

1988 BILL 49

Third Session, 21st Legislature, 37 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 49

**CONSUMER AND CORPORATE AFFAIRS STATUTES
AMENDMENT ACT, 1988**

MR. DAY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 49
Mr. Day

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CONSUMER AND CORPORATE AFFAIRS STATUTES AMENDMENT ACT, 1988

(Assented to _____, 1988)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Co-operative Associations Act

1(1) The Co-operative Associations Act is amended by this section.

(2) Section 24(8), (9) and (10) are repealed and the following is substituted:

(8) Every association shall in each year, on or before the prescribed date, send to the Director an annual return in the prescribed form, and the Director shall file it.

(3) Section 25 is repealed and the following is substituted:

25(1) The directors of an association shall place before the members of the association at every annual meeting

- (a) financial statements relating to the preceding fiscal year,
- (b) if the preceding fiscal year ended more than 6 months before the annual meeting, additional financial statements relating to a period beginning immediately after the end of the preceding fiscal year and ending on a date not earlier than 6 months before the annual meeting,
- (c) the report of the auditor if an auditor has been appointed, and
- (d) any further information respecting the financial position of the association and the results of its operations required by the regulations.

Explanatory Notes

Co-operative Associations Act

1(1) This section amends chapter C-24 of the Revised Statutes of Alberta 1980.

(2) Section 24(8), (9) and (10) presently read:

(8) At the close of each fiscal year the association shall submit accounts for audit by an auditor appointed in the manner prescribed by the by-laws, but the auditor appointed must first have been approved by the Director.

(9) Each association shall within 60 days after the close of each fiscal year send to the Director the annual return of the association, being a general statement up to the end of the fiscal year then last ended of the receipts, expenditures, funds and effects of the association as audited.

(10) The annual return shall show separately the expenditure in respect of the several objects of the association, and shall state the name, address and calling or profession of the auditor and the manner in which, and the authority under which, he is appointed, and together therewith the association shall send a copy of the auditor's report.

(3) Section 25 presently reads:

25(1) The auditor shall make such examinations and inquiries as will enable him to report to the members as required under subsection (2).

(2) The auditor shall make a report to the members on the financial statement to be laid before the association at any annual meeting during his term of office and the report shall include his opinion as to whether the financial statement referred to therein presents fairly the financial position of the association and the results of its operations for the period under review in accordance with generally accepted principles applied on a basis consistent with that of the preceding period.

(3) The auditor, in his report, shall also make any statements he considers necessary in any case where

(a) the financial statement of the association is not in agreement with the accounting records,

(b) the financial statement of the association is not in accordance with the requirements of this Act.

(2) If the association has not completed a fiscal year, the financial statements required by subsection (1) shall relate to a period beginning on the date the association came into existence and ending on a date not earlier than 6 months before the annual meeting.

(3) Financial statements required by this section shall be in the prescribed form.

25.1(1) The directors of an association shall approve the financial statements referred to in section 25 and approval shall be evidenced by the signature of 2 or more directors.

(2) An association shall not issue, publish or circulate copies of the financial statements referred to in section 25 unless the financial statements are

(a) approved and signed in accordance with subsection (1), and

(b) accompanied by the report of the auditor of the association, if any.

(3) An association shall, on request of a member, send to the member a copy of the documents referred to in section 25 that have been approved in accordance with this section.

25.2(1) The directors may appoint an auditor to hold office until the first meeting of members, and an auditor so appointed is eligible for reappointment by the members under subsection (2).

(2) Subject to section 25.42, the members of an association shall, by ordinary resolution at the first annual meeting of members and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(3) Notwithstanding subsection (2), if an auditor is not appointed at a meeting of members, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the members or, if not so fixed, may be fixed by the directors.

25.3(1) Subject to subsections (2) and (6), a person may not be an auditor of an association unless he is independent of the association and the directors and officers of the association.

(2) Federated Co-operatives Limited may be appointed as auditor for an association that is a member of Federated Co-operatives Limited.

(3) For the purposes of this section,

(a) independence is a question of fact, and

(b) a person is deemed not to be independent if he or his business partner

(i) is a business partner, a director, an officer or an employee of the association or a business partner of any director, officer or employee of the association, or

(c) he has not received all the information or explanations that he has required, or

(d) his examination indicates that proper accounting records have not been kept.

(4) The auditor of an association shall, at all times, be given access to all records, documents, books, accounts and vouchers of the association, and is entitled to require from the directors and officers of the association such information and explanations as in his opinion are necessary to enable him to report as required by subsection (2).

(5) The auditor of an association is entitled to attend any meeting of the association, and to be heard at the meeting in respect of any part of the business of the meeting that concerns him as auditor.

(6) The person responsible for giving notice of the meeting referred to in subsection (5) shall notify the auditor of the meetings, unless the auditor expressly waives notice.

(7) When

(a) not less than 10% of the members of an association notify the association in writing at least 7 days before a meeting of its members that they wish the auditor of the association to attend the meeting, or

(b) the Director advises the association that he wishes the auditor of the association to attend the next meeting of its members,

the association shall forthwith request the auditor to attend the meeting and the auditor shall so attend.

