

By-law change recommendations, Karma Co-op AGM, October 2010

Prepared by Howard Kaplan

This document consists of three parts:

1. A review of changes to the Co-operative Corporations Act that allow us to change our by-laws accordingly
2. A long list of proposed changes (“technical amendments”) to our by-laws, including but not limited to those authorized by changes to the Act, where these changes simply clarify the text of the by-laws without changing our current practice
3. A short list of proposed changes (“substantive amendments”) to our by-laws, one of which extends the time a director may serve on the Board (as requested at the 2009 AGM), the other of which clarifies when a director may miss Board meetings without losing eligibility to serve on the Board

The Board of Directors has approved circulating this document for member comments. It has not (yet) approved recommending these changes to the 2010 AGM for adoption.

Although this document often quotes from the existing by-laws, some readers may wish to consult a full copy of the by-laws. It can be found on our web site at this URL:

<http://www.karmacoop.org/bylaws/Karma-by-laws-October-2004-v1.pdf>

Changes to the Act

As part of the same package of legislation that enacted the HST, the Ontario Government recently amended the Co-operatives Corporation Act, the legislation that regulates how we finance and govern ourselves through meetings, the Board, member loans, etc. Most of the changes are not relevant to Karma as it is now constituted (one class of member-owners, with no formal role for suppliers or staff in the selection of directors); other changes explicitly authorize practices that we have already instituted. The changes are listed on the Internet at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2241&BillStagePrintId=4496&btnSubmit=go). Below, you will find the changes that I judge to be of interest to us, followed by my recommendation about what we do in response. In most cases, my recommendation is that we do nothing at this time.

Schedule F

Co-operative Corporations Act

1. Section 74 of the Co-operative Corporations Act is repealed and the following substituted:

Place of meetings ...

(3) If the by-laws of a co-operative, other than a non-profit housing co-operative, so provide, a meeting of the members of the co-operative may be held by telephonic or electronic means and a member who, through those means, votes at the meeting or establishes a communications link to the meeting is deemed for the purposes of this Act to be present at the meeting.

(4) A meeting held under subsection (3) is deemed to be held at the place where the head office of the co-operative is located.

(5) For the purposes of this section and section 76,

"telephonic or electronic means" means telephone calls or messages, facsimile messages, electronic mail, transmission of data or information through automated touch-tone telephone systems, transmission of data or information through computer networks, any other similar means or any other prescribed means.

Recommendation: We do not make any change at this time.

2. (1) Clause 75 (1) (b) of the Act is repealed and the following substituted:

(b) all questions proposed for the consideration of the members at a meeting of members are to be determined by the majority of the votes cast, and the chair presiding at the meeting, other than a chair chosen under clause (d.1), has a second or casting vote in case of an equality of votes;

Recommendation: This is not actually a change, except for the reference to a meeting chair who is not the co-op President. However, the unchanged introduction to Clause 75 says “in the absence of other provisions in that behalf in the articles or by-laws of the co-operative”. Article III, section 8 of our by-laws says “Unless otherwise provided, all questions arising at any meeting shall be decided by a majority of votes.” It’s not really clear, as matters now stand, whether the Co-op Act counts as an example of “otherwise provided” – the Act defers to the by-laws, while the by-laws defer to an unspecified “otherwise”. Since we do not want any member, even the President, to have more than one vote, we should clarify our by-laws. (Note that the amendment to the Act has brought this problem to our attention; the problem existed even in the un-amended Act.)

(2) Subsection 75 (1) of the Act is amended by adding the following clause:

(d.1) the president, if present at the meeting of members, may choose a non-member instead of himself or herself to be the chair presiding at the meeting;

Recommendation: We have a clause to this effect already, but it’s located in the section about the President, not in the section about general meetings. We do not need to change it.

3. (1) Subsection 76 (3) of the Act is amended by striking out "under its corporate seal".

Recommendation: The “seal” referred to here is an obsolete, brass instrument used to authenticate paper documents. There are two references to a corporate seal in our by-laws, one to our own and one to the seal of any corporate member; the first should be removed, and the second should be replaced by a reference to the secretary’s signature.

