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**A History of
Saskatchewan Co-operative Law
1900–1960**

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DON MULLORD
CHRISTOPHER S. AXWORTHY
DAVID LISTON

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CENTRE FOR THE STUDY OF CO-OPERATIVES



UNIVERSITY OF
SASKATCHEWAN

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Saskatchewan Co-operative Law
1900–1960**

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Centre for the Study of Co-operatives
University of Saskatchewan

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A HISTORY OF SASKATCHEWAN CO-OPERATIVE LAW - 1900 TO 1960
BY DONALD MULLORD, CHRISTOPHER S. AXWORTHY AND DAVID LISTON*

1. INTRODUCTION

This paper traces the history of Co-operative Law in Saskatchewan, from the time before Saskatchewan was a province to 1960. In doing so, it attempts to give the tenor of the discussions among co-operators in Saskatchewan about what the applicable statutes should prescribe, and to describe the concerns the provincial government had when it considered the enactment of amendments. Studying the case of Saskatchewan co-operative law is instructive because of the pre-eminence, outside of Québec, of Saskatchewan as a "co-operative province". In this capacity, it gradually became influential in setting the course of legislation for other provinces.

The history of Saskatchewan law begins with the English model that was transported to Canada prior to Saskatchewan's provincehood. It should be remembered that the U.K. co-operative model was predicated on consumer co-operatives and that adaptations were therefore necessary to accommodate a movement more oriented to producer co-operatives.

2. EARLY ENGLISH STATUTES

When England's first successful co-operative society, the Rochdale Equitable Pioneers Society, was organised in 1844, there was no suitable legislation by which such a society could incorporate. The Joint Stock Companies Act had been passed in 1844,¹ enabling joint stock businesses with 25 members or more to be granted incorporation by the Board of Trade without recourse to a special private Act of Parliament, as had previously been the case. However, the 1844 Act did not grant limited liability and the procedure required was too expensive for a small co-operative society.²

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¹ Joint Stock Companies Act, 7 & 8 Vict. c.110.

² G.D.H. Cole, A Century of Co-operation, Allen & Unwin, 1944, at. 116.

The Rochdale Pioneers applied for enrolment under the Friendly Societies Acts of 1834 and 1842.³ The Friendly Societies Act had been first passed by Parliament in 1793 to encourage working people to form charitable societies to benefit the sick and infirm, and thus to reduce public expenditures.⁴ The preamble to the Act stated:

Whereas the protection and encouragement of friendly societies in this kingdom, for raising, by voluntary subscription of the members thereof, separate funds for the mutual relief of the said members in sickness, old age, and infirmity, is likely to be attended with beneficial effects, by promoting the happiness of individuals, and at the same time diminishing the public burdens; ...⁵

The Act required that the societies be organized democratically. The members were to assemble from time to time to "constitute such proper and wholesome rules, orders and regulations ..." for the government of the society.⁶ These rules were to be submitted to the Justices at Quarter Sessions for approval,⁷ and once approved, they could only be altered by the consent of three-quarters of the members at a general meeting, where notice of the amendment to the rules had been given at two prior general meetings.⁸ The 1793 Act also allowed the society's rules to provide for the resolution of disputes between the society and its members by arbitration.⁹ This provision was continued in the later Industrial and Provident Societies Act. The 1793 Act restricted the societies to charitable activities, but the Act was amended frequently in the following years, and in 1834 the scope of the Act was broadened to allow Friendly Societies to be organized "for any purpose which is not illegal."¹⁰ This phrase apparently enabled trading societies to be registered under the Act, but the general wording created uncertainty as to which activities were permitted. In 1846, as a result of lobbying

³ Id., at 118.

⁴ Friendly Societies Act, 33 Geo. 3, c. 54.

⁵ Id., preamble.

⁶ Id.

⁷ Id., s. 2.

⁸ Id., s. 3.

⁹ Id., s. 16.

