

The Conundrum of Section 118 of the Canada Co-operatives Act

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Definition of a Co-op according to the International Co-operative Alliance:

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.

Values of a Co-op according to the International Co-operative Alliance:

Co-operatives are based on the values of self-help, self-responsibility, democracy, **equality**, **equity** and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

The Co-operative principle with respect to Member Economic Participation says:

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. **Members usually 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 their 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.

The Co-operators Group Limited

- Capital invested in The Co-operators is represented by Preference Shares
- These shares have received a limited return on capital (pursuant to co-operative principles) in the form of a dividend
- Membership Shares have a nominal value
 - Issued for many reasons in the past
 - None of which relate to contributions to capital

Section 118

The Canada Co-operatives Act

118. (1) Membership shares may be issued only to members, each of whom must hold the minimum number of membership shares prescribed by the by-laws.

Equal rights

(2) Subject to Parts 20 and 21, the membership shares of a cooperative confer on their holders equal rights, including equal rights to

- (a) receive dividends declared on membership shares; and
- (b) subject to the articles, receive the remaining property of the cooperative on dissolution.

The Big Question:

- Does 118 (2) (b) mean that the equal right which is being recognized:
 - is an equal right based on the number of membership shares held
 - or an equal right based on being a holder?

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- Based on the definition, values, and principles one should logically conclude equal division
 - (i.e. equal between all members holding membership shares)

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- This interpretation also aligns with concept of one member, one vote

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- Why a windfall on dissolution if a member only gets par value if it leaves the going concern?

Further support for equal distribution:

“Capital” should not be over-valued

Further support for equal distribution:

Former Act said residue would be distributed “rateably”

(i.e. based on business support, not capital provided)

Further support for equal distribution:

No suggestion of a fundamental change in distribution methodology when new Act put into place

This Interpretation is logical for The Co-operators

Early members who contributed capital had that capital converted to preference shares that receive a dividend

This Interpretation is logical for The Co-operators

New members are only allowed one membership share

But must pay a non-refundable membership fee which
would not have been paid by original members

This Interpretation is logical for The Co-operators

Number of membership shares held by early members is largely accidental

But.....using rules of statutory interpretation:

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Subsection 5 may also be of assistance:

(5) The right to vote attaches to membership in accordance with section 37 and not to a membership share.

Final Thoughts

- The opposing positions creates ambiguity for any co-operative in Canada that is dissolving, but didn't make provisions in the Articles
- A lawyer advising a co-operative on this matter is put in a very difficult position
- The best advise might be to have the co-operative seek a judicial determination

Q&A