(2) Section 76 of the Act is amended by adding the following subsections:

(4) Subject to subsection (5), the members of a co-operative shall vote in person.

(5) The by-laws of a co-operative, other than a non-profit housing co-operative, may provide for voting by mail or by telephonic or electronic means.

Recommendation: Electronic or mail voting cannot be grafted onto our existing general meeting structure. Such voting requires careful consideration of who may put a matter to a vote, how we determine a quorum for such a vote, how we authenticate votes, etc. This may be of interest in the future for specific matters, but not as a substitute for the kind of general meeting we already have. We should do nothing about it at this time.

4. (1) Section 87 of the Act is amended by adding ...

(2) the by-laws of a co-operative ... may provide for the appointment or election of directors who are non-members ...

Recommendation: There is no obvious reason why we would want to do this, and therefore we should not.

5. Section 91 of the Act is amended by adding the following subsection:

Directors may be acclaimed

(2) Despite subsection (1) and subject to the by-laws, if the number of candidates for election as directors of a co-operative at a general meeting is the same or fewer than the number to be elected at that meeting, the chair may declare the candidates to have been elected by acclamation.

Recommendation: This is consistent with our current practice, but one reading of the Act suggests that it should be made explicit in the by-laws. We should clarify this in the by-laws.

Based on the changes to the Act outlined above and on the resolution passed at the last AGM, I have prepared two motions to change the by-laws. The first motion consists entirely of technical changes to clarify current practice, without changing that practice. The second motion consists of small, substantive changes, of which the first such change was requested by the members at the 2009 AGM.

Technical amendments

The following “technical amendment” motion contains changes to the text of the by-laws that confirm or authorize current practice without modifying that practice.

Moved, to amend the By-laws of Karma Co-operative as follows,

To remove from Section 1 of Article I the words “in the Municipality of Metropolitan Toronto”, so that the section will instead read as follows:

1. The head office of the Co-operative shall be located at the City of Toronto and at such place therein as the directors may from time to time determine.

Because there is no longer any requirement for a co-operative to have a corporate seal, to entirely delete Section 2 of Article I, which currently reads as follows:

2. The seal of the Co-operative shall have inscribed thereon the words "KARMA COOPERATIVE, INC.", and the seal impressed in the margin of these by-laws is hereby adopted as the seal of the Co-operative.

For clarity, in Section 3 of Article II, to twice replace the words “members of the household” with the words “members of the co-operative residing in the household”, so that the section will instead read as follows:

3. The Board of Directors may authorize the administration of memberships of individuals residing at a common address as a household membership, in which the voting and other democratic rights are retained by individuals but the economic rights to make use of the services of the Co-operative and the concomitant obligations are shared jointly and severally by the members of the co-operative residing in the household, and in which notices of meetings and other official documents are addressed in common to the members of the co-operative residing in the household.

Because the annual fee is now ordinarily divided into two parts collected separately, in Section 7 of Article II, to replace the words “the annual fee of the current fiscal year” with the words “any annual fee”, so that the section will instead read as follows:

7. Upon written notice, a member may withdraw from membership. A member who, without giving notice of an intention to return to active membership, is more than six months delinquent in paying any annual fee shall be deemed to have withdrawn from membership. Upon receipt of notice that a member has died, the member will be deemed to have resigned, and any monies ordinarily due to be repaid to a resigning member shall be paid instead to the estate of the deceased member.

Because general meetings will always be held outside of the co-op itself, in Section 1 of Article III, to replace the words “at the head office of the Co-operative in the month of October in each year or at such place and time as the directors may determine” with the words “in the month of October in each year at such place and time as the directors may determine”, so that the section will instead read as follows:

1. The annual meeting of the members for the election of Directors and the transaction of such other business as may properly be brought before an annual meeting of members shall be held in the month of October in each year at such place and time as the directors may determine, but not later than five months after the end of each fiscal year. The time period between consecutive annual meetings may not exceed 15 months.

In Section 2 of Article III, to add a comma after the word “Toronto”.

In Section 3 (a) of Article III, to insert a comma after the first occurrence of the word “Co-operative” but remove the comma after the second occurrence of the word “Co-operative”.

