate. The company's separate legal personality can lead to possible tax advantages, such as a small business deduction. Companies often have more flexibility in deferring taxes and in allowing the division of business income. On the other hand, unlike a sole proprietorship, companies experience less than optimal tax treatment for business losses, which cannot be written off against other personal income the owners or shareholders may have.¹⁴

3.2 Incorporating Federally or Provincially

As mentioned above, in Canada, there are two options for incorporation: federal or provincial. There are several factors, which should be considered when deciding whether to incorporate federally or provincially (Ministry of CDCV, n.d.):

- A federal company has the capacity to carry on business throughout Canada. It does not have to worry about name changes if it wants to do business in a province where there is already a corporation with a similar name.

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- A federal company is subject to provincial laws of general application, but provincial laws cannot discriminate against a federal company.¹⁵
- In most provinces, a federal company carrying on business must register as an extra-provincial company. This is an additional expense if the company is only carrying on business in one province.
- A provincial company can carry on business within its own province, but to carry on business in any other jurisdiction, it must register (or otherwise become qualified) as an extra-provincial company in that jurisdiction. The other jurisdiction has the right to refuse registration.
- A provincial company is restricted to provincial objects, in the sense of its business being within provincial legislative jurisdiction (not in the geographical sense). For example, a company cannot register under the *Company Act* to carry on business as a bank or as an insurance company.
- Some provisions are stricter or more complex in the *Company Act* than in the *CBCA*. The fees and filing costs are more expensive when one is incorporating federally.

In British Columbia, most companies are incorporated under the *Company Act*, however many lawyers believe that incorporation under *CBCA* is preferable as it allows the organisation to conduct business anywhere in Canada. Another benefit of federal incorporation is the right to use the corporate name anywhere in Canada. It is also easier to communicate with shareholders residing outside of British Columbia if only one set of rules needs to be complied with - i.e., the *CBCA* rules.

3.3 Implications of Incorporating¹⁶

Higher Start-up Costs

Higher start-up costs stem from the process of setting up the co-operative/corporation, including professional fees for legal and accounting services. While it is not necessary to obtain legal advice to incorporate, it is definitely worth-

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while if a complex share structure is contemplated. Fortunately, the higher start-up costs may be offset by the lower financing and tax rates that corporations often enjoy. Obtaining financing may also be easier because lenders are generally more accustomed to dealing with corporations than with other forms of business.

Increased Paper Burden

The increase in paper burden is due to the number of filings that a company must make. For example, the *CBCA* requires that every company file an annual return (Form 22) and inform the Corporations Directorate of any changes in the board of directors and/or location of the registered office (Forms 3 & 6). The company is also required to file a separate income tax return from its shareholders, which may lead to an increase in ongoing professional costs. The company will also need to register in every province and/or territory where it carries on business.

3.4 Steps in the Incorporation Process Under the CBCA

Once the jurisdiction of incorporation has been selected, it remains to incorporate the company and organise it within the requirements of the incorporating statute. The incorporators must file certain prescribed material with the branch of the federal government or one of the provincial governments having responsibility for incorporations. Under the *CBCA* it is necessary to file the following:

- articles of incorporation (s. 6, form 1);
- notice of registered office (s. 19(2), Form 3);
- notice of directors (s.106, Form 6);
- a name search report on the proposed name of the corporation; and
- the fee of \$500.

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a) Articles

The articles are by far the most important of these documents because they set out the fundamental characteristics of the corporation (*CBCA*, s. 6(1)): the name of the corporation, the class and number of shares authorised to be issued, the number of directors, any restrictions on transferring shares, and any restrictions on the business the corporation may carry on. The articles may also include any provisions that may be found in the by-laws (*CBCA*, s. 6(2)).

b) Name¹⁷

The articles of incorporation must set out the name of the corporation under s. 6(1)(a) of the *CBCA*. Unless one wishes a numbered name, one will make a search prior to incorporation, using the computer facilities of a private name search company (using the Newly Updated Automated Name Search). The computer print-out will indicate any similarity between the proposed and existing names and is sent to the Director appointed under the *CBCA*, together with the articles of incorporation.

If the proposed name is either prohibited or confusing with respect to existing trade marks or names under Part II of the Canada Business Corporations Regulations, the Director may direct the corporation to change its name after incorporation under s. 12(2)(a). An example of a prohibited name is one that is too general or is merely descriptive of the business carried on by the corporation, such as «Computers Inc.».

A corporation's name is an important asset of its business and its officers will wish to request the Director to direct another corporation to change its name if the two names are likely to be confused. If the Director refuses to do so, the first corporation may appeal the decision under s. 246(b). If the corporation proposes to carry on business in Quebec, it will wish to set out its name in both a French and an English form in order to comply with the charter of the French Language in that province. Incorporation statutes in Canada typically facilitate

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this by allowing the corporation to set out its name in an English form, a French form, an English form and a French form, or a combined English and French form (see *CBCA*, s. 10(3)).

Similar requirements with respect to company names apply under the *BCCAA*. Under the *BCCAA* the company name must be set out in the memorandum. The Registrar has the discretion to refuse to register a company with a name that is confusingly similar to the name of a company that has already been incorporated and has the power to order the company to change its name (*BCCAA*, ss. 17, 18). A company may also set out its name in an English form, a French form, an English form and a French form, or a combined English and French form (*BCCA*, s. 16(4)).

The name of the corporation must include a suffix such as «Ltd.», «Inc.», or «Corp.». This suffix is provided to bring the limited liability aspect of the corporation to the attention of persons dealing with it. The corporate name with its accompanying suffix must be included in all contracts, invoices, negotiable instruments, and orders for goods or services issued or made by or on behalf of the corporation (*CBCA*, s. 10(5)).

*c) Registered Office*¹⁸

A corporation must maintain a registered office at which it can be served with legal documents and where it may be required to maintain corporate records. The location of the registered office must be provided in the articles under ss. 6(1)(b) and 19(1). Under *CBCA*, one must state the municipality but not the street address of the registered office. The street address need only be given in the notice of registered office, to be filed with the articles of incorporation under *CBCA* s. 19(2). The street address may then be changed without amending the articles (*CBCA*, ss. 19(3), (4)). The corporate records referred to in s. 20 are usually kept at the registered office.

Under the *BCCA* one must send a notice of the registered office —s. 8. The

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registered office may be changed by a resolution of the directors — s. 40. The company may maintain a separate office for the records the company is required to keep or it may have its registered office and records office in the same place —s. 39.

*d) Notice of Directors*¹⁹

Under the *CBCA*, it is necessary in the articles to specify the number of directors or a minimum and a maximum number of directors. The choice of the appropriate number of directors will depend on a variety of factors specific to each corporation, including the scale of the corporation's business, the desire of shareholders to be members of or to be represented on the board, and the desirability of involving people with no relation to the corporation as directors on the board—perhaps because they have some needed expertise or experience. In addition, corporate statutes contain certain requirements: under the *CBCA*, corporations or affiliated corporations with outstanding shares to more than one person must have at least three directors; all other corporations need to have only one director (*CBCA*, s. 102(2)). The number of directors or the minimum and maximum number of directors may be changed only by amendment of the articles.

Once these documents are properly filed along with the fee, the director appointed to administer the *CBCA* issues a certificate with the articles attached (Form 2), certifying that the corporation was incorporated on the date of the certificate (*CBCA*, ss. 8, 9). The corporation comes into existence on the date of the certificate (*CBCA*, s. 9). The directors named in the notice of directors hold office until the first meeting of shareholders at which an election of directors is held (*CBCA*, s. 106(2)). The provisions in the articles may only be changed by articles of amendments filed with the director's approval by a special resolution of shareholders.

In order to determine what rules govern a corporation, its shareholders, directors, and officers, it is necessary to take into account not just

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the governing corporate statute and the case law but also the elements of the corporate constitution identified above: the articles of incorporation, the by-laws, directors' resolutions, shareholders' resolutions, and any shareholders' agreement. These documents are agreed to by directors or shareholders, or both, and represent, in that sense, private arrangements between them. They are private arrangements, which are bounded by various mandatory provisions of the corporate statutes and are, to a greater or lesser extent, enforceable through statutory mechanisms. All of these documents must be maintained by the corporation at its registered office (*CBCA*, s. 20), usually in something called a «minute book». Shareholders and creditors must be given access to these (*CBCA*, s. 21). Articles and any other document filed with the Director appointed under the *CBCA*, such as notice of directors and notice of registered office, are placed in a publicly accessible record. (VanDuzer, 1997, p. 80)

3.5 By-Laws²⁰

While the directors of the corporation need not be listed in the articles of incorporation, their names and addresses must be given in the notice of directors under the *CBCA*, s. 106(1). In a *CBCA* incorporation, the directors will generally be the promoters. After the corporation comes into existence, the directors will pass organisational resolutions under *CBCA*, s. 104(1), including one approving the corporation's general by-law.

By-laws may deal broadly with the business or affairs of the corporation under *CBCA*, s. 103(1). They should be distinguished from the articles of the corporation, which are more difficult to amend under *CBCA*, s. 173 than the by-laws under *CBCA*, s. 103. By-laws may be made, amended, or repealed by the directors. While subject to shareholder approval, the by-laws are effective from the date of the directors' resolution. They become invalid only if not confirmed by the shareholders at their next meeting. By contrast, an amend-

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ment to an article does not come into effect until the date of the certificate of amendment granted by the Director (*CBCA*, s. 179). Given this difference between articles and by-laws, the latter will provide much greater detail than the former on how the affairs of the corporation are to be conducted.

By-laws are also to be distinguished from resolutions of directors or shareholders, which are usually more restricted in scope. A resolution may, for example, authorise a particular major transaction to be entered into by the corporation. Routine transactions will not usually require any formal authorisation, whether by way of by-laws or resolutions.

The by-laws are usually a fairly lengthy document, since many of their sections merely repeat provisions in the *CBCA*. If these were eliminated, the document would be only several pages in length. Can you think of a worthwhile reason why the by-laws should include *CBCA* provisions?

On or shortly after incorporation, the corporation will also pass banking by-laws and resolutions. The text of these documents is provided by the bank, which requests the return of executed forms.

3.6 Important Elements of a Co-operative and their Differences with Companies

The fact of the matter is that incorporated co-operatives and companies have much in common. Like companies, incorporated co-operatives possess their own legal personality and their members' liability is limited. The affairs of each are governed by a statute under which incorporation and basic constitutional documents – memorandum of association or letters patent, the articles, and by-laws – are provided for. The objects of a co-operative are usually as broad as a company's objects and often include the power to borrow money, mortgage property, invest funds, and acquire shares in another company.

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On the other hand, it is important to point out that co-operatives have a number of special features:

They have unique voting rights and procedures for members. In general, each member of a co-operative, no matter the extent of his initial capital contribution, is allowed only one vote at the general meetings with proxy voting often prohibited. This is in contrast to standard company legislation where voting power is based on the number of common or voting shares held and proxy voting is permitted. These co-operative features are based on the notion of equality among members and the assumption that democratic control may best be implemented if all members are encouraged to participate personally in the important decisions of the co-operative. (Hadden et al., 1984, p. 126)

Furthermore, the role of capital in a co-operative is viewed primarily as one of acquiring goods or services rather than as an investment in anticipation of future dividends:

There are often specific provisions in *Cooperative Acts* limiting the return available to members on their initial capital. Also, a cooperative sometimes may be incorporated with or without share capital. In the latter case, the initial capital is usually raised by loans for which certificates of indebtedness are issued. If shares have been issued, there may be a limit on the number of shares any one member is allowed to hold. And usually surplus funds are not distributed to members based on their proportion of capital distribution but rather in proportion to their patronage or the volume of business they have conducted with the co-operative. (Hadden et al., 1984, p. 126)

Other distinctive marks of co-operatives found in *Co-operative Acts* are that no capital share may be transferred without the approval of the board of directors; political neutrality must be maintained (e.g., campaign contributions by co-operatives are not permitted); and the word “co-operative” or an abbrevia-

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tion thereof must be included in the co-operative's name.

A final difference between co-operatives and companies concerns taxes. For income tax purposes, there are two types of co-operatives: 1) the non-income co-operative and 2) the income-earning co-operative. It is quite easy to understand how both work.

The Non-Income Co-operative

The non-income co-operative is one where any surplus generated belongs not to the co-operative but directly to the members. It will depend on the circumstances of each case as to who owns the surplus.

The Income-Earning Co-operative

If the co-operative is found to be income earning, then it is taxable like any other taxpayer except that the *Income Tax Act* allows a co-operative to deduct patronage dividends. With companies, corporate taxation principles generally do not allow dividends to be tax deductible.

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LIABILITY AND INSURANCE

This section will take a close look at the liability of corporations and co-operatives. Both are very similar when it comes to their liability. As indicated by Hadden et al. (1984), “it should be noted that in fact incorporated cooperatives and companies have much in common; like companies, incorporated cooperatives possess their own legal personality and their members’ liability is limited” (p. 125).

4.1 Corporations

The basic principle to understand about corporations is that incorporation brings into existence a new legal person whose rights and obligations may be thought of as analogous to those of a human person. This principle of the separate legal existence of the corporation was authoritatively confirmed by the House of Lords in *Salomon v. Salomon & Co.* As indicated in that case, the separate legal existence of the corporation means that a shareholder may also be a creditor, even a secured creditor, of the corporation:

This is permitted under Canadian corporate law, the only restriction is that the creation of a debt or the granting of a security interest may not be affected if the purpose is to defeat the claims of other creditors. Another consequence of the separate existence of the corporation is that a corporation owns its own property. The shareholders have certain property-like rights in the corporation, but no property interest in the assets of the corporation. (VanDuzer, 1997, p. 89)

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4.2 Corporations and Liability Under the CBCA

The *CBCA* provides that every director and officer exercising his/her powers and discharging his/her duties must exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances (this is known as the duty of care). Furthermore, these individuals cannot be relieved from their statutory liabilities to the extent that shareholders assume the directors' responsibilities in a unanimous shareholders agreement. Therefore, exception notwithstanding, directors and officers cannot contract out of liability.