¹⁰ Amendment to Friendly Societies Act, 4 & 5 Will. 4, c. 40.

by the Rochdale Pioneers and influential co-operative sympathizers, the Friendly Societies Act was amended to include the following "frugal investment" clause:

Be it enacted ... that a society may be established ... 4. For the frugal investment of the savings of the members for better enabling them to purchase food, firing, clothes, or other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children or kindred, with or without the assistance of charitable donations: Provided always, that the shares in any such investment society shall not be transferable, and that the investment of each member shall accumulate or be employed for the sole benefit of the member... ."¹¹

Though pleased with this amendment, co-operators viewed the restrictions that registration under the Friendly Societies Act imposed on trading societies' activities as unnecessary. For example, the societies could hold personal property only through non-member trustees and they could not own land; reserves could only be invested with the National Debt Commissions and there was no provision for federation of the societies.¹² Dissatisfied with their legal status, the societies lobbied for further changes to the Act; this led, in 1852, to the first statute specifically drafted to provide for producer and consumer co-operation - The Industrial and Provident Societies Act.¹³

A. The Industrial and Provident Societies Act, 1852

The title of the Act, which is still used today, reflects the belief that the working men's trading societies would serve a charitable purpose. The margin note to section 1 reads "Societies of working men may be established for attaining the objects of Friendly Societies Acts by means of joint trade."¹⁴ Trading surpluses were to be used for "such provident purposes ... as shall be from time to time authorized by the laws in force with respect to Friendly Societies."¹⁵ Societies would continue to be regulated by the Registrar of Friendly Societies,¹⁶ and by section 7 of the Act, "all the provisions of the laws

¹¹ Amendment to Friendly Societies Act, 9 & 10 Vict., c. 27.

¹² Supra, note 3.

¹³ Industrial and Provident Societies Act, 15 & 16 Vict., c. 31.

¹⁴ Id., s. 1.

¹⁵ Id., s. 2.

¹⁶ Id., s. 8.

relating to Friendly Societies shall apply to every Society to be constituted under this Act."¹⁷

Section 1 of the 1852 Act, adopted into early Canadian co-operative statutes, outlines the purposes for which societies could be organized:

1. It shall be lawful for any number of persons to establish a society under the provisions of this and the said recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorised by the laws in force with respect to Friendly Societies, or by this Act, by carrying on or exercising in common any labour, trade, or handicraft, or several labours, trades or handicrafts, except the working of mines, minerals or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; ...¹⁸

The section indicates that co-operative societies were not limited to retail trading and that worker co-operatives of tradesmen were also contemplated. Like the Friendly Societies, these co-operatives were to raise capital through voluntary subscription, and it has been suggested that worker co-operatives were not as successful in England as retail consumer co-operatives because of the difficulty of raising the necessary capital from the workers themselves.¹⁹

Section 2 of the Act listed matters for which the Rules of the society should provide. Interest on loans was not to exceed 6 per cent, and the value of loans was not to exceed four times the amount of the paid-up subscriptions. Dividends on subscriptions were not to exceed 5 per cent (thus providing a different interest rate for loan capital than member capital), and no dividends were to be paid out of the society's capital. Any surplus was to be used, firstly to repay loans, and then either for increasing capital, for provident purposes under the Friendly Societies Act, or for a patronage refund. The Rules were also to provide for the appointment of managers and other officers, the making of contracts, procedures for withdrawal of members and the

¹⁷ Id., s. 7.

¹⁸ Id., s. 1.

¹⁹ See generally the criticisms of Sidney and Beatrice Webb, discussed in R. Oakeshott, The Case for Worker Co-ops, Routledge & Kegan Paul, London, 1978, at 31-41; J. Thornely, Workers' Co-operatives: Jobs And Dreams, Heinemann, London, 1981, at 26-29.

arbitration of disputes, and the method of dissolution of the society.²⁰ The Act did not provide a procedure for adopting these rules, but it is probable that this was not considered necessary since the Friendly Societies Acts provided for democratic control by the members or a committee of members.