(ii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the association within 2 years of his proposed appointment as auditor of the association.

(4) An auditor who becomes disqualified under this section shall, subject to subsection (6), resign forthwith after becoming aware of his disqualification.

(5) An interested person may apply to the Court of Queen's Bench for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(6) An interested person may apply to the Court of Queen's Bench for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not unfairly prejudice the members, make an exemption order on any terms it thinks fit, which order may have retrospective effect.

25.4(1) An auditor of an association ceases to hold office when he

- (a) dies or resigns, or
- (b) is removed pursuant to subsection (3).

(2) A resignation of an auditor becomes effective at the time a written resignation is received by the association or at the time specified in the resignation, whichever is later.

(3) The members of an association may by ordinary resolution at a special meeting remove the auditor from office, other than an auditor appointed by the Court of Queen's Bench under section 25.5.

(4) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 25.41.

25.41(1) Subject to subsection (3) and section 25.42, the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors, any member may call the meeting.

(3) The by-laws of an association may provide that a vacancy in the office of auditor shall be filled only by vote of the members.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

25.42(1) Subject to subsection (2) and the regulations, the members of an association may, by resolution, resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next following annual meeting of members.

25.5(1) If an association does not have an auditor, the Court of Queen's Bench may, on the application of a member, appoint and fix the remuneration of an auditor, who shall hold office until an auditor is appointed by the members.

(2) Subsection (1) does not apply if the members have resolved under section 25.42(1) not to appoint an auditor.

25.6(1) The auditor of an association is entitled to

- (a) receive notice of every meeting of members,
- (b) attend and be heard at every meeting on matters relating to his duties as auditor, and
- (c) submit to the association and have read at the next meeting a written statement on matters relating to his duties as auditor.

(2) If a director or member of an association, whether or not the member is entitled to vote at the meeting, gives written notice to the auditor or a former auditor of the association not less than 10 days before a meeting of members, the auditor or former auditor shall attend the meeting at the expense of the association and answer questions relating to his duties as auditor.

(3) A director or member who sends a notice referred to in subsection (2) shall concurrently send a copy of the notice to the association.

(4) On the application of an association or its auditor, the Court of Queen's Bench may

- (a) exempt the auditor from attending any or all meetings of the members, and
- (b) exempt the association from paying the expenses of an auditor for attending a meeting in respect of which his attendance has been exempted.

(5) An auditor who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of directors or members called for the purpose of removing him from office,
- (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether because of resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or
- (d) receives a notice or otherwise learns of a meeting of members at which a resolution referred to in section 25.42 is to be proposed,

is entitled to submit to the association a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(6) The association shall forthwith send to every member entitled to receive notice of any meeting referred to in subsection (1) a copy of the statement referred to in subsection (5).

(7) No person shall accept an appointment as, or consent to be appointed as, auditor of an association if he is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until he has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(8) Notwithstanding subsection (7), a person who is otherwise qualified may accept an appointment or consent to be appointed as auditor of an association if he does not receive a reply to a request under subsection (7) within 15 days.

25.7(1) Except as otherwise provided in the regulations, an auditor of an association shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the members.

(2) Notwithstanding section 25.8, an auditor of an association may reasonably rely on the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the association.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

25.8 On the demand of the auditor of an association, the present or former directors, officers, employees and agents of the association and the former auditors of the association shall provide

- (a) information and explanations, and
- (b) access to records, documents, books, accounts and vouchers of the association

that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 25.7 and that the directors, officers, employees, agents or former auditors are reasonably able to furnish.

25.9 Any oral or written statement or report made under this Act by the auditor or a former auditor of an association has qualified privilege.

(4) *The following is added before section 26:*

25.91 Notwithstanding section 2(1) of the *Chartered Accountants Act*, section 2(1) of the *Certified General Accountants Act* and section 2(1) of the *Certified Management Accountants Act*, Federated Co-operatives Limited may, in respect of financial information of an association that is a member of Federated Co-operatives Limited, perform an audit or review within the meaning of those Acts.

(4) Federated Co-operatives Limited.

(5) *Section 70 is repealed and the following is substituted:*

70(1) The Lieutenant Governor in Council may make regulations

(a) for the purposes of section 25.42(1), respecting the circumstances, terms and conditions under which an association may resolve not to appoint an auditor;

(b) respecting the circumstances under which and the extent to which an auditor is relieved of his duty of examination under section 25.7.

(2) The Minister may make regulations

(a) prescribing the form and contents of annual returns;

(b) prescribing the date on or before which an annual return shall be sent to the Director;

(c) prescribing the form and contents of financial statements for the purpose of section 25;

(d) prescribing further information referred to in section 25(1)(d).

Employment Agencies Act

2 *The Employment Agencies Act is repealed.*

Commencement

3(1) *Section 1, except subsection (4), comes into force on January 1, 1989.*

(2) *Sections 1(4) and 2 come into force on Proclamation.*

(5) Section 70 presently reads:

70 The Minister may make regulations prescribing forms for the purposes of this Act.

Employment Agencies Act

2 This section will repeal chapter E-10 of the Revised Statutes of Alberta 1980.

Commencement

3 Coming into force.