In addition to the general duty of care, diligence and skill, the *CBCA* imposes specific statutory duties and liabilities on directors and officers. The *CBCA* requires that directors and officers comply with the *Act*, regulations, articles, by-laws and a unanimous shareholder agreement. This duty is enforceable by obtaining a compliance or restraining order. In addition, non-compliance without reasonable cause is an offence. (Gillen, 1994, p. 109)

Most of the other statutory duties and liabilities relate to maintaining the solvency of the corporation. Directors are jointly and severally liable to the corporation to make good its loss in the following circumstances:

- (i) issuance of a share for which the consideration other than money is less than full value;
 - (ii) purchase, redemption, or acquisition of shares in insolvent circumstances;
 - (iii) payment of an improper commission on an issuance of shares;
 - (iv) payment of dividend in insolvent circumstances;
 - (v) granting financial assistance in insolvent circumstances;
 - (vi) payment of an indemnity to an officer or director of a corporation in circumstances where indemnification is not permitted under the *Act*;
- and

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(vii) payment to a dissenting shareholder or pursuant to an oppression claim in insolvent circumstances. (Gillen, 1994, p. 110)

Furthermore, directors are again jointly and severally liable to employees: “for all corporate debts not exceeding six months’ wages, payable to each employee for services performed for the corporation, while they are directors” (Gillen, 1994, p. 109).

Indemnification and Insurance

A director or officer may be indemnified by the corporation for liability incurred in breaching his duty of care and skill and for other statutory liabilities. This is, of course, provided that the officer or director has acted honestly and in good faith with a view to the best interests of the corporation:

A corporation may purchase and maintain liability insurance for the benefit of officers and directors against any liability incurred except where the liability relates to the failure to act honestly and in good faith with a view to the best interests of the corporation. (Gillen, 1994, p. 111)

In British Columbia, court approval is required for any form of indemnification [BCCAA]. Furthermore s. 124(4) of the BCCAA provides for insurance only for directors.

Corporations and Liability Under the British Columbia Corporations Act

Directors are made personally liable under a variety of provisions of the BCCAA. Apart from directors’ potential liability for voting in favor of certain financial transactions as set out in s. 127 (this section imposes liability upon directors who vote for, or consent to, a resolution authorising certain specified acts or transactions in violation of stated provisions of the Act), the following other

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potential types of liability are found under the *Act*:

- directors may be liable if they make an improper allotment or issue of shares in violation of the provisions of sections 42 and 43 of the *Act*;
- directors may be liable if the company carries on business without any members for more than six months, in contravention of section 14;
- directors may be liable if they authorise, permit or acquiesce in the commission of any offence by the company;
- directors may be liable if they fail to comply with a proper requisition for a meeting of members under section 147 for the actual and reasonable expenses incurred by the requisitionists, unless relieved by ordinary resolution;
- directors may be ordered by the court to bear the costs of any application to compel the provision to a member of a share certificate (s.49(4)), or to compel delivery of a debenture (s.80(3));
- an officer or director who knowingly permits a company not to display its name in accordance with the requirements of section 106 may incur personal liability under that section;
- if a company, extraprovincial company, receiver, receiver-manager, or liquidator fails to file any document required by the *BCCAA*, and the Registrar applies for a court order to direct filing, the court may order that the costs be borne by a director or officer (s. 339);
- where a corporation issues any share, debenture, or membership in violation of a restriction upon such shares, debentures, or memberships by the Minister pursuant to section 212 of the *BCCAA*, every director and officer who knowingly and willfully authorises or permits such issue commits an offence (s. 212(6));
- a director who fails to declare an interest in a contract in terms of section 120 may be held liable to account for any profit made under that contract, in the terms of subsection 121(1); or
- directors may be liable as insiders, in connection with any share or debt obligation of the corporation, where the director makes use of any specific confidential information for the benefit or advantage of the director or of

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any associate or affiliate that, if generally known, might reasonably be expected to affect materially the value of the share or debt obligation (s. 129). (CCH Canadian Limited, 1999, p. 4301)

Corporations and Liability Under Other Statutes

Furthermore, it is important to note that, in addition to their potential liability under the *BCCAA*, directors face liability under the *Employment Standards Act* (British Columbia) for the unpaid wages of employees of the company (the relevant provision of the *Act* is section 96). In addition, section 227.1 of the federal *Income Tax Act* (“ITA”) provides that a director may be jointly and severally liable with the corporation with respect to certain payments that the corporation has failed to deduct or remit to Revenue Canada.

4.3 Co-operatives

Duties and Liabilities of Directors

As mentioned above, there is not much difference when it comes to duties and liabilities between co-operatives and corporations. It is important to remember that directors of both co-operatives and business corporations have a duty to:

- a) Act honestly and in good faith with a view to the best interests of the co-operative or business corporation.
- b) Exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

The first of these is generally known as the fiduciary duty of directors and the second as the duty of care.

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Distinction Between a Co-operative and Corporation

The most striking distinction between a co-operative business and an investor-owned business is that, in the former, the members' responsibility is limited to the amount of shares he or she holds. In the latter, shareholder's responsibility is limited to the value of the shares he or she holds.

Several sections of the *BC Cooperative Association Act* deal with the liability of co-operatives including:

Liability of members and investment shareholders

55 (1) The liability of a member or investment shareholder of an association for the debts, obligations, and acts of the association is limited to the amount, if any, unpaid on the shares held by the member or investment shareholder.

(2) Money payable by a member or investment shareholder to an association under its memorandum or rules is a debt due from the member or investment shareholder to the association of the nature of a debt due by instrument under seal.

Duties of directors

84 (1) Every director of an association, in exercising the director's powers and performing the director's functions must

- (a) act honestly and in good faith with a view to the best interests of the association,
- (b) exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances,
- (c) act in accordance with this *Act* and the regulations, and
- (d) subject to paragraphs (a) to (c), act in accordance with the association's memorandum and rules.

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(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors and corporations.

(3) No provision in a contract or in an association's rules or memorandum relieves a director of the association from

- (a) the duty to act in accordance with this *Act* and the regulations, or
- (b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that director in respect of any negligence, default, breach of duty, or breach of trust of which the director may be guilty in relation to the association.

(4) A director of an association who receives or has charge of money of the association must give security before entering on his or her duties, as may be considered necessary by the directors.

Duties of officers

105 (1) Every officer of an association, in exercising the officer's powers and performing the officer's functions, must,

- (a) act honestly and in good faith with a view to the best interests of the association,
- (b) exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances,
- (c) act in accordance with this *Act* and the regulations, and
- (d) subject to paragraphs (a) to (c), act in accordance with the association's memorandum and rules.

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(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of officers of corporations

(3) No provision in a contract or in the rules or the memorandum of an association relieves an officer of the association from

- (a) the duty to act in accordance with this *Act* and the regulations, or
- (b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that officer in respect of any negligence, default, breach of duty, or breach of trust of which the officer may be guilty in relation to the association.

Directors' and Officers' Insurance and Indemnification

The *BCCAA* permits a co-operative to take out directors' and officers' insurance to protect them from any liability they might incur as a result of their work as a director or officer—s. 103. In addition, the *Act* allows a co-operative to indemnify its directors and officers against any judgment, penalty, or fine awarded or imposed against them arising from the exercise of their duties—s. 98.

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PROFIT AND EQUITY MANAGEMENT

5.1 Profits

The members that use and benefit from a co-operative are also the owners and accordingly, they share in the profits made by the co-operative. However, the manner in which co-operatives distribute their earnings to these members are different from other traditional business earning distributions. For instance, co-operatives do not return earnings to members on a transaction-by-transaction basis for supplies, services, and products. Instead, at the end of the fiscal year, the co-operative will calculate earnings and then return these earnings to its members on the basis of how much business each patron provided to the association (USDA, 1997). Dividend returns and profit sharing are not structured according to how much each member contributed in initial capital investment but rather are based upon each member's use of the co-operative. These earnings are supplied either as equity allocations or as cash, and this method of distribution is known as the *patronage refund system* (USDA, 1997). Moreover, many co-operatives do not pay dividends on the capital invested by the members. This is because co-operatives are primarily focused on providing benefits to their members based on how much they use the co-operative and are less focused on providing a monetary return on the capital invested.

The *BCCAA* makes specific reference to the structure of co-operative business transactions and provides a guideline to co-operative business principles. The *BCCAA* provides an interpretation of business premised upon a co-operative basis under s.8, which specifically states that dividends on share capital must be limited. The benefit of limiting returns on equity is that this prevents or at least discourages outside investors from attempts to gain control away from the members of a co-operative since the co-operative's aim is to operate at cost, not as a profit generating entity (USDA, 1997). The co-operative's primary objective is to provide services and goods to its members at a competitive price and then to share in the profit based on the members' use and promotion of the co-

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operative. Consequently, profit sharing within a co-operative is not simply based upon trying to earn money on your investment. Co-operatives' members share in the equity invested by being able to access their supplies and services at a fair and reasonable price. By joining together, co-operative members have strength in numbers and are able to take advantage of volume discounts and increased market power when negotiating specific delivery or purchase/supply contracts (USDA, 1997). Co-operatives are also able to lower the cost of distributing their products because of their increased market strength, which, of course, correlates to higher profits in the long run.

In summary, the profits earned by the co-operative are distributed on the basis of each member's use, not on the allocation of how much capital each member contributed. These profits are then distributed as cash or the earning can be retained in the company under the system of retained patronage refunds. The reason for setting aside a certain portion of the profit is to establish a fund available to the co-operative in case any contingencies arise. The former *BCCAA* (1996) set out the specific amount that must be set aside to ensure that there is an adequate reserve each month. Under the former *Act*, the co-operative could determine this amount itself as long as it met the minimum requirements set forth in the *BCCAA*. Under the current *Act* it appears that there is no requirement for an association to contribute its surplus to a reserve. Both the former and current *BCCAA* limit dividend payments on paid up membership shares to a maximum of 8% yearly or higher limits which the co-operative may set out in its rules—s. 66(1)(c).

5.2 Equity Management

Co-operatives are distinct from other business corporations in the way they redeem the equity contributions of the various members. In a co-operative, there is a steady contribution of capital that is supplied by the patrons. However, the level of patronage of each member may change over time and differ between members: some use the co-operative frequently while others may sim-

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ply cease using the co-operative at all. Since each member's use of the co-operative shifts over time, co-operatives have developed three general methods of achieving a fair and equitable balance between the member's use and her level of equity contribution. The following is a breakdown of the primary mechanisms for equity management found within co-operatives, based on the US Department of Agriculture's Co-operative Information.²¹

Revolving Fund Plan

In this business arrangement, each member makes an annual contribution to the co-operative, which is usually done by two methods: either by the member's *retained patronage refund* or by *per-unit retain allocations*. In turn, the co-operative will redeem the capital contributions of members based usually on a first-in, first-out basis. In addition, the accounts of established members are adjusted to better reflect their current use of the co-operative. However it is important to note that redemption is not automatic. The Board of directors has the authority to decide if they want to redeem older capital contributions based on the financial condition of the co-operative in that fiscal year. The directors have this authority to decide when redemption will be provided based upon the respective powers given to the directors, which will be defined under the rules of the co-operative.

Special Plans

This method of distribution is relatively simple to implement. Under a special plan equity redemption occurs upon a specific event such as a member's death, retirement, or the attainment of a specified age. However, there is one potential difficulty with this approach because memberships in co-operatives are not restricted to individuals: First Nations, governments, and municipalities can also be members under s. 32 of the *BCCAA*. This problem can be dealt with by redeeming the individual's equity in proportion to their ownership in their respective partnership or corporation.

Base Capital Plan

This management technique attempts to match the proportion of capital each

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member should have, based upon his or her personal use of the co-operative at that particular time. The co-operative must assess its total equity capital needs. This figure is then allocated to each member based on the proportion the member utilised the co-operative during a specific time period between the past three to seven years. From a legal standpoint, the Board has the authority to review and possibly re-adjust the co-operative's equity requirements as different needs and contingencies arise. To achieve a balance between use and contribution, under-invested members must add to their account (by current year's patronage refunds, per-unit retains, or direct contribution). Conversely, over-invested patrons get a larger portion of the profit through cash rebates of the current year's patronage refunds or per-unit retain allocations.

What Happens to the Association's Equity When the Association Dissolves?

Before a co-operative ceases to generate earnings and dividends and is dissolved or chooses to dissolve, the Board should establish rules which will detail what will happen to the money and capital invested in the organisation. Section 196 of the *BCCAA* states that before any capital may be returned to the members, the association must have satisfied all of its liabilities, costs, charges, and expenses properly incurred in the dissolution or winding up. Only after that may an association, subject to its rules, repay its members the amount they paid for their membership shares and any money that may be owed to a member. After the association has satisfied its liabilities and repaid its members, s. 196 permits an association, which has not issued investment shares, to transfer its property to one or more organisations that have a similar purpose to the association being dissolved or to charitable organisations registered with the federal government. However, to transfer its property in this way the association must have provided in its memorandum the capacity to make this transfer.

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CAPITAL

6.1 Introduction to Capital

The Problem of Raising Capital for Co-operatives

Co-operatives, like any other business venture, need equity to begin their enterprise and to continue in their growth. Within a general business association the equity to initiate the venture is usually raised by selling shares to outside investors whose primary goal is profit acquisition. In the past, co-operatives have found outside investment more difficult to obtain for two reasons.

First, a co-operative does not usually carry a high return on its capital. For example, the *BCCAA* specifically limits any dividend returns from membership share capital. Section 66(1)(c) of the *Act* states that an association “may pay dividends at rates not exceeding 8% yearly, or higher limits that the association may set out in its rules.”