Because a corporate member may not have a corporate seal, in Section 7 of Article III, to replace the words “under its corporate seal” with the words “in a written document signed by its President or Secretary”, so that the section will instead read as follows:

7. No member shall have more than one vote at any meeting of the Co-operative, and voting by proxy shall not be permitted, except that a corporate member may appoint in a written document signed by its President or Secretary one of its officers or directors to attend and vote on its behalf at meetings of members.

To add to Section 8 of Article III the words “The Chair of the meeting does not have a second or casting vote in the case of a tie”, so that the section will read as follows:

8. Unless otherwise provided, all questions arising at any meeting shall be decided by a majority of votes. The Chair of the meeting does not have a second or casting vote in the case of a tie.

In Section 11 of Article III, to add a comma after the word “thereafter”.

In Section 4a of Article IV, to spell the role described there as “Chairperson of the Nominating Committee”, replacing the previous spelling entirely in lower case.

For clarity, to divide Section 4(f) of Article IV into three separate sections, rephrasing the second of those three concerning acclamation of candidates when no election is required, so that the three sections will read as follows:

- (f) The Nominating Chairperson shall present the nominations received by him or her in advance of the meeting, and in addition the Chairperson of elections shall call for nominations from the floor. Only those nominations from the floor which are accepted in person or for which written acceptance is submitted shall be accepted.
- (g) The chairperson shall, when all nominations have been completed, declare nominations to be closed. Whenever, after the close of nominations, the number of candidates nominated is not larger than the number of Directors to be elected, the Chairperson shall declare those candidates to be elected without requiring any balloting.
- (h) At any annual meeting at which a by-election for one-year terms is to be held, the by-election shall follow the election of Directors to full two-year terms. Nominations for the by-election shall not be closed until after the election of Directors to full terms has been completed, and any unsuccessful candidate in the said election may be nominated for the by-election.

In Section 5 of Article IV, to replace the first occurrence of the word “ballot” with the words “secret ballot”.

Because communication methods have changed, in Section 9 of Article IV, to update the location of Directors' meetings, the list of communication methods used to call such meetings, and the manner of scheduling multiple meetings, so that the section reads as follows:

9. Meetings of Directors may be held at such place as the directors may from time to time determine. A meeting of Directors may be convened by the President or Vice-President or any three Directors at any time, and the Secretary by direction of the President or Vice-President or any three Directors shall convene a meeting of Directors. Notice of such meeting shall be delivered personally, by telephone, or by electronic mail to each director not less than two days prior to the day for which the meeting is scheduled. Separate notice need not be provided for each individual meeting when a schedule of meetings has been provided to each Director. Meetings of the Board of Directors may be held at any time without formal notice if all the directors are present or those absent have waived notice or have signified their consent in writing to the meeting being held in their absence. Notice of any meeting or any irregularity in any meeting or notice thereof may be waived by a director.

Because it is not clear whether the Act provides for attendance at a Board meeting by telephone only if specifically authorized in the by-laws or if not specifically forbidden in the by-laws, to specifically authorize it, by adding a new Section 10 of Article IV and renumbering the following sections, with the new section reading as follows:

10. Where all the Directors participating in a meeting of the Board of Directors have consented thereto, any Director may participate in the meeting by means of conference, telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a Director participating in a meeting pursuant to this subsection shall be deemed to be attending that meeting.

For clarity, in the current Section 10 of Article IV, to specify that it is a majority of Director positions, not of Directors in office, that constitutes a quorum, so that the section reads as follows.

10. A majority of the Director positions authorized in these by-laws, whether or not each position is filled, shall constitute a quorum at any meeting of the Board of Directors.

To clarify the voting authority of the President in the current Section 11 of Article IV, so that the section reads as follows:

11. Questions arising at any meeting of the Directors shall be decided by a majority of votes. Each member of the Board is entitled to one vote. The Chair of the meeting is not required to abstain from voting, nor does the Chair have a second or casting vote in the case of a tied vote.