Section 3 stated that members' interest was not transferable.²¹ This was an important restriction, since it prevented control of the societies from passing into the hands of persons who were not the societies' patrons.

Section 9 of the Act limited a member's interest member to one hundred pounds.²² Section 11 stated that the liability of members was unlimited.²³ This was a significant deterrent to working-class investors, but it could be circumvented to some degree by vesting property absolutely in the hands of trustees.²⁴ It is not surprising, however, that limited liability was withheld from the co-operative societies in 1852, since it was not extended to companies until 1855. In that year Parliament enacted the Joint Stock Companies Act,²⁵ which for the first time limited the liability of the shareholders to the amount unpaid on their shares.²⁶ This Act was the model for company legislation in England and Canada for over a hundred years.

The Industrial and Provident Societies Act was extensively revised in 1862²⁷ to include several of the provisions made for joint stock companies in the 1855 Act. For example, the 1855 Act provided that the minimum number of persons that could form a limited liability company was seven and that the association could be formed "for any lawful purpose."²⁸ Similarly, the 1862 Act required a minimum of seven persons to form a society, and stated that societies could be formed for any purpose permitted by law

²⁰ Supra, note 13, s. 2.

²¹ Id., s. 3.

²² Id., s. 9.

²³ Id., s. 11.

²⁴ Supra, note 2, at 120.

²⁵ Joint Stock Companies Act, 19 & 20 Vict., c. 47.

²⁶ Id., s. 61.

²⁷ 25 & 26 Vict., c. 86.

²⁸ Supra, note 25, s. 3.

except mining, quarrying and banking.²⁹ Both Acts limited shareholders' liability to the value of their shares,³⁰ but in consideration of that privilege, both societies and companies were required to have a registered office to which notices and communications could be addressed,³¹ and to paint or affix an easily legible sign in a conspicuous position on every office or place of business.³² Stiff penalties for non-compliance were included in both Acts.³³ The 1855 Act prohibited a company from registering under a name identical to that of a subsisting company, or so nearly resembling such a name as to be "calculated to deceive."³⁴ This provision was broadened in the 1862 Act to prohibit names that were "likely to deceive".³⁵ The Friendly Societies Acts, previously applicable to co-operative societies in toto, were made applicable only to exemption from stamp duties and income tax, settlement of disputes by arbitration or justices, compensation of members unjustly excluded, the power of the courts in the case of fraud, and the jurisdiction of the Registrar of Friendly Societies.³⁶ Comprehensive provisions in the 1855 Act for winding up companies were made applicable to societies.³⁷

The 1862 Act did not follow the 1855 Joint Stock Companies Act in providing for general and special meetings of shareholders or for a comprehensive schedule of regulations for managing the company. The 1862 Industrial and Provident Societies Act was less precise in its requirements. The Rules of a society were to be registered with the Registrar of Friendly Societies,³⁸ and were to be available to any person on payment of a sum not exceeding one shilling.³⁹ The Act included a schedule of matters for which

²⁹ Supra, note 27, s. 3.

³⁰ Supra, note 25, s. 28; supra, note 27, s. 20.

³¹ Supra, note 25, s. 30; supra, note 27, s. 12.

³² Supra, note 25, s. 30; supra, note 27, s. 10.

³³ Supra, note 25, s. 31; supra, note 27, s. 11.

³⁴ Supra, note 25, s. 6.

³⁵ Supra, note 27, s. 8.

³⁶ Id., s. 16.

³⁷ Id., s. 17.

³⁸ Id., s. 5.

³⁹ Id., s. 7.

the Rules were to provide. For example, they were to provide for the mode of holding meetings and right of voting, and for making or altering rules. The frequency of meetings was not prescribed, and the principle of one member-one vote was not specifically included. The specific restrictions in the 1852 Act on the interest to be paid on loans or members' subscriptions was dropped in favour of a general statement that the Rules were to provide for "the mode of application of profits." The overall effect of the 1862 Act was to remove some of the restrictions on the societies under the previous Act, and to treat the societies as commercial businesses rather than as special kinds of social or charitable institution.