Second, co-operatives have voting restrictions imposed by the *BCCAA* that limits members to one vote, regardless of the amount of shares held or capital contributed. The limitation on voting rights provides co-operatives with the benefit of protection from investment takeovers, which occurs when investors acquire voting control of the company. On the other hand, because of the voting limitations, co-operatives are also seen as less attractive to investors who want greater control of their equity (Ish, 1981).

As a consequence of these two factors, the initial capital in a co-operative was usually raised by direct contributions from the members, not outside investment. This form of equity capital is also known as *risk capital* because the co-operative must liquidate all other obligations for liabilities, costs, and expenses that must be paid before the capital is returned to the members (Abrahamsen, 1976).

Thus, primary sources of capital consisted of direct investment through mem-

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bership fees, members' shares, and the increased use of value-added processing through transferable delivery rights (Harvey, 1995). In addition, capital was raised through public financing, government or credit institution loans, governments grants, member loans, and as the business progressed, through retained margins, per-unit capital retains, and revolving funds (Buckley et al., 1995).

The Situation Today: Investment Shares

To solve this problem of raising capital, co-ops worldwide have lobbied governments to modernise the statutes that govern them. BC is no exception. The *BCCAA* provides for a new source of capital for co-operatives: investment shares. The *Act* allows non-members to purchase investment shares in the co-operative, if the co-operative's memorandum and rules permit it. Alternatively, the co-operative could limit the availability of investment shares to members only. These investment shares have par value or no par value and may be held jointly. In addition, it is not necessary for the co-operative to limit the return the investor receives on these shares, as is required for membership shares.

The authorisation for issuing investment shares must be found in the association's memorandum. This means that a currently existing association would be required to amend its memorandum if it wished to issue investment shares. Originally, the *BCCAA* (1999) only required authorisation for issuing investment shares in the association's rules. However, Bill 9, the *Cooperative Association Amendment Act* (2000) changed this by making it clear that the authorisation must be found in the association's memorandum. The memorandum must also set out for every class of investment shares whether the number of shares that may be issued is unlimited and, if not, the maximum number of investment shares that may be issued, and the par value of the shares or a statement that the shares are without par value (see s. 13 of the *Amendment Act*). The association's rules must set out the designation of each class of investment shares and the special rights and restrictions attached to each class, and that investment shares may be issued to non-members, if that is the case (see s. 13 of the *Amendment Act*).

Unlike membership shares, each investment share entitles the owner to one

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vote—s. 61. Thus, the more shares, the more votes. However, investment shareholders can only vote on a limited number of issues at general meetings: matters affecting their class rights as investment shareholders, disposing of all of the assets of the co-op, waiving the appointment of an auditor, transferring from BC to another jurisdiction, or amalgamating with another co-op (CCA, n.d.).

6.2 Internal Financing

Direct Investment: Membership Certificates Common/Preferred Stocks, Members' Loans, Transferable Delivery Rights.

A co-operative will raise its necessary capital initially through membership fees or through the sale of stock and shares within the co-operative. Section 48 of the *BCCAA* outlines where the share capital of a co-op can be raised. The first place is internally: membership shares. Section 48 states that the authorised share capital of an association consists of a single class of membership shares, with or without par value, regardless of whether or not the association has more than one class of membership (CCA, n.d.).

The topics of the issuance of shares and security regulations have specific issues that will be covered in more detail in the subsequent section on security regulations.

Transferable delivery rights are an additional form of direct investment that focuses on value-added processing of commodities. Members provide the initial capital by purchasing long-term delivery rights to the co-operative. The benefit of this system is that it provides the member with a ready-made market within the co-operative to sell his or her goods and, in turn, the member agrees to deliver to the co-operative an agreed upon percentage of their product either based on specific quantities or acreage. These rights are limited in quantity to the amount that the co-operative feels it can manage efficiently. Usually these rights are non-dividend, non-voting preferred stock; however, these rights can be transferable, subject to the rules of the co-operative. Consequently, mem-

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bers can make a profit on the sale of their rights since the delivery rights are restricted and the only way for outside investors to obtain these rights is by purchasing them from current members (USDA, 1997).

*Undistributed Income: Retained Margins, Per-unit Capital Retains, and Revolving Funds*²²

As the business progresses, the co-operative may withhold a certain portion of the profit from members based upon their use of the co-operative or it might retain a percentage of the proceeds of sales from the product it sells. A revolving fund or retained earnings is a distinct feature of co-operatives because most *Canadian Co-operative Acts* require that any surplus, after providing for reserves and authorised dividends, must be distributed to the members based upon their patronage to the association (Buckley et al., 1995). Retained earnings serve as a reserve for any unforeseen contingencies, but also serve as an additional form of investment capital. At the end of the fiscal year, the co-operative will return profit to its members as patronage refunds. As mentioned earlier, under the former *BCCAA* (1996), a portion of the profits from each year had to be set aside as a reserve fund. This is no longer the case under the current *Act*.

Per unit capital retains are an additional method of raising capital whereby a member invests based on the number of physical units handled by the co-op or based upon a percentage of sales revenue. The retains are then deducted from sales proceeds that are due to the member. These capital retains are later returned to the members as cash or retained by the association within a revolving fund. There is a distinction between per-unit retains and patronage funds. The former is based on the volume of business with the co-op and the latter is based upon the earnings generated by the co-operative. Accordingly, with per-unit capital retains a co-operative can generate capital even in a year sustaining losses or limited profit margins (Buckley et al, 1995).

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6.3 External Financing

External financing will include any loans entered into with a credit institution on behalf of the co-operative, as well as government loans or grants that are distributed to qualified co-operatives, and investment shares.

Government Financing

The BC government has several programmes available to provide funding to co-operatives. These programmes include:

- Co-op Advantage. This programme provides funding for:
 1. innovation and demonstration projects which use new, innovative models of co-operatives;
 2. the development of business plans and training for starting new co-operatives; and,
 3. training and development to strengthen existing co-operatives. (Ministry of CDCV, Website)
- Community Enterprise: This programme complements Co-op Advantage and provides funding to coastal, rural, and resource based communities in BC to implement economic diversification projects using the co-operative model. As a result, this funding is especially relevant to those who wish to start a forestry co-operative, although it should be noted that this funding is not available for forestry and fishery business development projects supported by existing provincial/federal programmes.²³ This programme specifically targets areas of BC experiencing economic hardship and that have a higher than BC average dependency on resource (fish or forestry) sector income. The funding is not available to co-ops in Victoria and Vancouver.

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Credit Union and Non Governmental Organisation (NGO) Financing

Numerous credit unions and NGOs provide funding and financing to co-operatives. An excellent resource to find these sources of funding is the BC Funders Council, which was founded by the Canadian Co-operative Association—BC Region. The BC Funders Council produces a funding directory entitled *BC Funders Council for Co-op and Economic Development*, which lists credit unions, trusts, foundations, co-operatives, and NGOs that may provide funding or financing to a co-operative (CCA, Website).

Investment Shares

As mentioned earlier, the *BCCAA* allows people who are not members of the co-operative to invest in the co-operative. For more information, see the previous section entitled “The Situation Today: Investment Shares.”

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SHARES AND SECURITIES REGULATION

Many Canadian businesses raise their initial equity through the distribution of securities, which are regulated under the *Securities Act*.²⁴ The *Securities Act* is a closed system in which all distributions and trades involving securities are subject to the rules and regulations of the *Act* unless a specific exemption is granted. Registering for distribution of securities and especially the issuance of a securities prospectus can be very time consuming and involve considerable expense. Under the former *BCCAA*, co-operative organisations were exempt from these requirements. This is no longer the case.

7.1 What is a Share?

A share is a form of ownership by the holder within a corporation. Corporations, including co-operatives, may issue more than one “class” of shares. If the corporation only issues one class of shares, each share of that class must have the following rights attached to it:

- the right to vote at any meeting of shareholders of the corporation;
- the right to share in any dividends declared by the corporation; and,
- the right to share in the distribution of the remaining property of the corporation on dissolution.

If a corporation has more than one class of shares, the Articles of Incorporation must define the rights, privileges, restrictions, and conditions attaching to each class. Each of the three rights listed above must be included in at least one class of shares, but no one class needs to have all three rights (Business Law Clinic, 1999).

Under the current *Act*, securities can initially be distributed to raise capital for any new co-operative. There is no restriction on the number of shares that can

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be distributed since the *Act* allows for an unlimited number. The shares are later divided into specific denominations that can be decided upon by the co-operative when it establishes the association's rules and memorandum. In addition to specifying the number and value of each share, the co-operative may provide for more than one class of shares. If a co-operation chooses to distribute different classes of shares it must specify the rights and, conversely, the restrictions that are attached to each share within the association's rules. Members who purchase shares within a co-operative can make gains through profit sharing within the association, but profits from the acquisition of a share are restricted because the *Act* limits any dividend on share capital. In conjunction with any expectation of profit on the shares is the risk of liability. Fortunately, the liability of members for any debts or obligations to the co-operative is limited to the amount unpaid on their shares—s.55(1).

7.2 Security Issue Preconditions

Under the current *BCCAA* (1999), share distribution is regulated by the *Securities Act*. Accordingly, the manner of distribution, documentation, and disclosure requirements has changed from the former *Act* (1996). In many respects, the requirements under the *Securities Act* are now more onerous, more detailed, and probably more expensive and time consuming than previously. However, co-operatives are exempt from some of these requirements:

- There is an exemption for “membership shares” if the total acquisition cost of the shares acquired in any year is less than a specified amount, which will be set by governmental regulations.
- “Investment shares,” are generally not exempt, but a partial exemption will be allowed for investment share purchases made by a co-operative member who has been a member for a minimum period of at least 12 months. Moreover, share purchases are exempt if the shares are acquired by capital from a member's patronage refund.

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Any other purchases or distribution of shares are subject to all the requirements of the *Securities Act*, which include, but are not limited to the following:

- distribution of a prospectus that details all the pertinent information regarding the co-operative to potential investors;
- mandatory and continuous disclosure of any information that may affect the business of the co-operative or its structure; and,
- in addition, the *Securities Act* requires registration and compliance with specific registration requirements before allowing any potential sale of a co-operative's shares.

However, the *Securities Act* does allow for the application of an Exemption Order for any of the above requirements. An Exemption Order will be reviewed and assessed by the securities commission.²⁵

7.3 Sale of Shares to Members

The members of the co-op are not restricted in the amount of shares they can purchase unless the co-op places limitations within their rules. Under the former *BCCAA*, membership shares had to be paid for “in cash.” The current *Act* is more flexible. Although the current *Act* states that membership shares must be paid for “in money” (s. 51(3)), they may also be paid for in one of the following ways:

- with shares or other securities of an association having a similar purpose as the co-operative selling the shares;
- with assets to be used by the co-operative; or,
- with all or part of the business of another person if the business is consistent with the co-operative's own purpose—s. 51.

The co-op is not allowed to encourage the sale of shares by inducements such as an offer of employment—s. 209. If the co-operative decides to issue additional classes of shares with different rights and restrictions, then the details must be attached to every share certificate issued that represents that share,

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and the co-operative must keep a copy of the rights and restrictions at its registered office or provide a free copy to anyone who requests one—s. 58. After these shares are issued, the co-operative cannot alter any of the rights given to the shares without consent from the members through a special resolution—s. 68(2).

7.4 Redemption, Re-issue, and Transfer of Shares

Section 66 of the *BCCAA* allows a co-operative to redeem or reissue its shares. “Redemption rights” simply mean that the co-op can buy back the shares it has previously sold to the shareholders and the shareholders are obligated to sell the shares back to the association. The co-op may also advance money or guarantee contract of its members when there is security on property. Redemption, re-issue, and loan advancement are all permitted under the *BCCAA* so long as the co-op is not insolvent or any of these actions would result in rendering the co-op insolvent. Nor can a co-operative reduce its share capital unless by an extraordinary resolution—s. 67(2). The association can also place a lien on shares if the member has not paid debts due to the co-operative and this lien extends to any dividend or interest attached to the share. Members themselves have the right to transfer shares because shares are part of the personal estate of the member, but all transfers must comply with the specific transfer forms found in the association’s rules. Furthermore, the *BCCAA* refers to the regulations of the *Company Act*, which prohibit the transfer of any shares if the association is winding up, unless the transfer is made to or with the approval of the liquidator (*Company Act*, s. 282).

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7.5 Recommendations on Securities Distribution

Clearly the sale of shares within a co-operative, whether to acquire the necessary capital to begin a business or to promote growth and stability for ongoing business ventures, is an effective means of acquiring the equity needed for a co-operative enterprise. However, the current *BCCAA* contains dramatic changes from the former *Act* in the manner in which securities are distributed and regulated. Under Bill 98, a prospectus must be issued, registration is required to sell the prospectus, and the application is no longer the responsibility of the Superintendent of Co-operatives but will be evaluated by the securities commission. Consequently, the distribution of shares will in all likelihood be substantially more expensive. However, both the former and the current *BCCAA* allow for an exemption from these regulations if the distribution is to members and the shares consist of one class only. Clearly this is a benefit to smaller co-operatives but whether or not securities sales to members alone will generate sufficient capital for the association is an additional issue that an association's Board must take into account. A lawyer and a financial advisor should evaluate any security distribution.

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THE TAXATION OF CO-OPERATIVES

There are two basic introductory questions about the taxation of co-operatives. First, are co-operatives subject to tax? Second, what portion of earnings is taxable? It should be recognised that tax law can be highly detailed and complex. The following information is intended to provide only a general introduction to the taxation of co-operatives. A tax specialist should be consulted for specific questions about the application of tax law.

8.1 Are Co-operatives Subject to Tax?

Non-Profit Organisation

A co-operative could be exempted from the payment of income tax if it is organised and operated exclusively for social welfare or civic improvement or any purpose except profit. To be eligible for this exemption, the *Income Tax Act* further requires that no part of the income of a non-profit organisation may be payable (or even available) for the personal benefit of any proprietor, member, or shareholder.

