

CoopZone Tele-learning session on Multi-stakeholder (M-S) Co-ops, 10 June 2014

1) Presentation on the topic by each of : Martin Van Den Borre, Réjean Laflamme, Russ Christianson (also facilitator), Cheryl Krostewitz, Rick Juliusson, Marty Frost, and Brian Iler. Notes by Hazel Corcoran.

a) Martin Van Den Borre, Quebec

In Quebec, we call them “solidarity co-ops”, including worker, consumer and supporting (solidarity) members. Now, it is possible to incorporate such a co-op with only 2 of the 3 types of members, not necessarily all 3 types.

There are 8 - 9 different ways to organize a solidarity co-op. There are often challenges with governance. Since this was added into the Quebec Co-op Act, they’ve generally accounted for 2/3rds of co-op start-ups in Quebec, including the majority of health co-ops. Recently we’ve seen it expand into cafes, and many different other fields.

Many of these would previously have been worker co-ops. It has enabled co-ops to start where the co-op resembles a worker co-op, called a “solidarity co-ops with predominance of workers.” There is an outer ring of support members who bring capital and other supports, and typically not consumer members. In co-ops with a lot of consumer members, it’s a challenge because the Quebec Act requires that if there is a member class for consumers, 50% or more of business must be done with consumer members.

There is another challenge with solidarity co-ops: the protection of the rights of workers within the co-op. In those which may have very large memberships (e.g., health co-ops), we’ve often seen a very small number of workers, and thousands of consumer members. Workers may have guaranteed board seats but have no protection in the members’ meetings: one member-one vote. They have sought an approach with double majorities, but this has been rejected by the government as not consistent with the co-op principles.

Another issue: board members often seek to represent not the best interests of the whole co-op but only of their own member class. Often we see people over complicating the structure of the co-op.

Q: are solidarity co-ops exempt from securities regulations in Quebec?

Martin: yes, in selling shares to a member one need not comply with securities regulations.

b) Réjean Laflamme, re: Quebec & Ontario

I will give an example. It’s a food co-op in development now. Most of the members are consumers; there are 10 support members; at one point had 1 worker member on the board but no longer. To protect the rights of workers, one can include provisions in the articles of incorporation, but this could be changed by future members.

Réjean thought that there was an even higher percentage of start-ups which are solidarity co-

ops.

I have only one experience in Ontario, and it did not work. It was a group of immigrants doing training in Information Technology. The Financial Services Commission of Ontario (FSCO) would never agree to the approach chosen by the group. They were forced to go with a consumer co-op, which made no sense but was the only choice. This was 3 years ago.

In Ontario, if anything can be done to make this easier for multi-stakeholder (M-S) co-ops to incorporate, that would be helpful.

Brian Iler: a way to deal with wishing to entrench something (e.g. worker protection) is to put provisions in by-laws which the group wants, and also adding that the by-laws can only be changed with unanimity of the members. Further, at FSCO there is now a whole new set of staff who are much more aligned with co-op values; it's much easier to deal with them than it was 3 years ago. Offering statements are now going through reasonably well.

c) Russ Christianson, Ontario

I was fortunate to go to Mondragon with Greg McLeod in 1987. Eroski was an inspiration in terms of thinking about both worker & consumer interests. The Italian social co-ops are also an inspiration.

In 1988 when I managed the Ontario Natural Food Co-op, we looked into whether or not the workers wished to come in as members. The workers at that time did not want to take the risk.

The Ont. legislation was originally a barrier in terms of development of M-S co-ops. It required that each stakeholder group had to be represented at a board meeting for there to be quorum. If there was a conflict, any of the stakeholder groups could boycott the meeting & no business would get done. In 2009 this was amended. Since then, there has been a renaissance in local, organic food co-ops. There are about 70 in development in Ont. over the last few years, and they are now participating in the Ont. Natural Food Co-op. A number are incorporated as M-S co-ops. Russ has been involved in helping nine of them to start. Some examples:

1) Local Organic Food Team: brought together 1) Old-order Mennonite farmers, 2) a group of non-Mennonite organic farmers & 3) workers involved in distribution. It was a food box program. Adding to the complications were the legal structure (which is generally not recognized by Old-order Mennonites) and the cross-cultural challenges. In the end, it turned into two different co-ops: 1) Mennonite producers (which is still operating); 2) a worker co-op which de-mutualized.