B. The Co-operative Principles of the Rochdale Pioneers

The Rochdale Equitable Pioneers Society evolved a set of principles for co-operative societies. The Pioneers did not commit these principles to a written list, and it is probable that they evolved over a period of years. Consequently, different authorities quote different "principles," and in recent years there has been some debate about the actual number of Rochdale Principles. W.B. Francis, writing in 1959, lists nine principles that he regards as fundamental for co-operative ventures:

1. Democratic control: one member, one vote.
2. Limited interest on capital.
3. Patronage dividends.
4. Unlimited membership.
5. No credit; business on a cash basis.
6. Educational work.
7. Political and religious neutrality.
8. Goods and services of high standard.
9. Co-operatives sell goods or provide services at the market price.⁴⁰

It is interesting to note that while the Industrial and Provident Societies Act of 1852 referred to limited interest on capital and patronage dividends, the 1862 Act does not refer specifically to any of the principles. The purpose of the 1862 Act appears to be to regulate the interaction of the society with other businesses and with the government, but to leave internal management to the society and its members. Since most of the co-operative principles are concerned with the co-operatives' internal management, they were not incorporated into the legislation of 1862.

⁴⁰ W.B. Francis, Canadian Co-operative Law, Toronto, Carswell, 1959, at 6.

3. EARLY CANADIAN CO-OPERATIVE LAW

A. The First Canadian Co-operative Statute

In 1865, the Ontario legislature passed an Act Respecting Co-operative Associations⁴¹ closely modelled on the Industrial and Provident Societies Act of 1862. The purposes for which an association could be organized were much like those set out in the 1862 Act,⁴² as were the conditions under which an association could commence operations. Before it could do so, it was to frame a set of rules for regulating, governing and managing the association. The rules were to provide for the following matters:

- a) mode of convening general and special meetings, and of altering rules;
- b) provisions for the audit of accounts;
- c) power and mode of withdrawal of members, and provisions for the claims of executors or administrators of members;
- d) mode of application of profits;
- e) appointment of managers and other officers, and their respective powers and remuneration, and provisions for filling vacancies occasioned by death, resignation and other causes.⁴³

The 1865 Act does not distinguish between general meetings and special meetings, but in 1861 the province of Canada had passed The Joint Stock Companies General Clauses Consolidation Act,⁴⁴ which did distinguish between the two. A special meeting was defined as a meeting called by one-fourth part in value of the shareholders of the company, for the transaction of any business specified in the notice of the meeting.⁴⁵ Since Section 1 of the Companies Act provided:

1. When not otherwise expressly enacted, this Act shall apply to every joint stock company incorporated by any Act hereafter to be passed, for any of the following purposes: ...⁴⁶

it is possible that the drafters of the 1865 Act intended that the distinction used in the Companies Act would be applied to co-operatives.

⁴¹ Co-operative Associations Act, S.O. 1865, c. 22.

⁴² Id., s. 1.

⁴³ Id., s. 5.

⁴⁴ S.C. 1861, c. 18.

⁴⁵ Id., s. 13.

⁴⁶ Id., s. 1.

The complete title of the 1865 Co-operatives Associations Act was "An Act to authorize the formation of companies or co-operative associations for the purpose of carrying on, in common, any trade or business." The distinction between "companies" and "co-operative associations" is not explained in the Act. However, section 2 of the 1861 Companies Act stated:

2. For the purpose of incorporating this Act, or any of its provisions with a special Act, it shall be sufficient in such Act to enact, that the clauses of this Act, or such of them as in such Act maybe particularly designed to that end, shall be incorporated with such Act ...⁴⁷

However, the drafters of the Co-operative Associations Act did not specifically incorporate the provisions of The Joint Stock Companies Act, and so it could be argued that the meanings of "general meeting" and "special meeting" in the Act were not incorporated into the 1865 Act.