Income-Earning versus Non-Income Co-operatives

Generally speaking, co-operative corporations can be divided into two types for tax purposes: non-income co-operatives and income-earning co-operatives. The classification of a particular co-operative depends on a close examination of the relationship between the members and the co-operative. If a co-operative is found to be income-earning, it will be liable to pay income tax on its profits. Obviously, if a co-operative is found to be non-income-earning, it will not be liable to pay income tax.

Non-income co-operatives frequently have what is described as an agency

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relationship with their members. This means that the co-operative has the authority to affect the legal relations of its members, the “principals.” The existence of an agency relationship is usually evidenced by a contract, agreement, charter, articles of association, or by-laws describing, either in general or specific terms, the extent to which the co-operative may act as an agent for its members and as a principal in its own right. Where authority has been conveyed to the co-operative to act as the agent of its members, a transaction by the co-operative, acting in its capacity as agent, constitutes at law a transaction by the principals. Any earnings arising from such an arrangement are earnings of the members and do not represent income or surplus of the co-operative. Furthermore, if the agency co-operative carries on business with non-members, but that business is contemplated by the agency agreement, the co-operative will not be subject to tax. However, if the income is earned outside the agency relationship, the co-operative will likely be required to pay income tax like any other taxpayer. If a co-operative carries on business as agent **and** as principal in its own right, the *Income Tax Act* requires the co-operative to calculate the amount of its gross income attributable to each type of transaction —s. 135(4). Income earned by agency co-operatives is distributed to the members, who must include the amounts in their tax returns. Agency co-operatives may not escape tax liability completely, however. Co-operatives are typically required by statute to create reserve funds. Even if the members intend a co-operative to be not-for-profit in every respect, the co-operative may still be required to pay tax on these reserve funds.

Income-earning co-operatives (that is, co-operatives acting not as agents, but as principals) receive favourable tax treatment. The *Income Tax Act* permits taxpayers to deduct “patronage dividends” paid to its members or customers. This represents a significant advantage over ordinary commercial corporations that may not deduct dividend payments from their income. The patronage payments that may qualify for the deduction are those that have been made pursuant to “allocations in proportion to patronage.” These allocations are amounts credited by the co-operative to members under legal agreements, through which members are entitled to receive payments at a rate in proportion

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to the amount of business done with the co-operative in the taxation year. Members must generally be treated equally for patronage payments to be deductible (i.e. some members may not receive greater dividends for purchasing the same quantity and quality of goods as other members). Members must receive their patronage dividends within the taxation year for which the allocation is made, or within 12 months of the end of that year. Patronage dividends can take different forms, including the distribution of money to members, the set-off of obligations by members to the co-operative (i.e. to provide for operating costs), or the payment of members' debts to third parties. Members must authorise these different forms of payment in their agreements with the co-operative.

Patronage dividends must be included in the calculation of the recipient's income. Co-operatives must typically deduct a percentage of patronage dividends and remit the amount to the Receiver General. The percentage is 15% for residents of Canada and 25% for non-residents, subject to any tax treaty with the country where the member resides. In addition to patronage dividends, many co-operatives pay regular dividends to shareholders on account of the latter's capital investment. These dividends, as is the case for ordinary commercial corporations, are not deductible. The recipients must also report the dividends in their tax returns.

8.2 What is Taxable?

As has already been briefly described, income-earning co-operatives have a special ability to deduct patronage dividends. There are many other provisions that apply to income-earning co-operatives, some that apply to taxpayers generally and others that apply uniquely to co-operatives. We will briefly canvass some of these provisions.

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General Tax Provisions

The *Income Tax Act (ITA)* is built upon a “source” concept of income. This means that only income from a recognised source is taxable. From a co-operative’s point of view, the relevant sources are business and property. Co-operatives must also pay tax on capital gains and may deduct capital losses. The *ITA* states that a taxpayer’s income for a taxation year from a business or property is the taxpayer’s profit from that business or property for the year. “Profit” is not defined in the *ITA* and conformity with generally accepted accounting principles (GAAP) is not specifically required. However, both Revenue Canada and the courts have usually applied GAAP, except where the case law specifically requires a departure from those principles. For greater certainty, the *ITA* provides a list of revenue items that must be included in income, a list of limitations on the deductions of expenditures, and a list of items that may be deducted.

A capital gain or loss is a gain or loss from a disposition of depreciable property and other specified forms of property. While 100% of business and property income is taxable, only 75% of capital gains are taxable.

The taxation year for co-operatives is a fiscal period. A fiscal period is the period for which the co-operative’s accounts in respect of the business or property are made up. This definition allows a co-operative to select its own year-end for tax purposes, so long as it is consistent from year to year and the date that is selected as the year-end is no longer than 53 weeks after the tax year began. Co-operatives must file returns within six months of the end of the tax year. As a corporation, it is required to pay tax in 12 monthly installments calculated on the basis of an estimate of the tax liability for the fiscal period. Any balance is due within two months of the end of the tax year. Interest is payable on unpaid tax.

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Provisions Specific to Co-operatives

There are special provisions with respect to the taxation of co-operatives in the *Income Tax Act*.

Section 136 (1) states:

Notwithstanding any other provision of this *Act*, a cooperative corporation that would, but for this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157, the definition ‘mark to market property’ in subsection 142.2(1) and the definition ‘small business corporation’ in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

Through this provision, income-earning co-operatives are extended some of the deductions under the *ITA* designed for small businesses and private corporations controlled by Canadian owners. For instance, a Canadian-controlled private corporation pays a relatively low rate of corporate income tax on its first \$200,000 of Canadian active business income. Also, a co-operative is entitled to receive the benefit of the manufacturing and processing tax credit of 7%. There are special provisions with respect to investment tax credits. A tax specialist should be consulted about the scope of available deductions and credits.

Section 136(2) defines a co-operative corporation for purposes of section 136 (1) as follows:

(In order to benefit from the provisions in section 136 (1), these conditions must be met.)

In this section, “cooperative corporation” means a corporation that was incorporated by or under a law of Canada or a province providing for the establishment of the corporation or respecting the establishment of cooperative corporations for the

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purpose [1] of **marketing** (including processing incident to or connected therewith) **natural products** belonging to or acquired from its members or customers, [2] of **purchasing supplies, equipment or household necessities** for or to be sold to its members or customers or [3] of **performing services** for its members or customers, if (a) the statute by or under which it was incorporated, its charter, articles of association or by-laws or its contracts with its members or its members and customers held out the prospect that payments would be made to them in proportion to patronage; (b) none of its members (except other cooperative corporations) have more than one vote in the conduct of the affairs of the corporation; and (c) at least 90% of its members are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming, and at least 90% of its shares, if any, are held by those persons or partnerships. [Numbers and emphasis added]

For more information about taxation, and the taxation of co-operatives in particular, the following sources may be useful: Hogg & Magee, 1997; Krishna, 2000), Ish (1981), Revenue Canada Publications IT 493 and IT 362R, and, of course, the *Income Tax Act*.

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LICENSING REQUIREMENTS FOR FORESTRY CO-OPERATIVES

The British Columbia *Forest Act* governs the harvesting of timber on Crown lands. If a sufficient land base is not available through acquisition of private lands, an application must be made to the Minister of Forests for one of several different licenses available under the *Forest Act*. It should be noted that applying for a license does not guarantee success. The method most often used by the ministry is to advertise the availability of a license and to accept applications, which are then evaluated. The information found in this section is substantially based on the information contained in the Ministry of Forests' website: www.for.gov.bc.ca

9.1 The Timber Tenure System

The term “timber tenure system” refers to the collection of legislation, regulations, contractual agreements, permits, and government policies that define and constrain a person’s right to harvest the province’s timber (Ministry of Forests, 1997). The term “timber tenure” is commonly used to describe the contract between a company and the government that grants the rights to harvest a specified volume of timber.

The *Forest Act* and the *Forest Act* regulations provide the structure for the tenure system. They set out:

- the forms of agreement under which Crown timber can be sold
- the rights and obligations of each form of tenure

In addition to the *Forest Act*, the *Forest Practices Code of British Columbia Act (FPC)* and its associated regulations are also significant. The *FPC* contains rules about how timber harvesting operations on Crown land must be planned and conducted, tenure contracts, and tenure policy (Ministry of Forests, 1997). In addition, the *FPC* sets out a range of penalties for failure to

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meet these rules. In order for the timber tenure system to function properly it is important to have clear rules in place to determine how permissible harvest rates are established, distributed among operators, and monitored.

Allowable Annual Cut Determination

The province's chief forester determines the rate of harvest or "allowable annual cut" (AAC) that can occur within a particular geographic area. The process must take place in accordance with rules set out in the *Forest Act*. The basic land management units upon which an AAC is determined are timber supply areas (TSA) and tree farm license areas (TFL). Technically, once the AAC for a TSA is determined, the volume is distributed or "apportioned" by the minister of forests to various categories of licenses that share rights to harvest timber within the TSA (Ministry of Forests, 1997).

Agreements

The *Forest Act* specifies ten forms of agreement, commonly referred to as "tenures," under which timber may be sold or harvested in British Columbia. Over 90 per cent of the annual harvest of Crown timber occurs under forest licenses, tree farm licenses and timber sale licenses (Ministry of Forests, 1997, p. 5):

- forest license
- tree farm license
- timber sale license
- timber license
- pulpwood agreement
- woodlot license
- free use permit
- license to cut
- road permit
- Christmas tree permit

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Exclusive and Non-Exclusive Rights

Many tenures grant virtually exclusive rights to harvest the timber within a specified area of land. Tree farm licenses, woodlot licenses, and most timber sale licenses grant these rights. Other tenures confer a right to an annual volume of harvest within an area of land, but also entitle other licensees to operate within that area. This allows the timber supply to be shared among a number of licensees over time. Forest licenses and some timber sale licenses grant non-exclusive rights.

The actual authority to harvest a specific block of timber is granted by the forest district manager through a cutting permit. In the case of most timber sale licenses and licenses to cut, the license document itself usually constitutes the authority to harvest specific timber.

Replacement of Licenses

Certain licenses are replaceable every five years. The holders of a tree farm license, forest license, woodlot license, and certain timber sale licenses are offered a new agreement to replace the existing one. The new contract must be for the same volume of timber or area of land, but it may include new conditions. If the current holder accepts the replacement offer, it supersedes the previous agreement. If an offer is declined, the existing license will run its designated term and expire (Ministry of Forests, 1997, p. 9).

Issuance of New Harvesting Rights

The *Forest Act* sets out the conditions and criteria under which the Ministry of Forests may award or issue the different tenures. Around 80 per cent of the provincial total allowable annual cut is currently committed to replaceable tree farm licenses and forest licenses. Most of these rights originated during the 1950s. The majority of the remaining volume available for new tenures has

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generally been sold in the form of short-term non-replaceable timber sale licenses or forest licenses. New harvesting rights are advertised and sold through competition. The minister of forests awards the new forest license to the applicant who submits the best proposal for addressing specified government objectives. For example, in the past few years, non-replaceable forest licenses have been issued to companies that are committed to harvesting timber that has been damaged by insects and milling timber locally to provide local employment. This type of licensing agreement would provide an excellent opportunity to innovative forestry co-operatives.

Constraints on Manufacturing

The *Forest Act* contains a number of provisions related to the processing of Crown timber, mainly for the purpose of providing employment security to mill workers. For example, most tree farm licenses and forest licenses require their holders to process all Crown timber (or an equivalent volume) harvested from the license area in a manufacturing facility owned or operated by the license holder (Ministry of Forests, 1997). If these requirements are not met, the government is able to take back that portion of the license's AAC that was not used appropriately and reapportion it for sale to someone else, or suspend and cancel a license.

The *Act* also contains a provision requiring all Crown timber to be manufactured in the province, rather than being exported as unprocessed logs. The government may grant exemptions to this requirement.

Crown Payments

The tenure system provides the government with revenue through the use of stumpage fees and annual rent. The holders of most forms of agreement pay the annual rent. The annual rent rates are set by regulation. Stumpage is a predetermined price per cubic meter. The rate is calculated by the Forest Service based on current market values for the timber and the costs of harvesting and

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marketing the timber. Stumpage must be paid for all trees harvested from provincial Crown land, with the exception of small quantities of timber removed for non-commercial purposes. Licensees can choose a quarterly or annual stumpage period. A quarterly determination will be reviewed and adjusted every three months and will reflect changes in the log market. An annual determination is fixed for one year, providing the same stumpage rate throughout that period (Ministry of Forests, 1998).

9.2 Licenses Available Under the *Forest Act*

Major Licenses

Many tenures have been designated under the *Forest Act* as “major licenses” for the purpose of defining certain obligations. Included in this designation are tree farm licenses, forest licenses, timber licenses, replaceable timber sale licenses that have an AAC greater than 10 000 cubic meters per year, and timber sale licenses that have been issued to harvest timber under a pulpwood agreement.

Timber Sale License (Forest Act Part 3 Division 3)

The Minister of Forests will advertise to invite applications for these licenses. Criteria to be evaluated are the potential for creating and maintaining jobs, providing management and utilisation of Crown timber, and meeting the government objectives of environmental quality (s. 21). The term of the license is from 6 months to ten years. The license is typically not replaceable. The Minister does not have to advertise if the timber is in danger of reduction in value due to insect infestation, fire, or disease and must be removed to prevent this; or, if the volume of timber in question is less than 2000 m³ and only one application is made; or, if the volume to be harvested is 500 m³ or less. The license will specify an annual allowable cut or provide for cutting permits to be issued by the district manager. The holder is required to pay stumpage fees.

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Timber Licence (*Forest Act Part 3 Division 5*)

A timber license grants its holder the exclusive right during its term to harvest all merchantable timber in that area. If the timber license is within a tree farm license area, the timber must be harvested in accordance with the management plan approved for that tree farm (s. 30(d)). The timber license will provide for cutting permits to be issued by the district manager and requires the payment of stumpage fees by the holder. The term of the license is variable and is not replaceable.