2) Buy the Bushel Community Co-op: This was a succession from a private business that was organized as a M-S co-op with consumers, producers & workers. Started out as a share co-op, then within two years changed to a non-share co-op to gain more access to community resources, as not-for-profit.

Trying to get producers to participate actively in producer – consumer co-ops is a challenge. It speaks to the importance of member participation.

3) Another model which has been replicated in Canada, but not that successfully, is the Oklahoma model. It's a website-based or virtual "farmers' market". Farmers put items on line at the prices they want, and consumers order. There is a pick-up point, or in some cases orders are delivered. It is a "free market" approach and not a supply management approach (where there are agreements on how to share the market between producers).

Eastern Ont. Local Food Co-op: were only in business for a couple of years.

The Niagara Local Food Co-op: may not survive.

Ottawa Valley Food Co-op: doing ok, and needs to grow. They are investigating a regional food hub.

A major challenge is scaling up.

When the food co-ops are consumer co-ops, they tend to use the USA model, with a minimum of 5,000 square feet; so are scaled up from the beginning.

4) There was a youth employment M-S co-op in Barrie, Ont. This was a non-share incorporation in the late 90's. Never really got off the ground.

5) Beach School Co-op (Toronto): staff members, parent members & student members (up to grade 8). Students create the curriculum, like the Italian Reggio Emilia model (very inspiring).

There is kind of ideal for these M-S co-ops: a beautiful concept in terms of democracy, participation, and fairness. However, from a reality point of view, the complexity is a drawback. It's challenging to get real participation from different stakeholder groups. There are inherent conflicts among groups. It means that it's important to have very good governance.

The Quebec study: Producer & consumer co-ops have double the survival rates of conventional businesses. 76% survive 5 years; it's 67 % of M-S co-ops.

d) Cheryl Krostewitz, Manitoba

In MB, the legislation has only allowed M-S co-ops for 3 years.

In 2008, there was a collaboration by the government, MCA & CDEM. They did research, identified some areas to work on:

- 1) Create a more supportive environment for the establishment of co-ops; part of this meant having good legislative framework including for M-S co-ops. This was a great process, very collaborative. Worked with the Province in a consultation. Various sectors were invited to look at any barriers. The Province was really willing to work with us, to listen and took our feedback.
- 2) Provide better infrastructure to co-operatives
- 3) Create better awareness and understanding of co-operatives.

Since the M-S co-op legislation started in 2011, 24 co-ops have been started, of which 10 are M-S co-ops and 14 are other types of co-ops.

In terms of challenges, many groups are in a hurry to jump on the M-S co-op bandwagon. It's received a lot of press and attention. Yet the Act has a lot of flexibility to choose other types of co-ops.

The Act is not very prescriptive. As long as there are 2 classes, it's possible to incorporate a M-S co-op; classes can be determined by the co-op. Each stakeholder group must have the right to have at least one member on the board. Many issues must be decided: how directors are elected, if there are stakeholder veto rights, etc.

The registrar has been a bit cautious. There are model bylaws available for other types of co-ops, but not for M-S co-ops. They are all different. It's often frustrating for groups.

It's a better model for raising capital. In MB, they must do an investment offering statement any time more than \$1000 is raised. It's possible to pursue member loans more easily in a M-S co-op than in, e.g., a housing co-op. It's easier to bring in expertise to the board.