Another possible interpretation of the words "special meeting" is suggested by section 7, which prescribes the manner of altering the rules:

7. After such rules have been certified, it shall be lawful for such Association, by resolutions, at a meeting specially called for that purpose, to alter, amend, or rescind the same, or any of them, or to make new rules.⁴⁸

Possibly it was intended that a special meeting was one called to alter the rules.

The 1865 Act included two of the Rochdale Principles: elections were to be by ballot, and each member was to have only one vote.⁴⁹ Also, the association's business was to be conducted strictly on a cash basis; no credit was to be given or taken.⁵⁰ This last provision was the only one to give rise to reported litigation.

B. Early Cases Concerning Cash Trading

The Rochdale Pioneers imposed the restriction on their society that trading be on a cash basis only because some of the them remembered that an earlier attempt to form a co-operative store in Rochdale had failed when it overextended credit to members who

⁴⁷ Id., s. 2.

⁴⁸ Supra, note 41, s.7.

⁴⁹ Id., s. 11.

⁵⁰ Id., s. 15.

could not afford to buy groceries.⁵¹ The restriction became a constant source of difficulty for co-operatives in the following one hundred years and the principle was eventually abolished.

The first reported case in Canada under a co-operative statute concerned cash trading.⁵² By the latter half of the nineteenth century, the London Co-operative Association Limited regularly purchased goods from the plaintiff; the transaction was considered to be for cash if payment was made within thirty days. The invoices were placed before a board meeting of the trustees and if found to be correct, were paid by the treasurer. The plaintiff brought action when the co-operative failed to pay invoices to the value of \$895.80. Counsel for the co-operative argued that the transaction was not for cash, and that therefore the plaintiffs could not recover. Section 15 of the Co-operative Associations Act stated:

15. The business of the Association shall be a cash business exclusively; no credit shall be either given or taken, and no officer, member or servant of the Association, or any number of them together, shall have power to contract any debt whatever in its name, except in respect of rent on the premises required for the business, the salary of clerks and servants, and such like contract, necessary in the management of the affairs of the Association; everything shall be bought and sold for cash only.⁵³

It was held that the co-operative could not incur any debt whatever, except as provided in Section 15, and that it was therefore incapable of incurring any liability. The Act provided for publicity of the character of co-operative associations, and parties transacting business with them should enquire as to their powers and liabilities. The court held that for a valid transaction, there must be either prepayment or simultaneous delivery and payment.

The principle of cash trading under the Ontario statute was considered again in Ontario Co-operative Stone-Cutters' Association v. Clarke et al.⁵⁴ The defendant had a contract with the Dominion government to construct a section of the Welland Canal, and subcontracted with the plaintiff to build the canal's stone walls. The defendant did not carry out its contract with the Government, and the plaintiff, unable to perform its part

⁵¹ Cole, supra, note 2.

⁵² Fitzgerald et al v. London Co-operative Association Limited (1868), 27 U.C.Q.B. 605.

⁵³ Supra, note 41, s. 15.

⁵⁴ (1880), 31 U.C.C.P. 280.

of the contract, brought action for loss of profit. The defendant claimed that it was not liable under the contract because it was not a cash transaction, and argued that Fitzgerald v. London Co-operative Association⁵⁵ supported its contention that the co-operative could not enter into any contract except for cash. The court observed that section 1 of the Act permits the association to carry on "any labour, trade or business," and held that a contract necessary to carry on a "labour" or "trade" was to be distinguished from contracts of buying and selling. The court stated that the restriction to cash transactions applied only to buying and selling, and that the contract at issue in this case was necessary for managing the Association's affairs and was therefore specifically excepted in the Act.