Tree Farm License (*Forest Act Part 3 Division 6*)

The Minister must advertise to invite applications for a tree farm license, and a public hearing must be held to discuss and evaluate all applications. The applications are evaluated based on the potential for creating and maintaining employment opportunities and other social benefits in BC. A Tree Farm License requires the holder to provide for the management and utilisation of Crown timber and to further the development objects of the provincial government. It grants the holder exclusive rights to harvest timber from the license area. The term of the license is twenty-five years. The license requires the holder to pay stumpage fees and to submit a management plan every five years.

Community Forest Agreement (*Forest Act Part 3 Division 7.1*)

The community forest agreement was a creation of the Minister of Forests in 1997. It consisted of seven pilot projects in BC, several of which were forestry co-operatives. The ministry is not currently considering further applications, but may do so in the near future (Kelly Finck, forester at the Ministry of Forests, personal communication, 1999). The term of these licenses is five years if the agreement is probationary or twenty five to ninety-nine years if it is a long-term agreement (s. 43.3). The area covered under the agreement can be comprised of Crown land, Indian reserve land, and private land. It gives the holder the exclusive right to harvest timber on Crown land within the agreement and

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may give the holder the right to harvest, manage, and charge fees for botanical forest products and other prescribed products. It also requires the holder to pay stumpage fees and provides for cutting permits to be issued.

Woodlot License (*Forest Act* Part 3 Division 8)

A woodlot license is a legal agreement between the Forest Service and the licensee that grants the exclusive right to harvest Crown timber within the license area. In most cases, the license area includes private forest land – usually adjacent or near to the Crown land portion – owned by the licensee. The right to Crown timber is granted in return for the licensee’s agreement to manage the total license area according to applicable legislation and regulations. No other rights are granted through a woodlot license. Timber logged from private land is not subject to stumpage. The license holder can use the private land in a woodlot license for other purposes, such as livestock grazing or recreation, provided they are compatible with the *woodlot licence management plan*. In order to qualify for a woodlot licence the applicant must be a Canadian citizen or a permanent resident of Canada, who is 19 years of age or older, or an Indian Band or a corporation other than a society (s. 44(5)).

The maximum Crown land portion of a woodlot license is 400 hectares on the coast and 600 hectares in the interior. Any amount of private land can be included in the license area.

Woodlot license areas are usually identified by the Forest Service. However, individuals can also propose that a parcel of Crown timber be made available under a woodlot license. All areas being considered for a woodlot license are evaluated based on the size, location, topography, forest make-up, ease of access, the absence of forest pest problems, and other resource values. Woodlot licenses are valid for a 15-year term and are replaceable every five years from the date of issue.

Before any harvesting can begin on Crown or private land within a woodlot

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license area, a cutting permit must be obtained from the district office. A cutting permit grants authorisation to harvest trees on one or more cutblocks. An application for a cutting permit must include the results of an operational cruise, maps showing cutblocks and access roads, proposed logging and silviculture systems, and a harvest schedule. As well, provisions of an approved silviculture prescription must be incorporated.

Miscellaneous Tenures

Road Permit – A road permit gives a person the right to construct or modify a road on Crown land to access Crown timber that the person has a right to harvest, for example, under a forest license. Where Crown timber must be harvested to construct or modify the road, the road permit may also grant the person the right to harvest the timber. Stumpage is paid for timber harvested under this permit.

Free Use Permit – This permit gives a person the right to remove minor volumes of Crown timber at no charge for certain reasons, including the cutting of firewood for personal use or the use of timber to develop a mineral claim.

License to Cut – This license is issued where a person has the legal right to occupy Crown land, but not to harvest the timber from that land. An example is wood harvested from a road or hydro right-of-way. Stumpage is paid for timber removed.

Christmas Tree Permit – This permit authorises a person to grow and harvest Christmas trees on Crown land.

With all the licenses, there is a requirement that the timber that is harvested from Crown land and the wood residue produced from that timber must be used in British Columbia or manufactured in BC into lumber, saw wood products, shingles or shakes, pulp, newspaper or print, sticks, or Christmas trees unless an exemption is granted — s. 127 (Kelly Finck, forester at the Ministry of Forests, personal communication, 1999).

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CONCLUSIONS

10.1 Summary

In summation, the main points of this paper are as follows:

Co-operatives differ from a conventional joint venture enterprise in a number of ways. Co-ops are democratic institutions predominantly owned and controlled by their members and users. In contrast to a company, where every share usually represents a vote for its owner, co-operatives are governed on a one member, one vote basis. Surplus earnings for co-operative members are regarded as surplus payments to those who created it and are distributed either through direct repayment or discounts of goods and services. The members can, and do, elect to put this money back into shares in the co-operative, which helps the capital position of the co-op. In a company, common shares represent titles of ownership and their values are usually speculative. For the members of a co-op, the membership shares are non-speculative and refundable, and in most cases the yield is limited. Co-operatives must face the discipline of meeting a strong bottom line and at the same time provide the best possible service to their members and communities (CCA, Website).

A vital part of co-operatives is a linkage with their communities. In the case of forestry co-operatives, this linkage means that the business is far more likely to use sustainable forest practices and to combine timber harvesting with other compatible industries such as eco-tourism, mushroom harvesting, or value-added ventures. The members of a co-operative are the owners and employees; therefore, the co-op's practices often reflect the underlying values and needs of its membership. In addition, these values are often those of the surrounding community. This allows the decisions with respect to the business to take into consideration any benefits and repercussions that the local population may experience.

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10.2 Getting Started

If you are interested in setting up a forestry co-operative the following may provide a rough guideline of the issues that you may face and the sequence of events that should take place for the formation of a co-operative:

1. Hold a meeting of leading persons to discuss a need that forming a co-operative might meet.
2. Hold an exploratory meeting of interested persons. Vote whether to continue. If affirmative, select a steering committee to investigate possibilities and survey the market.
3. Conduct a survey to determine co-operative feasibility. One of the most important aspects of a successful forestry co-operative is securing an adequate land base. This would require the co-operative to either own or purchase private land sufficient for its needs or to apply for and receive either a Tree Farm License or Community Forest Tenure under the *Forest Act*.
4. Hold a second general meeting to discuss the survey results. Vote on whether to proceed.
5. Conduct a market or supply and cost analysis. Relevant information would be:
 - i. Is there a market for raw logs?
 - ii. Does the co-operative own or have access to a sawmill?
 - iii. Is there the possibility of an additional value added industry, such as timber or items constructed from the timber such as log homes or furniture?
 - iv. Is there a market for additional products, such as edible mushrooms, medicinal herbs, flora for floral arrangements?
 - v. Is the land base adequate to sustain an eco-tourism industry?
6. Hold a third general meeting to discuss the results of the market or supply and cost analysis. Vote on whether to proceed.
7. Conduct a financial analysis and develop a business plan. A business plan sets out a co-op's intended goods and services and outlines how much

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money and other resources are needed to start a co-op. Business plans can help to answer important questions before a co-operative incorporates, such as:

- i. What will the co-operative do?
 - ii. How much money will it need from share capital, loans, and other sources?
 - iii. What type of shares will be most beneficial? Should there be different classes of shares?
 - iv. What price should be placed on the shares?
 - v. How will the co-operative's profits be distributed?
8. Hold a fourth general meeting to hear results of the financial analysis. Vote on whether to proceed. If affirmative, vote on whether the steering committee should remain intact or whether changes should be made.
 9. Acquire capital - develop a loan application package.
 10. Form a group of founding members. Each member must sign the incorporation documents and purchase one or more shares in the association.
 11. Draw up necessary legal papers and incorporate.
 12. Call a meeting of all potential charter members to adopt the bylaws. Elect a board of directors.
 13. Call the first meeting of the board of directors and elect officers. Assign responsibilities to implement the business plan.
 14. Conduct a membership drive.
 15. Hire a manager
 16. Acquire facilities
 17. Start up operations.

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APPENDICIES

Appendix 1: Case Studies

Case Studies in Northern British Columbia by Mann Vergan & Celine Berniard

Case Study 1: Touch Wood Industries Co-operative, Vanderhoof, BC

Date of interview: Thursday, March 6th 2000.

Interviewee: Corey Ahlm, manager

The community of Vanderhoof is located in Northern British Columbia. When the last spike of the railroad was driven in 1914, the Grand Trunk Pacific Development Company offered land for sale and the town of Vanderhoof was founded. Touch Wood Industries Co-operative is a co-operative that manufactures wooden furniture for the purpose of selling it to different retailers (and to a certain extent, individuals). They also lease their equipment and wood shop to locals so that they can build their own wooden products. The interview was done with Corey Ahlm, the manager of the co-op (he is also the sole employee of the co-op –meaning he is also the only one who builds these different products).

1. When did the co-operative emerge?

The co-op emerged in October 1998 (Board of Directors).

2. Why was it formed?

The co-op was formed to give people in this town better equipment and products for them to be able to use. The community could also benefit from better priced wood (cheaper than the competitors), especially for pine and spruce. It

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was also formed to recycle wood, which would normally not be used. Finally, the co-op was perceived as a great way to get the community involved in a new company (it required a large participation of the community).

3. Who were the founders?

The founders were: Keith Spencer; Sherley Moon; Julius Komlos; Tyrone Yec. They are also the members of the board of directors. There's only one employee who also happens to be the manager of the co-op.

4. What network or networks were central to the founding of the co-operative?

The manager had absolutely no idea.

5. Were there any special characteristics of the groups of people or location in which the co-operative emerged that help to explain its development (e.g. a number of c-operatives already in existence, band organisation already informed about co-operatives, etc.)?

No.

6. What kind of activities (business and social) did the co-operative undertake in the beginning?

The main activity in the beginning of the cooperative was to make wooden panels. Other activities include wooden clocks, drawers, racks, etc.

7. Have the activities changed since the co-operative has been in operation?

No.

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8. What were the key issues confronting the co-operative in the early stages?

The main issue confronting the co-op in the beginning was finding funding – community funding (50%) and the federal government funding (50%).

9. What role did government play?

The federal government funded almost 50% of the co-op (very little money came from the provincial government).

10. What role, if any, was played by other co-operatives?

None.

11. How was funding secured?

There was a drive for local people to buy shares in the co-operative (50% of the funding was raised this way). Secondly, the other 50% of the funding was secured by the government.

12. How did the elected leadership of the co-operative learn about their roles and responsibilities?

The founders of the co-op (the elected leadership) learned about their roles and responsibilities completely on their own.

13. How did the managers and employees learn about their roles and responsibilities?

The Manager (the only employee) learned his roles and responsibilities from the founders.

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14. What training programs would have been useful?

There are two things that would have been useful: 1) Marketing training; and 2) management training.

15. What are the positive attributes of the co-operative model as you have experienced?

A positive attribute is that it is a great way for local people to take advantage of products and technology available in the co-operative.

16. What are the negative attributes?

In general people from the community don't like to help.

17. What general advice would you give to any group interested in developing a co-operative?

Before venturing in this kind of business, the group must absolutely do a lot of research. Have a list of potential customers before starting to invest time and money.

18. What kind of further assistance would you like to have from government?

There's no need for further assistance from the government (they have already given enough). The government should help small co-ops market their products. They should also help them in the training and marketing of their management (not enough help in this sector).

19. What kind of further assistance would you like to have from the sector?

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No assistance whatsoever.

End of the Interview:

At the end of the interview, the manager expressed his views about the co-op:

- When they started the co-op their main goal was to export goods to the United States, but no steps were taken to achieve this goal. The little market they have is solely in the surrounding area: Prince George, Vanderhoof, and very little business in southern BC. They tried selling their product to companies like Costco but they weren't interested. There is no salesperson whatsoever (nobody to find customers).
- Most equipment was bought by the shareholders with grant and donation money.
- The co-op owns the building they are working in and leases the land surrounding it for \$300/year.
- The co-op is presently losing money (or as the manager pointed out "in the red"). There's still a bit of grant money, but if things don't start to pick up, they will have to close down in five months. Soon, a lot of people (from the community) that bought shares in this business are going to be asking about their investment.
- The manager's final advice is to have the board of directors participate more in the decision-making process, including marketing the products.

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Case Study 2: Quesnel Hardwood Co-op, Quesnel, BC

Date of interview: Friday, March 7th 2000.

Interviewee: James Wilson

The community of Quesnel is located in Northern British Columbia. Discovery of gold in the surrounding area in the 1860s contributed to Quesnel's growth. The city is the centre of a popular hunting and fishing region at the junction of the Fraser and Quesnel rivers. Lumber, pulp, and plywood manufacturing are the city's primary sources of income. This was an excellent case study about a forestry co-op. The key person interviewed was James Wilson (a member of the Board of directors). We eventually got to speak to four out of the five members and the manager as well. Quesnel Hardwood Co-op's main goal is to buy birch trees on corporate lands before they are clear cut. Big corporations don't want birch—too much work involved (too many employees instead of machines). The co-op wants to find the birch and take the time in analysing the wood. It is less mechanical and creates more jobs (it is more labor intensive). There is, by far, less waste in the forests: the co-op utilises the trees.

This seems to be a great initiative and idea. The only concern we might have is the fact that there might be a conflict of interest: all members of the board have a business that directly benefits from the co-op.

1. When did the co-operative emerge?

About a year ago one of the present-day board members decided to start his own business. He hadn't thought of establishing a co-op but instead a corporation. Eventually, without any experience or planning, the co-op emerged. At first there must have been at least 18 people involved in this project but now there's only five. All of these five have businesses of their own (all private entrepreneurs). It all started in the fall of 1998 when one member went to a seminar about co-operatives and thought it might be a good idea.