Brian: re: cautious administrators: when they wished to set up a worker co-op for Big Carrot, the province refused to incorporate it because it was providing employment, rather than services to members. So that's another example. Recent round of Ont. legislative amendments allow up to 20% of the board to be made up of non-members, which is another way to bring in expertise.

e) Rick Juliusson, BC

Most of the negatives I see are around complexity, and the vision versus the reality. For example, OUR Ecovillage was set up as a for-profit co-op with 6 different classes of members. However, recognizing that the way they have evolved is different than that original vision, they recently changed the bylaws & became a community services co-op. They also realized that only 2 of the 6 member classes had been populated; but in that case decided to leave the classes in, since they were already there, as a placeholder for future possible changes. Another issue is the fear of being taken over: one group could become dominant. We try to handle this with unalterable provisions in by-laws.

But there are also advantages:

- 1) You can enshrine control with one group of the membership. E.g., I'm working with a new elder care co-op. The seniors wish to have dominance; 75% of the board have to be senior members. They felt that this gives them the level of control they want.
- 2) Allows setting up fee structures which let different classes pay more & have more control. E.g., in an artists co-op, those who need a gallery may need to pay more to get and use a gallery. However, there are lower fees & less control for performing artists & youth artists, and

yet another set of fees and responsibilities for patrons and general supporters.

3) The major advantage: Having different perspectives at the table is really valuable. If we restricted the seniors' co-op to just seniors who wish to receive home care, they could have a very different (and potentially misinformed) perspective on what to expect and what they'll get. Having the care providers at the table brings in a reality check. Similarly with producer / consumer co-ops. Major grocery stores have been able to come in as members.

f) Marty Frost, BC

In BC, we first got the right to create M-S co-ops in 2001 – by creating different membership classes in the same co-op. However, we began to experiment even before this with M-S-like provisions. The change in the Act made it much easier to differentiate varying different member classes. Since the legislative change, most groups start out wanting to create a M-S co-op. I don't discourage them, but always ask the group how they wish to differentiate the different member classes. Is it really necessary to bring all the struggles to the board table? There can be a lot of business decisions made at the board table, which isn't appropriate & can be untenable. So when we start to talk about terms & conditions of membership, people often start to think of a different model. If a co-op really wants to have different groups with different terms & conditions, then it's the time to have a M-S co-op. So if you wish to guarantee that a group will have 3 seats on the board, create a M-S co-op. Sometimes the major differentiator is the differences in share capital. There is a heavy administrative burden in a M-S co-op. The last differentiator is in allocation of dividends.

There are definitely challenges in the model: including that directors have a hard time seeing they represent the whole co-op & not their member class.

There are also strengths.

In BC, it's possible to bring in outside capital; also to bring in outside expertise. It does have its place. We have the freedom in M-S co-ops to describe different rights & responsibilities in M-S co-ops. However, often members can find other ways to do this.

Russ : Mary Lou Morgan, the founding President of the Big Carrot, feels that keeping it simple is important and multi-stakeholder co-ops add complications.

Lynne: can you have different classes of members without calling it a M-S co-ops? Marty: our Co-op Act allows different classes of members, but doesn't call them "M-S co-ops." Lynne: the Salt Spring Co-op was initiated by the workers. They incorporated with workers, producers & consumers. A major issue was price, leading to conflict. Marty: this co-op ceased to exist, and a lot of it was around this issue. It show that it can be damaging to bring these kinds of issues to the board table.

g) **Brian Iler, Legal Network member, Ontario.** Notes provided in writing by Brian.

Multi-stakeholder co-operatives

Most co-operatives' memberships all have the same common interest – obtaining the products or services provided by the co-operative that they need or want. Even though there might be disagreement amongst members as to how the co-operative is managed, there is sufficient commonality of interest that members, by and large, agree to allow majority votes – at the board and at the membership level – to prevail.

The multi-stakeholder concept recognizes that where different communities of interest exists within a co-operative, the simple majority vote process – or a consensus-based process – is less likely to be acceptable, and some protections to ensure each community's interest is recognized and considered are inserted. In some ways, the movement for proportional voting in elections comes from a similar source – a simple majority vote does not always ensure that all voices are heard.