The courts again considered the effect of the cash trading restriction in 1897 in Struthers v. Mackenzie.⁵⁶ The Wyoming Co-operative Association regularly purchased on credit from the plaintiffs, R.C. Struthers & Co. The plaintiffs were unable to recover against the co-operative, and brought action against the manager, the treasurer and the directors personally. They argued that there was an implied representation or warranty of authority in law of the association to purchase goods on credit. The court held that the plaintiffs must be taken to have known that the defendant co-operative association was such, and must have known of the statutory restriction on credit sales. Thus the plaintiffs and the defendants had equal knowledge of the legal restriction, and there could be no implied representation or warranty. The plaintiffs also argued that the defendants had benefited by reselling the goods, and should account for the value of them. The court came to the rather odd conclusion on this issue that the defendants had used the proceeds from the plaintiff's goods to relieve the defendants from a personal liability for other goods purchased by the association, and had not therefore derived a personal benefit from the goods.

C. Manitoba Co-operative Associations Act, 1887

Little appears to be known about early consumer co-operatives in western Canada, but it is probable that the increased settlement of the prairies after 1880 brought with it settlers who were aware of co-operative developments in England and eastern Canada. It is known that there was a co-operative store in operation at Winnipeg, because on May

⁵⁵ Supra, note 52.

⁵⁶ (1897), 28 O.R. 381 (Div. Ct.).

13th, 1885 the Winnipeg Co-operative Association placed an advertisement in the Winnipeg Daily Sun.⁵⁷

In 1887, the Manitoba Legislature passed an Act Respecting Co-operative Associations,⁵⁸ perhaps in response to the needs of small groups such as the Winnipeg association. The Act was almost identical to the Ontario Act, which had been slightly amended in 1880⁵⁹ and 1884.⁶⁰ According to Trevena, there may have been a few incorporations under the Act, but it was generally forgotten until 1913.

4. EARLY CO-OPERATIVE DEVELOPMENT IN SASKATCHEWAN

A. Saskatchewan Prior to 1913

The first co-operative organisation to appear on the prairies, The Patrons of Industry, was founded in Michigan in 1887 and spread rapidly to Ontario and then in 1891 to Manitoba. The organization was at its most successful in 1895, when there were 330 lodges with a membership of about 5,000 in western Canada.⁶¹ The main purpose of the Patrons of Industry was to improve the economic position of the settlers by co-operation. The local lodges placed sufficiently large orders with a department store to obtain discounts. The County Association pooled orders from the lodges for enough supplies to fill a boxcar. When the car arrived in Regina, the supplies were distributed from the track to farmers who drove in to collect them.⁶² The Patrons entered federal politics in 1896 but only one Patron member, Dr. Douglas from Eastern Assiniboia, was elected; the organisation disintegrated because of disagreements among the leaders after the election.⁶³

In 1896, two brothers attempted to establish a utopian, co-operative community near Tantallon, on the Qu'Appelle River. The preamble to the Constitution explained their purpose:

⁵⁷ J. Trevena, Prairie Co-operation - A Diary, Saskatoon, Co-operative College of Canada, 1976, at 65.

⁵⁸ S.M. 1887, c. 12.

⁵⁹ S.O. 1880, c. 22.

⁶⁰ S.O. 1884, c. 27.

⁶¹ H.S. Patton, Grain Growers Co-operation in Western Canada, Cambridge, Harvard University Press, 1928, at 33.

⁶² J. Hawkes, Saskatchewan and Its People, Regina, The S.J. Clarke Publishing Company, 1924, at 618.

⁶³ Id., at 620.

Feeling that the present competitive social system is one of injustice and fraud and directly opposed to the precepts laid down by our Saviour for the guidance of mankind in subduing all the forces of nature and the evils springing from selfishness in the human heart, we do write under the name of the "Harmony Industrial Association" for the purpose of acquiring land to build homes for its members to produce from nature sufficient to insure its members against want and the fear of want.

To own and operate factories, mills, stores, etc. To provide educational and recreative facilities to the highest order and to maintain harmonious relations on the basis of co-operation for the benefit of its members and all mankind in general.⁶⁴

The membership grew to about fifty people; they operated a blacksmith shop, a carpentry shop, a laundry and lime kilns, and produced flour and butter. The community was not as successful as the founders had anticipated, partly because a railway that was expected was never constructed, and in 1900 the community was harmoniously dissolved.