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2. *Why was it formed?*

To get as much birch wood out of the forest as they can. The reason is simple: the Majors (large forestry corporations) clear cut the forests and consider birch to be in their way (so they cut it and throw it away). The co-op wants to be able to get in those corporate forests before they clear cut (eventually have the government to force the Majors to do that). The co-op was thought to be a great way to lobby the government (they want the Ministry of Forests to tell the majors not to throw the birch out and to instead utilise the product).

As a group, the co-op could recognise where the money is and where it can be made. Furthermore, now private land owners who want to dispose of their birch can find a company (the co-op) where they can go and sell this resource.

3. *Who were the founders?*

Wes Porter was the first founder of the co-op and was at first the self-appointed chair. Steve Hebert was the one who convinced everyone to start a real co-op. Another founder is Don Pugh. Today's co-op members are: Martin Hennigar; Brian Peel; James Wilson; Wilf Bettcher; and Tim Foley. There's also one employee in the company (Marvin Fox – who goes and finds some trees; buys the wood for such and such a price and asks the board for approval). In the near future they will hire a secretary.

4. *What network or networks were central to the founding of the co-operative?*

The main network that was central to the founding of the co-operative is the "Community Futures" (which is sponsored by the BC government and the Federal Human Resources). This gave them the opportunity to have a wealth of information; a network of financing; and the opportunity to lease office space within the Community Futures centre.

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5. *Were there any special characteristics of the groups of people or location in which the co-operative emerged that help to explain its development (e.g. a number of co-operatives already in existence, band organisation already informed about co-operatives, etc.)?*

The people who were involved in the co-op in the beginning are not there anymore. The only special characteristic that they can think of is the “Community Futures,” which gave the main input and has a direct link with both levels of government. An example of their help is that at the beginning the co-op was in someone’s basement; now they’re in the Community Futures building (since January 1st).

6. *What kind of activities (business and social) did the co-operative undertake in the beginning?*

In the beginning the business activities were: buying private woods from small land owners and trying to convince the Majors to let them buy their birch trees.

7. *Have the activities changed since the co-operative has been in operation?*

Yes. There is now a better business approach before diving into a new activity/project. It is now an established business of the Caribou.

- They now have an office.
- Loggers are now coming to them.
- Buyers are now coming to them (from different parts of the world including: Japan, U.S., Europe, India). Through the community futures their birch is sent around the world.
- Buyers ask the government where they can buy birch and their co-op’s name appears on the list.
- New business activities are going to be looked into, including selling Popsicle sticks (made out of birch).

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- There is now more confidence and credibility for the co-op.

8. *What were the key issues confronting the co-operative in the early stages?*

The main barriers were the lack of information and the lack of knowledge from both the new members and the government (the provincial government doesn't seem to understand how a forestry co-op actually works since most of them can be found out East). Before venturing in this kind of business, there must be more research done including:

- Get some research money
- Find some resources to research the market
- Learn where the best place is to send the product
- Find people with some experience in the co-op field

Another major issue was (and still is) the fact that all of the board members have full-time jobs and don't have the time that is required to improve the co-op. All the members think it would have been very practical to have a document or someone to show them how to set up a co-op. As always, the hardest issue confronting a new business is funding (especially seed money). The board believes that a seed funding division from the government would have been good. In their mind they believe that with this kind of help a lot more co-ops would be established in this province.

9. *What role did government play?*

The role of the government was fairly good. Unfortunately the government tells you it wants to give you money but it doesn't tell you how. They don't broadcast enough information to the public. The government has helped the co-op enormously with its financing (a grant from the CEAF; and a grant from the HRDC: about 50/50 respectively).

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The main problem with the government is the paperwork and the amount of time it takes to process any application. The government is very receptive only if the paperwork is filled. Unfortunately, it is a shame they do not make it easy to understand and to find the proper funding.

[Steve Hilbert is the key connection with the government for the co-op]

10. What role, if any, was played by other co-operatives?

None - absolutely no role whatsoever. The co-op had heard about two other co-ops working in the same field but they died. There's a rumor that the First Nations in the area want to start a co-op. The co-op members believe this is a good thing because they will most likely help each other. They also believe that it is a huge market where other co-ops could thrive (including a spin-off effect). For now the two groups (the co-op and the First nations) are mutually very receptive and hope to eventually work as a team.

11. How was funding secured?

No funding was ever secured (only through the government: CEAF and HRDC). Basically all the co-op members invested their own money.

12. How did the elected leadership of the co-operative learn about their roles and responsibilities?

They learned their roles and responsibilities with the help of government pamphlets. The constitution was drafted by using a generic example found in one of those pamphlets (modified to meet their needs, of course). Another place where they learned about their responsibilities was during a business workshop sponsored by the government.

13. How did the managers and employees learn about their roles and responsibilities?

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As they went along. They didn't know anything before and they learned by themselves.

14. What training programs would have been useful?

There are many training programs that would have been useful: workshop on how co-ops work; an increase in communication services, especially finding other professionals in the field that know how a forest co-op works; Board training would have been useful: how to have a productive co-op meeting (with a productive time frame); how to keep minutes; how to pass motions; ... Something that would teach people on the proper format of running a meeting.

15. What are the positive attributes of the co-operative model as you have experienced?

First and foremost it's a potential new industry for Quesnel in markets that the Majors won't look at (for example birch sticks six feet long for California grape growers). It gives a great opportunity to work as a group and as a team. Every member of the co-op gets a great learning experience especially on issues relating to: co-ops; communications; government programs; new markets for export; ...

16. What are the negative attributes?

Most negative attributes have to do with the lack of money. A handbook with a model co-op would be nice: It is too expensive to fly to Ontario and Eastern Canada to see how forestry co-ops work. The problem is that new co-ops need this information but can't afford it.

17. What general advice would you give to any group interested in developing a co-operative?

They must do their homework. They must research their products, markets,

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and customers. Right from the start find out what each person/member can contribute to the co-op (what product they can make; what trade and knowledge, each member has,...). It is important to be aware and accept a group attitude (your idea might not be the best idea – you must accept that fact). Always keep in mind a group attitude: can't be selfish. Must always do your best not to have an angered member of the group especially in a small community (bad rep means bad name). Finally every person must come to the table with what they can offer and after see what they can benefit.

18. What kind of further assistance would you like to have from government?

First and foremost, the paperwork must be done a lot simpler (especially the vocabulary and the length). Secondly, the time to get answered must be speedier: it shouldn't take a very long time to get answered back especially for questions that should take only couple of weeks (now it is still a question of months). Furthermore, once money has been promised it shouldn't take such a long time to receive it ("if they say money is coming, should respect their promises and these promises should be carried through").

19. What kind of further assistance would you like to have from the sector?

Eventually something must be done to make it easier to approach the Majors ("work with them not against them"). The Majors should accept and understand the co-ops (for instance at this point and time, even if the Majors accept to get rid of their birch, only their loggers will be able to go get it). There should be an increase of talks in the upper level between the Majors; the Forestry Ministries; and the co-ops. Finally there must be a reduction of red-tape bureaucracy (Majors must become more co-operative).

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Case studies in Interior British Columbia

by Tamara Vrecko

Case study 3 : Harrop-Procter Co-operative, West Kootenays, BC

Date of interview: Thursday & Friday February 24 & 25, 2000.

Interviewees: Ramona Faust, Karen Kane-Directors and additional contributions from Harrop-Procter volunteers, co-coordinators, and community residents.

The community of Harrop-Procter is in the southern Interior of British Columbia situated along the southern shore of West Kootenay lake, accessible only by ferry and surrounded by pristine forests and a Provincial Park. The community is one of the oldest settlements by European settlers in BC and yet remains one of the last intact watersheds in the Southern Columbia Mountains. The co-operative is the first eco-system based community forest license in British Columbia. The co-op's mandate is to promote eco-based forestry planning which is a method of evaluating the land base that respects the water, wildlife and ecologically sensitive features of the land while promoting economic possibilities. Harrop Procter Co-operative focuses on selective logging, value-added manufacturing, eco-tourism opportunities, agro-forestry, and botanical forest products while increasing local employment and community stability.

1. When did the co-operative emerge?

The Harrop-Procter Community Co-operative was incorporated March 17, 1999 and their first AGM was held in September with initially sixty members.

2. Why was it formed?

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In 1995 the BC government designated a class A park adjacent to the Harrop-Procter community but did not include the community's watersheds where the majority of the town derives their drinking water. The area was designated special management and the community was concerned that timber harvesting would begin by companies not concerned with the importance of the watersheds nor with the biodiversity and heritage of the area. Consequently the community formed the Harrop-Procter Watershed Protection Society. In a few years the forest area became part of the Ministry of Forests' Small Business Forest enterprise program. The community recognised the opportunity to have more input and decision-making ability for their forests and they submitted a proposal for a community forest license.

3. Who were the founders?

The founders were the original members of the Harrop-Procter Watershed Protection Society under the directorship of Rami Rothkop and Ramona Faust. However, this still does not give a full picture of the importance of the co-op within the community. Over 60% of the community gave support and helped establish the co-operative from its initial beginnings.

4. What network or networks were central to the founding of the co-operative?

The co-operative used sources and information from other co-operatives, particularly the Denman Island Co-operative website which has listed their statement of incorporation and has links to various other organisations and co-ops.

5. Were there any special characteristics of the groups of people or location in which the co-operative emerged that help to explain its development (e.g. a number of co-operatives already in existence, band organisation already informed about co-operatives, etc.)?

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Yes, the Watershed Protection Society was the catalyst for the development of the co-operative whereby the society recognised the need to develop and expand its business initiatives through the development of the co-operative. Members and volunteers from the society helped build the co-op and continue as active members within both organisations. In addition, the Kootenay area has a long tradition of co-ops such as the Kootenay co-op with over 4,000 members in Nelson.

6. What kind of activities (business and social) did the co-operative undertake in the beginning?

The co-op was very active in getting the entire community involved to promote the social and business benefits of the co-op. Members went door to door to get feedback, and numerous town and small group meetings were held. Public participation and involvement were deemed crucial. The initial business activities were focused on raising the necessary capital for the group by offering various tinctures, herbal tea blends, and dried culinary and medicinal herbs.

7. Have the activities changed since the co-operative has been in operation?

Yes. The co-op has expanded in line with its original proposal and is beginning this year on selective logging, agro forestry, and botanical forest products. In addition, the co-op has progressed into the development of eco-tourism and has already built a trail with various sites and a new bridge within the forest. Moreover, the co-op plans to expand a local sawmill to provide customised and eco-certified wood for value-added operations.

The co-op has already begun negotiations and tentative plans have already been established with two local colleges, including the *Kootenay school of Arts* and *the Selkirk Wood Design school* in Castlegar, which teach and produce various furniture designs. The schools have agreed to use the wood provided by the co-op in partnership, which clearly benefits both organisations

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and also provides incentives for many students to stay in the region with these new employment opportunities. In addition, HP co-op received letters of support from other co-ops and organisations including *Wood Vine*, a value added timber organisation that stated they would buy the wood from HP when it became available.

8. What were the key issues confronting the co-operative in the early stages?

Primary issues were funding, which was difficult to obtain but the co-op did receive a \$30,000 grant from Silva forests to begin planning their forestry timber harvesting proposal. In addition, a major obstacle was to be taken seriously by the government. The MLA at the time was very hesitant about co-operatives and was concerned with issues such as the board of Directors changing, ideas being varied, people dropping out. In addition, the government stated that it had had problems with co-ops in the past where no one was accountable. To succeed, the co-op had to prove to the government that they were dedicated, determined, and focused on the long-term advantages. Other issues in the beginning were how to organise and structure the co-op and concerns about director liability for members who took responsibility for the coop business—would they be personally liable if things went wrong? Moreover, concerns about legal aspects: the wording in the acts were difficult to understand and the members did not know the legal or technical aspects. Finding this information also proved to be a tremendous obstacle because necessary information was not centered in one government organisation. For instance, when researching information on forestry co-ops the members had to research Department of Forestry, the co-operatives, and business initiatives, but most of the information was scattered throughout different departments. The co-op found the information they needed on corporate structure vs. co-operatives and director liability from the Ministry of Agriculture.

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9. What role did government play?

The government was resistant because of prior problems with co-operatives in the past and therefore when they applied to the Community Forest Board there was little response and the process stalled for over two years. However, the government did provide assistance with information after subsequent meetings with BC Forest Minister David Zirnelt when HP proved they were focused on making this co-op a success. Yet the government did not provide any funding until recently, except for programs such as youth employment.

10. What role, if any, was played by other co-operatives?

HP co-op developed and maintained a network with other co-ops, such as the Denman Island co-op, to get support and ideas on structure and funding. HP co-op used the Denman Island statement of incorporation as a base for their own co-op.

11. How was funding secured?

The co-op was successful in finding the minimum amount of funding necessary although government support would have been extremely beneficial. Donations were made; sale of shares for initial capital at \$25 per share; \$30,000 grant from Silva Forests and numerous applications for support for grants and funding from various foundations. Youth Options BC also provided funding for youth employment, which was used to build the eco-tourism trail through Mill Creek, Alpine Lake area. Additional trails will be sponsored by Mountain Equipment Co-op.

12. How did the elected leadership of the co-operative learn about their roles and responsibilities?

The co-operative is exceptionally well organised. The one outstanding feature of this co-op is that it recognised the inherent limitations that many co-ops face

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when there is enthusiasm and dedication within the group but little experience or knowledge as to what to do. Accordingly, HP focused on each individual's expertise. Each member had a diverse background and specialty; therefore members with backgrounds in forestry led the forest-planning group, while others who had engineering degrees examined the impact on the area and the watersheds. In addition, members who had worked previously in human resources were consequently involved in the organisation, policy, and hiring.

13. How did the managers and employees learn about their roles and responsibilities?

The group was divided into seven core groups with a leader who specialised in the area and provided guidance and expertise to the various employees and volunteers. In Harrop-Proctor the groups were divided accordingly: forest planning and government negotiation, fundraising/community outreach, GST, policy/hiring, e-team, herbal products, and, finally, water monitoring.