To reorganize the material currently in Sections 1 and 2 of Article V, putting material about appointment and removal into the same section, with renumeration in a section separate from both, so that the sections read as follows:

1. The Board of Directors shall annually or oftener as may be required, elect a President, a Vice-President, a Secretary, a Treasurer (and if deemed advisable, an Assistant Secretary and an Assistant Treasurer). None of the said officers except the President and Vice-President need be a member of the Board of Directors; those two offices shall be deemed to be vacant whenever the office-holders cease to be eligible to hold office.

Any two of the aforesaid offices may be held by the same person, except those of President and Vice-President. A vote of the majority of the Board of Directors shall be necessary for the election of the said officers. The board of Directors may from time to time elect or appoint such other officers and agents as it shall deem necessary. All officers shall have such authority and shall perform such duties as from time to time shall be prescribed by the Board. All officers shall be subject to removal by resolution of the Board of Directors at any time with or without cause provided that a majority of the Board shall vote in favour thereof.

Remuneration of Officers

2. The remuneration, if any, of all officers elected or appointed by the Board shall be determined from time to time by resolution of the Board of Directors. The fact that any officer or employee is a Director or member of the Co-operative shall not disqualify him from receiving such remuneration as may be determined.

To remove from Section 6 of Article IV the words “and seal”, and to replace the words “membership fee” with the words “membership loan and fees”, so that the section reads as follows:

6. The Secretary shall issue or cause to be issued notices for all meetings of the Board of Directors and members when directed to do so; have charge of the minute books of the Co-operative; sign with the President or other signing officer or officers of the Co-operative such instruments as require his or her signature and shall perform such other duties as the terms of his engagement call for or the Board of Directors may from time to time properly require of him or her.

The Secretary or some other officer specially charged with the duty shall keep or cause to be kept a book or books or other suitable records wherein shall be kept recorded:

- (a) a copy of the Letters Patent and of any Supplementary Letters Patent issued to the Co-operative and the by-laws of the Co-operative duly authenticated;
- (b) the names, alphabetically arranged, of all persons who are or have been members of the Co-operative;
- (c) the post office address of every such person, while such member;
- (d) the names, post office addresses and callings of all persons who are or have been directors of the Co-operative, with the date at which each person became or ceased to be such a director;
- (e) the amounts paid and remaining unpaid respectively on the membership loan and fees of each member.

In Section 7 of Article IV, to add a comma after the words “may require”.

Because it refers to a duty not required by the Co-operative Corporations Act, to entirely delete Section 2 of Article XIII, which currently reads as follows:

2. It shall be the duty of the Secretary to file a copy of these by-laws and of every subsequent by-law of the Co-operative and every amendment thereto certified by the President and Secretary with the seal of the Co-operative fixed, in the office of the Provincial Secretary within 30 days of confirmation thereof as required by the Co-operative Corporation Act.

In all places not otherwise mentioned, to capitalize the spelling of the words Board, Directors(s), Chair (when used as a noun), and General Manager.

Substantive amendments

The following “substantive amendment” motion contains changes to current practice.

Moved, to amend the By-laws of Karma Co-operative as follows,

In Section 3b of Article IV, to replace the word “four” with the word “six”, so that the section will read as follows:

- (b) Any person who has served as a Director for any part of each of six consecutive Board service years shall not be eligible to serve as a Director during any part of the fifth consecutive year. A "Board service year" is the time between successive commencements of term. No member may be elected to serve as a Director unless he or she is eligible to complete the term for which he or she is elected.

This change, if adopted, will allow for greater continuity among the membership of the Board. Either this change or a change to make the Board term three years instead of two was requested by the Annual General Meeting in October 2009. The current Board considers this change, but not a change in length of Board term, to be practical and desirable.

To add a new Section 9 of Article IV, renumbering the subsequent sections accordingly:

Leave to be absent from directors' meetings

- 9. The Directors shall grant leave to a Director to be absent from meetings of the Board only for the purpose of conducting other business on behalf of the co-operative or as compensation for the time spent conducting such other business.

This change, if adopted, will clarify the difference between a Director simply informing the Board of a planned absence from a meeting (as typically expressed in the minutes as the Director's “regrets”) and a Director having the leave of the Board to be absent. The difference is important because the by-laws specify that a Director ceases to be eligible to continue as a Director after missing three consecutive regularly-scheduled meetings of the Board without leave of the Board.