Political lobbying in Ottawa by Dr. Douglas led to the enactment of The Manitoba Grain Act in 1900.⁶⁵ This Act was intended to palliate the difficulties western grain farmers were having with the C.P.R.-private elevator monopoly. By the Act, farmers had the legal right to obtain railway cars directly, and to load them either over loading platforms or through flat warehouses; they no longer had to depend on the line elevator companies. However, the railways were unable to move a large portion of the record crop in 1901 before freeze up at the Lakehead, and both businessmen and farmers were indignant. W.R. Motherwell, a farmer from Indian Head who had observed the failure of the Patrons of Industry in the 1890's, organized the Territorial Grain Growers Association (T.G.G.A.), with the object of uniting farmers to counter the dominance of the private grain-handling interests.⁶⁶ The Association successfully lobbied to enforce farmers' rights under the Manitoba Grain Act, and obtained amendments to the Act favourable to farmers.⁶⁷ The Province of Saskatchewan was created in 1905, and in the

⁶⁴ G. Johnson, The Harmony Industrial Association, (1951), 4 Saskatchewan History, at 11.

⁶⁵ Supra, note 61, at 20 - 24.

⁶⁶ Id. at 33.

⁶⁷ W.A. Mackintosh, Agricultural Co-operation in Western Canada, Toronto, Ryerson Press, 1924, at 14.

following year the name of the T.G.G.A. was changed to the Saskatchewan Grain Growers Association (S.G.G.A.).

In 1904, E.A. Partridge, a Sintaluta farmer, proposed at a T.G.G.A. meeting that a farmers' company be formed to sell grain co-operatively.⁶⁸ He believed that a farmers' company operating in the commission market at the Winnipeg Grain Exchange would be a financial success, and would eliminate price fixing by the private grain companies. The grain growers' association did not initially support Partridge's proposal, but in 1906, Partridge and a group of Sintaluta grain growers formed the Grain Growers Grain Co. Ltd. (G.G.G.C.). The new company quickly obtained a seat at the Exchange, and despite great hostility from the private trade and an expulsion order that had to be reversed by the Manitoba government, the G.G.G.C. succeeded in maintaining its position at the Exchange. By 1912 the company had 27,000 farmer-members and was selling 28 million bushels of grain annually.⁶⁹ The company recognized that farmers sell products at wholesale prices but generally purchase as retail consumers. The company considered entering the business of farm supply purchasing, in addition to its regular business of grain marketing,⁷⁰ but did not do so until 1913.

B. The Role of The Co-operative Union and of George Keen

The Co-operative Union of Canada was formed on March 6th, 1909, largely on the initiative of George Keen, then President of an Ontario co-operative.⁷¹ This was to have a profound effect on the development of co-operatives and co-operative law in Saskatchewan and elsewhere in Canada. The Co-operative Union was instituted to

⁶⁸ Id., at 18.

⁶⁹ Ian MacPherson, *The Co-operative Movement on the Prairies, 1900-1955*, "Canadian Historical Association Booklet No. 33, Ottawa, 1979, at 6.

⁷⁰ Supra, note 61, at 281.

⁷¹ Ian MacPherson, Building And Protecting The Co-operative Movement, A Brief History of The Co-operative Union of Canada, 1909-1984, CUC, Ottawa, undated, at 2.

promote co-operatives and co-operation in general, but for the purposes of this paper, one object set out in its by-laws is of particular interest. By-law 2(e) read as follows:⁷²

to protect the interests of the co-operative movement by action whenever necessary as to Federal legislation and administration and through the provincial or regional sections as to provincial legislation and administration.