Sometimes the community of interest is geographic: Gay Lea, a dairy farmers' co-op in Ontario uses geographic zones, holds members meeting in each zone to elect delegates, and delegates' meetings elect the Board of Directors.

To ensure that co-op staff have a voice in the activities of the Co-operative Housing Federation of Toronto, one seat on its board is reserved for an individual selected by their staff Association.

A community health centre with the mission to serve 3 different ethnic communities opted to provide that each community would elect one third of the Board of Directors.

In the private sector, private business corporations in which there is more than one shareholder, will normally have a shareholders' agreement which addresses governance and decision-making. A minority shareholder without a shareholders' agreement is entirely vulnerable to any adverse decision made by the majority shareholder.

The wind turbine at Exhibition Place in downtown Toronto is a joint venture – another way of providing for ownership by two very different stakeholders – Toronto Hydro and WindShare co-operative – using a joint venture agreement which looks very much like a shareholders' agreement, Toronto Hydro and WindShare have joint ownership and joint decision-making through a management committee comprised of two representatives of each party and a quorum required of three.

So multi-stakeholder co-operatives are one way among many for parties with different economic or social interests to work together for a common goal.

There are some common features to all of these relationships:

- a shared objective
- differing economic or social interests
- a formal commitment to a process to resolve those differing economic or social interests in light of the shared objective

Cooperatives tend to emphasize the democratic approach to decision-making: if the process is fair, [and fair in a co-operative context does mean one-member one-vote], and then the decision will be fair.

In business corporations, sharing of decision-making power occurs often only on major decisions – sale, financing, etc. The majority shareholder will often retain total control of day-to-day decision-making.

Even in a co-operative environment, the one member one-vote rule will not suffice where there is more than one community of interest.

Recognizing that, in Ontario, the Co-operative Corporations Act was amended in 1994 to provide for a multi-stakeholder co-operative:

“multi-stakeholder co-operative” means a co-operative,

- (a) the articles of which provide that it is a multi-stakeholder co-operative for the purposes of this Act,
- (b) the articles of which provide for the division of its members into two or more stakeholder groups,
- (c) the articles of which set out the method of determining the number of directors each stakeholder group may elect, and
- (d) for which the requirements set out in subsection 1 (1.3) are satisfied

(1.3) For the purposes of the definition of “multi-stakeholder co-operative”, the requirements of this subsection are satisfied if,

- (a) each member of the co-operative belongs to a stakeholder group; and
- (b) no member of a co-operative belongs to more than one stakeholder group at the same time.

(1.4) For a multi-stakeholder co-operative, any reference in this Act to a special resolution means a resolution that is not effective until it is,

- (a) passed by the directors of a multi-stakeholder co-operative; and
- (b) confirmed, with or without variation, by at least two-thirds, or such greater proportion as the articles provide, of the votes cast by the members of each stakeholder group at,
 - (i) a general meeting of the members of the co-operative duly called for that purpose, or
 - (ii) separate meetings of each of the stakeholder groups duly called for that purpose. 1994, c. 17, s. 1 (2).

Determining directors

(1.5) For a multi-stakeholder co-operative, the value invested in the co-operative by the members of any stakeholder group shall not be used as the sole basis for determining the number of directors that may be elected by that stakeholder group.

s. 61(2.1) Despite subsection (2), the by-laws governing admission of members of a multi-stakeholder co-operative may provide that no person shall become a member of the co-

operative until the person's application for membership has been approved by the directors elected by the appropriate stakeholder group and the person has complied fully with the by-laws governing admission of members.