14. What training programs would have been useful?

Similar to the experiences of other co-operatives' programs, HP felt the necessary programs were marketing, management training, and funding application training or information. However, the HP co-op was successful in using some of the training programs provided by the government including Co-op Advantage, which is a new funding mechanism that helps with infrastructure (training and strategic assistance) but the programs do not cover staff or capital expenses. Community futures also provided information on how to write a business plan. Mediation training for Board development was provided by a local lawyer.

15. What are the positive attributes of the co-operative model as you have experienced?

Each member can make a valuable contribution and participate in a democratic

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way “where wealth doesn’t determine your influence or the outcome” - Director Ramona Faust.

In addition it gives the whole community a voice, and community support is essential for the promotion and growth of the organisation. Moreover, a co-op is more centered on the needs of the community, taking into account factors that may be forgotten in a larger corporation’s primary goal of profits. A co-op helps keep their profits and employment within the community.

16. What are the negative attributes?

Cumbersome nature of first starting the co-operative because at the moment there is very little information out there for co-ops to use, especially on the legal ramifications and how to compare a co-op to other traditional corporate structures. In addition, strong pressure from big business and government is still hesitant with co-operatives until there have been more co-operatives established and the government can critique the success of the co-operative movement.

17. What general advice would you give to any group interested in developing a co-operative?

Understand that everything that could go wrong probably will, therefore plan accordingly. Most of all, take your time to research, don’t push ahead too soon because government and funding foundations want to see structure, organisation and a definitive business plan; if you rush ahead without excellent preparation you could leave a negative first impression and lose valuable funding and especially credibility. In addition, get advice by talking to lawyers, accountants, and anyone who has experience and expertise in the products and services you want to provide. Most of all, get community support—the reason HP succeeded over many other applications for the pilot forestry licenses, according to government, was the community involvement, support, and aware-

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ness of the co-op.

18. What kind of further assistance would you like to have from government?

The primary obstacle was getting the necessary information. Harrop-Proctor would like the government to combine information and resources into one area or at least inform the co-operatives on how to obtain the information they need. As mentioned previously, information on co-operative structures and director liability was found in the Department of Agriculture, other information was in the Department of Forestry, and further information was found in co-operative or business initiative sites. The co-op thinks that access to all information at one website, or that at least provides links, would help them. It would decrease time and resources required from the government and would hopefully cease the “endless” phone calls necessary to find the right information.

19. What kind of further assistance would you like to have from the sector?

Stronger networking opportunities for co-ops and smaller forestry businesses to promote the local economy. More information and resources should be available so smaller organisations can learn and gain support from others.

...local interests will be truly represented and the land that sustains us will be respected. Without healthy ecosystems, economic values for their own sake become meaningless. Secure water sources, local employment, recreational possibilities and innovative value-added opportunities are all possible by-products of this plan, which we hope will encourage others to follow. (Harrop-Procter Watershed Protection Society, Personal Communication, July 2000)

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Appendix 2: Contacts

Provincial Government Contacts (in alphabetical order)

Two key places to begin your search with the provincial government are the BC government online directory at <http://www.dir.gov.bc.ca> and the toll free information number of Enquiry BC (1.800.663.7867).

BC Registrar of Companies, Ministry of Finance

You will submit your legal documents, including the name approval request form, the memorandum of association, rules of association, notice of registered office, and list of first directors to the Registrar. Call the registrar if you have any questions about these documents.

940 Blanshard Street, 2nd Floor
PO Box 9431, STN PROV GOVT
Victoria BC
V8W 3E6
P: 250.387.7848 (Victoria) or 604.755.1041 (Vancouver)
F: 250.356.0206
www.fin.gov.bc.ca/corppg/default.htm

Enquiry BC

If you can't find a provincial government phone number, call Enquiry BC at **1.800.663.7867**. Operators at this number have access to the BC government phone directory.

Important Note: If you have a provincial government phone number, but it is long distance, call Enquiry BC and ask to be transferred to that number so that it does not cost you anything.

Forest Renewal BC

Forest Renewal BC is a provincial government agency, which may be able to provide your co-op with funding or loans. Forest Renewal BC has offices across BC.

Victoria Office
727 Fisgard Street, 9th Floor
PO Box 9908, STN PROV GOVT
Victoria BC
V8W 9R1

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P: 250.387.2500
F: 250.356.7134
E: forestrenewal@canada.com
<http://www.forestrenewal.bc.ca>

Government Agents

Government Agents are located throughout BC and are able to provide you with information on provincial government services. They also have most government forms available. For a location near you, contact Enquiry BC or call the Government Agent's headquarters at:

P: 250.356.2038
F: 250.387.5633
www.governmentagents.sb.gov.bc.ca/index.html

Ministry of Community Development, Co-operatives and Volunteers

Contacts for information on the **Co-op Advantage** funding programme, the **Community Enterprise** funding programme and general assistance and information in starting your co-operative.

PO Box 9915, STN PROV GOVT
221-560 Johnson Street
Victoria BC
V8W 9R1
P: 1.877.777.1533
F: 250.356.9467
E: cdev@gems4.gov.bc.ca
www.cdev.gov.bc.ca

Ministry of Finance and Corporate Relations

The Ministry of Finance and Corporate Relations issues you the certificate of registration for paying the provincial sales tax.

Consumer Taxation Branch, Vancouver
500-605 Robson Street
Vancouver BC
V6B 5J3
P: 604.660.4524
F: 604.660.1104
Consumer Taxation Branch, Victoria
Policy and Legislation Section

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1061 Fort Street
Victoria BC
V8V 3K5
P: 250.387.0656
F: 250.387.6218

Ministry of Forests

To find the office nearest you, contact one of the Ministry's six regional offices:

Cariboo Forest Region
200-640 Borland Street
Williams Lake BC
V2G 4T1
P: 250.398.4345
F: 250.398.4380

Kamloops Forest Region
515 Columbia Street
Kamloops BC
V2C 2T7
P: 250.828.4131
F: 250.828.4154

Nelson Forest Region
518 Lake Street
Nelson BC
V1L 4C6
P: 250.354.6200
F: 250.354.6240

Prince George Forest Region
1011-4th Avenue
Prince George BC
V2L 3H9
P: 250.565.6100
F: 250.565.6671

Prince Rupert Forest Region
Bag 5000, 3726 Alfred Avenue
Smithers BC
V0J 2N0

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P: 250.847.7500

F: 250.847.7217

Vancouver Forest Region

2100 Labieux Road

Nanaimo BC

V9T 6E9

P: 250.751.7001

F: 250.751.7190

www.for.gov.bc.ca

One-Stop Business Registration

The provincial and federal governments have set up a network called “one stop business registration.” This system allows you to complete many of the required legal documents to get your co-operative going all at once at one of the designated computer terminals in BC. For more information on the programme, see the website at: <http://www.osbr.sb.gov.bc.ca/>

To locate the one-stop business registration office near you contact:

Mark Timmins

OneStop Business Registration

British Columbia Ministry of Small Business, Tourism and Culture

Small Business Branch

1405 Douglas Street, 6th Floor

PO Box 9805, STN PROV GOVT

Victoria BC

V8W 9W1

P: 250.565.6339 or (Toll Free) 1.800.988.8299

F: 250.565.6638

E: Mark.Timmins@gems5.gov.bc.ca

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Federal Government Contacts

Canada/British Columbia Business Service Centre

This organisation is a partnership of the provincial and federal governments and has excellent information on everything from marketing to business planning to a huge list of government grants and loans available to small business.

601 West Cordova Street

Vancouver BC

V6B1G1

P: 604.775.5525 or (Toll Free – BC region only) 1.800.667.2272

F: 604.775.5520

Info-FAX: 604.775.5515 or (Toll Free) 1.800.667.2272

<http://www.sb.gov.bc.ca>

E-mail Bookstore: crowley.brenda@cbsc.ic.gc.ca

Website Comments: hartley.len@cbsc.ic.gc.ca

Business Start-Up: olson.dave@cbsc.ic.gc.ca

Trade and Markets or Export/Import: waung.mary@cbsc.ic.gc.ca

Statistics: eversfield.mark@cbsc.ic.gc.ca

Community Futures Development Corporations

These organisations may provide loans, information, and other resources, including office space, to your co-operative. At last count there were 35 CFDCs across the province. To find the one nearest you, contact:

Community Futures Development Association of BC

1607-1166 Alberni Street

Vancouver BC

V6E 3Z3

P: 604.681.7130

F: 604.681.9369

Co-operatives Secretariat

Co-operatives Secretariat

Sir John Carling Building

930 Carling Avenue

Room 467

Ottawa ON

K1A 0C5

P: 613.759.7194

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F: 613.759.7489

E: co-ops@em.agr.ca

<http://www.agr.ca/policy/coop>

Human Resources Development Canada

As part of its mandate, this federal department provides wage subsidies to small businesses. It has offices across Canada.

To find the office nearest you, contact Reference Canada at 1.800.667.3355 or check their website at www.bc.hrhc-drhc.gc.ca/common/contact.html

For publications from this Ministry, contact:

Publications Centre

Human Resources Development Canada

140 Promenade du Portage, Phase IV

Hull, PQ

K1A 0J9

F: 819.953.7260

E: info@hrdc-drhc.gc.ca

The Women's Enterprise Society of BC

This organisation assists “women entrepreneurs to succeed in business,” according to its website. It provides networking, information, and loans.

103-1635 Abbott Street

Kelowna BC

V1Y 1A9

P: 250.868.3454 or (Toll Free) 1.800.643.7014

F: 250.868.2709

E: info@wes.bc.ca

www.wes.bc.ca

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Co-operative Organisations

Canadian Co-operative Association (CCA)

275 Bank Street, Suite 400

Ottawa ON

K2P 2L6

P: 613.238.6711

F: 613.567.0658

E: ccainfo@web.apc.org

<http://www.co-opcca.com/>

CCA British Columbia

John Restakis

1800-555 West Hastings Street

Box 12069

Vancouver BC

V6B 4N5

P: 604.662.3906

F: 604.662.5642

The Co-operative Development Foundation of Canada

Angela Splinter, Manager

275 Bank Street, Suite 400

Ottawa ON

K2P 2L6

P: 613.238.6711

F: 613.567.0658

E: cdf@co-opcca.com

Co-operative Enterprise Centre

180-3795 Carey Road

Victoria BC

P: 250.595.6451

F: 250.595.6461

Federated Workers Co-operative, DevCo

This organisation is a worker co-operative that assists people in developing co-ops in British Columbia. It is an excellent resource for information and training to support the establishment of your co-operative.

Marty Frost

P: 604.251.6710

F: 604.251.6759

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Federation of Worker Co-operatives of BC

Jackie Somerville
PO Box 3698
Courtenay BC
P: 250.337.8873
F: 250.337.8873

International Co-operative Alliance

15, route des Morillons, 1218 Grand-Saconnex
Geneva, Switzerland
P: (+41).022.929.88.88
F: (+41).022.798.41.22
E: ica@co-op.org
<http://www.coop.org/ica>

Victoria's Community and Co-operative Enterprise Centre

100-703 Broughton Street
Victoria BC
V8W 1E2
P: 250.360.0852
F: 250.360.0842
E: cedco@pacificcoast.net

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Universities and Colleges

British Columbia Institute for Co-operative Studies, University of Victoria

Dr. Ian MacPherson, Director
Room 109, University House 2
University of Victoria
PO Box 3060, STN CSC
Victoria BC
V8W 3R4
P: 250.472.4539
F: 250.472.4541
E: rochdale@uvic.ca
<http://web.uvic.ca/bcics>

Coady International Institute, St. Francis Xavier University

PO Box 5000
Antigonish NS
B2G 2W5
P: 902.867.3961
F: 902.867.3907
E: coady@stfs.ca
www.stfx.ca/institutes/coady

University of Saskatchewan, Centre for the Study of Co-operatives

101 Diefenbaker Place
University of Saskatchewan
Saskatoon SK
S7N 5B8
P: 306.966.8509
F: 306.966.8517
E: co-op.studies@usask.ca
<http://www.coop-studies.usask.ca/>

University of Wisconsin, Center for Co-operatives

E: grinnel@aae.wisc.edu
www.wisc.edu/uwcc

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Appendix 3: Individual Board Member Evaluation Worksheet

Individual Board Member Evaluation

Reproduced with permission from the Government of Nova Scotia website at: <http://www.gov.ns.ca/ecor/ced/coop/pubs/directdo/sect3.htm> - et

Please review and answer each question. This evaluation is for your own benefit and your answers are for your own knowledge and information. The purpose of this exercise is to help you review your activities and contributions as a board member, as well as to help you identify specific objectives for strengthening your future performance.

I. Board organisation and procedure orientation

1. Have you reviewed and are you familiar with:

Yes No The organisations current mission goals and objectives?

Yes No The Act, Regulations, and bylaws?

Yes No The corporate organisational structure?

Yes No The organisation of the board?

Yes No The list of policies of the board, management?

2. Do you prepare for each board meeting by reading and analysing all materials sent in advance of the meeting?

Yes No

3. How would you rate your attendance at the participation in:

Very good Good Poor Board meetings and discussions?

Very good Good Poor Committee meetings and discussions?

Very good Good Poor Do you always voice your concerns about, (or vote against) proposals with which you do not agree?

4. Yes No Once a vote is taken by the board, do you always support the position, even if you did not vote in the majority?

5. Yes No Have you recommended new or beneficial ideas in the past year for improving the performance of the board?

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6. ____ Yes ____ No Have you contributed directly to the achievement of one or more of the board's annual objectives?

7. What steps will you take in the coming year to increase your knowledge of and participation in the board's operations and committee structures?

(a)

(b)

(c)

II. External representation

1. In what ways have you been an effective representative of the organisation to the public or specific groups outside the organisation?

(a)

(b)

2. How have you helped the community to become more aware of the organisation and its role in the community?

(a)

(b)

3. How have you helped the management to become more involved and better known in the area?

(a)

(b)

4. What steps will you take in the coming year to increase your effectiveness as a representative of your organisation?

(a)

(b)

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III Personal development

1. How well do you feel you understand the current issues in your industry/sector and their potential impact on your organisation and its people?

____ Very good ____ Well ____ Not well

2. How familiar are you with the services and programs of your organisation?

____ Very familiar ____ Familiar ____ Not familiar

3. What steps will you take in the coming year to increase your knowledge of critical issues facing your organisation and their impact on the services and programs of the organisation?

(a)

(b)

(c)

IV Relationships

1. How would you characterise your working relationship with the other board members and the senior management staff?

____ Very effective ____ Effective ____ Not effective

2. What steps will you take in the coming year to strengthen these relationships?

(a)

(b)

(c)

V. Tenure on the Board

Based on your response to the questions above;

1. Do you feel you are an effective board member and still the best person to fill your position as a board member?

____ Yes ____ No

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2. Are you comfortable with the amount of time you devote to being a board member of the organisation?

___ Yes ___ No

3. What steps in addition to the ones above, can you take to further improve your performance as a board member?

(a)

(b)

(c)

Review your response to this questionnaire in six months in order to track your progress toward the objectives you have set for yourself.

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Appendix 4: An Introduction to Robert's Rules of Order and Consensus Decision Making

Robert's Rules of Order

The information on Robert's Rules of Order is taken from the website www.cyberbuzz.gatech.edu/apo/robert.html

Robert's Rules of Order

What Is Parliamentary Procedure?

It is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion.

Why is Parliamentary Procedure Important?

Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organisation. Today, Robert's Rules of Order newly revised is the basic handbook of operation for most clubs, organisations, and other groups. So it's important that everyone know these basic rules!

Organisations using parliamentary procedure usually follow a fixed order of business. Below is a typical example:

1. Call to order.
2. Roll call of members present.
3. Reading of minutes of last meeting.
4. Officer's reports.
5. Committee reports.
6. Special orders — Important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Announcements.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.

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3. Debate motions.
4. Vote on motions.

There are four Basic Types of Motions:

1. **Main Motions:** The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. **Subsidiary Motions:** Their purpose is to change or affect how a main motion is handled and is voted on before a main motion.
3. **Privileged Motions:** Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. **Incidental Motions:** Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How are Motions Presented?

1. **Obtaining the floor**
 - a. Wait until the last speaker has finished.
 - b. Rise and address the Chair by saying, “Ms. or Mr. Chair.”
 - c. Wait until the Chair recognises you.
2. **Make Your Motion**
 - a. Speak in a clear and concise manner.
 - b. Always state a motion affirmatively. Say, “I move that we ...” rather than, “I move that we do not ...”.
 - c. Avoid personalities and stay on your subject.
3. **Wait for Someone to Second Your Motion**
4. Another member will second your motion or the Chair will call for a second.
5. If there is no second to your motion it is lost.
6. **The Chair States Your Motion**
 - a. The Chair will say, “it has been moved and seconded that we ...” Thus placing your motion before the membership for consideration and action.
 - b. The membership then either debates your motion, or may move directly to a vote.
 - c. Once your motion is presented to the membership by the chair it becomes “assembly property”, and cannot be changed by you without the consent of the members.
7. **Expanding on Your Motion**

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- a. The time for you to speak in favour of your motion is at this point in time, rather than at the time you present it.
 - b. The mover is always allowed to speak first.
 - c. All comments and debate must be directed to the Chair.
 - d. Keep to the time limit for speaking that has been established.
 - e. The mover may speak again only after other speakers are finished, unless called upon by the Chair.
8. Putting the Question to the Membership
- a. The Chair asks, “Are you ready to vote on the question?”
 - b. If there is no more discussion, a vote is taken.
 - c. On a motion to move the previous question may be adapted.

Voting on a Motion:

The method of vote on any motion depends on the situation and the by-laws of policy of your organisation. There are five methods used to vote by most organisations, they are:

1. By Voice — The Chair asks those in favour to say, “aye”, those opposed to say “no”. Any member may move for an exact count.
2. By Roll Call — Each member answers “yes” or “no” as his or her name is called. This method is used when a record of each person’s vote is required.
3. By General Consent — When a motion is not likely to be opposed, the Chair says, “if there is no objection ...” The membership shows agreement by their silence, however if one member says, “I object,” the item must be put to a vote.
4. By Division — This is a slight verification of a voice vote. It does not require a count unless the chair so desires. Members raise their hands or stand.
5. By Ballot — Members write their vote on a slip of paper. This method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to Table — This motion is often used in the attempt to “kill” a motion. The option is always present, however, to “take from the table”, for reconsideration by the membership.
2. Motion to Postpone Indefinitely — This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once

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again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.
5. Most importantly, *BE COURTEOUS*.

Consensus Decision Making

Reproduced with permission from the website <http://www.actupny.org/documents/CDdocuments/Consensus.html>

What is consensus?

Consensus is a process for group decision-making. It is a method by which an entire group of people can come to an agreement. The input and ideas of all participants are gathered and synthesized to arrive at a final decision acceptable to all. Through consensus, we are not only working to achieve better solutions, but also to promote the growth of community and trust.

What does consensus mean?

Consensus does not mean that everyone thinks that the decision made is necessarily the best one possible, or even that they are sure it will work. What it does mean is that in coming to that decision, no one felt that her/his position on the matter was misunderstood or that it wasn't given a proper hearing. Hopefully, everyone will think it is the best decision; this often happens because, when it works, collective intelligence does come up with better solutions than could individuals.

Consensus takes more time and member skill, but uses lots of resources before a decision is made, creates commitment to the decision and often facilitates a creative decision. It gives everyone some experience with new processes of interaction and conflict resolution, which is basic but important skill-building. For consensus to be a positive experience, it is best if the group has 1) common values, 2) some skill in group process and conflict resolution, or a commitment to let these be facilitated, 3) commitment and responsibility to the group by its members and 4) sufficient time for everyone to participate in the process.

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Forming the consensus proposals

During discussion a proposal for resolution is put forward. It is amended and modified through more discussion, or withdrawn if it seems to be a dead end. During this discussion period it is important to articulate differences clearly. It is the responsibility of those who are having trouble with a proposal to put forth alternative suggestions.

The fundamental right of consensus is for all people to be able to express themselves in their own words and of their own will. The fundamental responsibility of consensus is to assure others of their right to speak and be heard. Coercion and trade-offs are replaced with creative alternatives, and compromise with synthesis.

When a proposal seems to be well understood by everyone and there are no new changes asked for, the facilitator(s) can ask if there are any objections or reservations to it. If there are no objections, there can be a call for consensus. If there are still no objections, then after a moment of silence you have your decision. Once consensus does appear to have been reached, it really helps to have the recorder repeat the decision to the group so everyone is clear on what has been decided.

Difficulties in reaching consensus

If a decision has been reached, or is on the verge of being reached that you cannot support, there are several ways to express your objections:

Non-support (“I don’t see the need for this, but I’ll go along.”)

Reservations (“I think this may be a mistake but I can live with it.”)

Standing aside (“I personally can’t do this, but I won’t stop others from doing it.”)

Blocking (“I cannot support this or allow the group to support this. It is immoral.” If a final decision violates someone’s fundamental moral values they are obligated to block consensus.)

Withdrawing from the group. Obviously, if many people express non-support or reservations or stand aside or leave the group, it may not be a viable decision even if no one directly blocks it. This is what is known as a “lukewarm” consensus and it is just as desirable as a lukewarm beer or a lukewarm bath.

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If consensus is blocked and no new consensus can be reached, the group stays with whatever the previous decision was on the subject, or does nothing if that is applicable.

Roles in a consensus meeting

There are several roles, which, if filled, can help consensus decision making run smoothly. The facilitator(s) aids the group in defining decisions that need to be made, helps them through the stages of reaching an agreement, keeps the meeting moving, focuses discussion to the point-at hand; makes sure everyone has the opportunity to participate, and formulates and tests to see if consensus has been reached. Facilitators help to direct the process of the meeting, not its content. They never make decisions for the group. If a facilitator feels too emotionally involved in an issue or discussion and cannot remain neutral in behavior, if not in attitude, then s/he should ask someone to take over the task of facilitation for that agenda item.

A vibes-watcher is someone besides the facilitator who watches and comments on individual and group feelings and patterns of participation. Vibes-watchers need to be especially tuned in to the sexism of group dynamics.

A recorder can take notes on the meeting, especially of decisions made and means of implementation, and a time-keeper keeps things going on schedule so that each agenda item can be covered in the time allotted for it (if discussion runs over the time for an item, the group may or may not decide to contract for more time to finish up).

Even though individuals take on these roles, all participants in a meeting should be aware of and involved in the issues, process, and feelings of the group, and should share their individual expertise in helping the group run smoothly and reach a decision. This is especially true when it comes to finding compromise agreements to seemingly contradictory positions.

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Appendix 5: Possible Contents of a Board of Directors' Manual

Reproduced with permission from the Government of Nova Scotia website at: <http://www.gov.ns.ca/ecor/ced/coop/pubs/boarddir/sect15.htm>

A manual should contain:

1. a brief history of the organisation
2. a statement of the objectives of the organisation
3. an organisation chart - board and staff
4. board committees and their members
5. names, addresses, and telephone numbers of each board member
6. job descriptions of the president, the manager, and the board
7. by-laws of the organisation
8. current minutes and agendas of the board meetings
9. board and management policies
10. financial statements
11. operating and capital budgets
12. long range plans
13. special reports

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Appendix 6: Asking Good Questions at Meetings

Reproduced with permission from the Government of Nova Scotia website at: <http://www.gov.ns.ca/ecor/ced/coop/pubs/boarddir/sect8.htm>

Effective Questions

The most effective impact the board has on the decisions and plans of the organisation is through the question process.

Discerning and penetrating questions on all matters presented to the board are the privilege and responsibility of the board.

Good questions:

1. focus the issue
2. make more information available
3. make decisions more effective

Good questioning requires directors:

1. to study the situation in advance
2. have some experience
3. have tact, judgment, and courage

Discerning questions:

1. educate the board and the manager
2. organise the thought of the manager
3. require the questioner to be a good listener

Good managers usually invite discerning questions from the board. The willingness and ability to provide answers to significant questions raised is a test of the qualifications of the manager.

The president must assure that the questions asked are:

1. to the given point; not disconnected or about two subjects at one time
2. are kept objective and not directed toward personalities

Following are nine types of discerning questions:

1. To clarify data
What do these figures mean?
Did you mean? or

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Did you mean?

2. To test the reliability of data
 - Is that report dependable?
 - How do we know it's reliable?
 - How accurate have these reports been in the past?
3. To get more data
 - Can we get more information?
 - Are other figures available?
 - How does this compare with the national/provincial/municipal average?
4. To stimulate other alternatives
 - Isn't there some other possibility?
 - How could we make this idea more acceptable?
 - Shouldn't we study this proposal further so we don't miss anything?
5. To focus on areas of agreement and away from areas of disagreement.
 - Could we accept the three points we agreed upon?
 - Why not look at it from the angle of what is right rather than who is right?
 - How vital do we consider this point on which we don't agree?
6. To direct attention to the probable effects of a proposal.
 - How will it affect our finances?
 - How will it affect our services?
 - Who is the program going to benefit? or hurt?
7. To check the degree of probability of the effects.
 - How probable is the proposal you predict?
 - Is it certain our members will reject the idea?
8. To direct attention to the relative value of probable effects.
 - Which of these probable outcomes do we think is more important?
 - Why don't we compare the long-term value of one alternative against the other?
9. To terminate a discussion and reach a decision.
 - Have we heard all your ideas?
 - Are we ready to come to a conclusion?
 - Is there a point in discussing this matter further?

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Official printed versions of the above can be obtained from:

Crown Publications Inc.

521 Fort Street

Victoria, BC

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Notes

1 These principles are adapted from the International Co-operative Alliance website at: <http://www.coop.org/ica/info/enprinciples.html>

2 s. 12 refers to section 12 of the *BC Cooperative Association Act*.

3 Note that the former *BC Cooperative Association Act* did not allow an association to specify the co-operative's purpose or mission in its memorandum.

4 Note that the former *BC Cooperative Association Act* (1996) required that the members' occupations also be listed.

5 *Kelly v. Electrical Construction Co.* (1907), 16 O.L.R. 232 (H.C.)

6 (1984), 33 Sask. R. 41 (Q.B.)

7 RSC, 1985, c. C-44

8 RSBC, 1996, c.62

9 See Business Law Clinic, 1999.

10 See Business Law Clinic, 1999.

11 *Ashbury Railway Carriage and Iron Co. v. Riche* (1875) LR 7 HL 653

12 See Canadian Co-operative Association, n.d.

13 See Canadian Co-operative Association, n.d.

14 For more information on the tax benefits and implications of incorporation, consult the Canada Customs and Revenue Agency publication *Guide for Ca-*

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nadian Small Business. For ways to obtain this publication, see the Resources section at the end of this document.

15 *British Columbia Power Corporation v. British Columbia (Attorney General)* (1963), 44 W.W.R. 65 (B.C.S.C.)

16 See Canadian Co-operative Association, n.d.

17 See page 164 of Buckley et al., 1995.

18 See page 165 of Buckley et al., 1995.

19 See VanDuzer, 1997.

20 See page 167 of Buckley et al., 1995.

21 *The Cooperative Association Act*, R.S.B.C. 1996 c71, s.16

22 See page 73 of Buckley, 1995.

23 For more information see the Ministry of Development website at: <http://www.cdev.gov.bc.ca/ComEnterprise/default.htm>

24 *The Securities Act*. (RSBC 1996) Chapter 418.

25 For a more detailed discussion, a summary of Bill 98 can be viewed online at www.ccabc.bc.ca

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