75.1 Meetings of the members of a stakeholder group of a multi-stakeholder co-operative shall be called as nearly as possible in the same manner as meetings of members generally

95.1 A meeting of the directors elected by a stakeholder group of a multi-stakeholder co-operative shall be called as nearly as possible in the same manner as meetings of directors generally

104.1 Despite section 104, for a multi-stakeholder co-operative, the members of a stakeholder group may, by resolution passed by a majority of the votes of the stakeholder group cast at a meeting of the stakeholder group duly called for that purpose, remove any director elected by the stakeholder group before the expiration of his or her term of office and may, by a majority of the votes cast at the meeting, elect any qualified person in his or her stead for the remainder of the term.

QUORUM – MULTI-STAKEHOLDER CO-OPERATIVES

There was a major problem that resulted in most lawyers recommending against use of the multi-stakeholder co-operative in Ontario: at least one director from each stakeholder group had to be present at a directors meeting.

If one stakeholder group was sufficiently upset with the governance of the co-operative, and its directors boycotted the directors' meeting, then no business could be done and the co-operative is unable to operate.

The sector asked for this to be amended:

The requirement for quorum at directors' meetings in a multi-stakeholder co-operative to include one director from each stakeholder group should be deleted: see s. 93.1. Experience has shown that the possibility of a stalemate with this provision is sufficient to dissuade use of the stakeholder co-op model.

As a result of this request, this was repealed in 2009.

2) Discussion and questions

Lynne: re: the incorporation of the immigrant co-op where they sought to provide training & on-going work for new immigrants: The problem there was said to be FSCO not agreeing to the by-laws. Was the issue primarily FSCO, or something else? Réjean: it was primarily FSCO which did not allow it; FSCO suggested they it become a consumer co-op. This was not workable so the group disbanded. This might go better if it were being done now.

Réjean: in 1990, I was chair of our CDR & we organized a tour to Mondragon. Based on Eroski, we suggested that they look at the model of solidarity co-ops. This is what inspired the creation of the model in Quebec; and then it has spread to other parts of the country.

Peter H: in Atlantic Canada, there is no provision for M-S co-ops. It's possible in by-laws to create different membership classes, reflected in the composition of the board of directors. However in membership meetings, you always have one member one vote. It's seen that there

is a legislative barrier. People who've really wanted to do it with different classes of membership have done it under the federal Act, if functioning in more than one province.

Eric: In NB, the Act is being revised and this may change. The Act is old. The debate they are having: how do workers continue to have control within a M-S co-op with investment shareholders? My question is: how do you keep the capital from controlling members? Is this only through the board?

In BC: The approach in BC would be to give the workers a majority of the board of directors. Re: certain decisions, the investor members would want to have some sort of veto especially if the decision affects the investments themselves. Otherwise the investors often don't want to be involved in the governance.

In Ont.: People who invest with a view to make money are always difficult in a co-op: hard to attract, hard to manage & hard to get rid of. If they're there, you need to manage it. Sometimes it's possible to take in investors without giving away control.

In MB: investors do not have specific rights unless the co-op decides to give them that. They had discussed being able to bring investors in so they could have special meetings for some issues. The majority of the board should always be represented by the class which the co-op most impacts. We have the ability to do this with the amount of flexibility we have. The other way to always guarantee that a class will be represented is to put in a veto for a class, or state that each class has to have 2/3rds majority.

In Quebec: there is no such thing as investor members.

In federal or other more flexible jurisdictions: in member meetings one can have different percentages of the votes allocated to different classes if there is a delegate structure.

Martin: there can be one member with a large amount of influence. The Act does allow for participating privilege shares, which doesn't give a vote or a seat on the board. It's not often used, sometimes in the ambulance co-ops with union funds participating in the capital structure.

Hazel : it's also possible to set up differing control within a delegate structure approach.

Brian: one reason we have such a good relationship with government is that we meet with the regulators 3 times per year. It's been very productive. It's fairly unique in Ontario in terms of relationships with stakeholders. Quebec may have something similar.

Hazel : there is a manual on this topic available on line: Solidarity as a Business Model, by Margaret Lund, available here: <http://community-wealth.org/content/solidarity-business-model-multi-stakeholder-cooperatives-manual> .

Russ thanked all of the presenters and participants.