This by-law indicates that the Co-operative Union was organized with regional and provincial sections to better enable it to fulfil its mandate.⁷³ Keen's view was that the provincial sections of the CUC should be expected to "exercise more influence in provincial legislatures than can be expected by the Dominion executives and officials."⁷⁴ Keen also warned provincial sections to "carefully watch Bills which are introduced into Provincial legislative assemblies, and particularly by private trade organizations. Action against co-operators in that field are not likely to be frontal attacks. It will be by indirection. The word "co-operative" will not appear."⁷⁵

From the time of his appointment as the first General Secretary of the Union in 1909, and for over thirty five years thereafter, Keen corresponded prolifically with Saskatchewan co-operatives and co-operators. He dispensed advice and assistance on many matters of importance to co-operatives, including co-operative legislation. He made regular trips to Saskatchewan to consult co-operators and he built up a close relationship with the Co-operatives and Marketing Branch of the Saskatchewan Department of Agriculture, especially with W.W. Waldron and his successor B.N.

⁷² Co-operative Union of Canada, Public Archives of Canada, Call No. MG 28, I 15, Vol. 1, By-laws of the Co-operative Union of Canada. The failure to obtain the passage of Federal co-operatives legislation was very much on the minds of the first activists in the Co-operative Union. This concern continued for a very long period of time. At least at the 1932, 1936, 1937 and 1939 Congresses, for example, a resolution was passed calling on the Federal government to introduce legislation on co-operatives and urging each of the provincial governments to introduce co-operative credit legislation and to amend their various statutes dealing with co-operatives to permit co-operatives in one province to operate branches in other provinces up to a distance of ten miles away from the interprovincial boundary. Dissatisfaction with the legislative regime is illustrated by the fact that when Canadian Co-operative Implements Ltd. was established in 1940 it was incorporated under the Companies Act, 1934. See October 26th, 1913 letter from Waldron to Keen, id., Vol. 37, General Correspondence, 1926, C-D.

⁷³ However, the Public Archives show that the CUC's presence in Saskatchewan was often regarded as unsatisfactory. It appears, too, that the provincial sections either did not work well or were non-existent. See e.g., the Congresses of 1930-1932, id., Vol. 2, Congresses, 1919, 1929, 1930, 1932, 1933, 1936. It was not until the 1936 Congress in Toronto that a resolution was passed to establish a Saskatchewan section of the CUC.

⁷⁴ Circular from Keen to affiliated co-operatives, July 31st, 1936, id.

⁷⁵ Directive from Keen, National Co-operative Re-organization, 1941, id.

Arnason. The Branch assisted with Keen's visits to Saskatchewan and its officials had frequent meetings with him when he was in the Province. Waldron even urged co-operative retailers to join the CUC.⁷⁶ Keen's assistance in the push for co-operative legislation in Saskatchewan is well documented.⁷⁷

C. Progress in the West

In 1911, the G.G.G.C. obtained a new federal charter by special Act of Parliament⁷⁸ in order to broaden its territorial scope and operations. The Act incorporated several co-operative features. Stockholders were required to be farmers, farm owners or farmers' wives; individual stockholdings were restricted to a value of \$1,000; each shareholder had only one vote, and surpluses could be distributed on other than a share basis.⁷⁹ The objects of the company were couched in very broad terms:

To produce, manufacture, export, import, buy, sell, deal in, and deal with all cereals ... and all products or by-products of the farm, and all machinery, implements, goods, wares, and merchandise which may be used in the production and manufacture of the products of the farm, and all articles, substances and things which may be utilized in the said product or in the maintenance, cultivation, improvement and development of farms.⁸⁰

The Act passed in the House despite considerable opposition from members sympathetic to the interests of retail merchants.⁸¹ The company had a strong, central organisation, but for it to operate an effective farm supply business, organisation at local centres was necessary.⁸² In 1912, the company leased the Manitoba government elevators with the intention of using the elevator system to distribute farm supplies.⁸³ In 1913, the

⁷⁶ November 28th, 1930 letter from Waldron to Keen, *id.*, Vol. 52, General Correspondence, 1930, C-H.

⁷⁷ See e.g., correspondence between Keen and the Saskatchewan Registrar of Joint Stock Companies, *id.*, Vol 2, General Correspondence 1908-1909.

⁷⁸ S.C. 1911, c. 80.

⁷⁹ *Id.*, ss. 4, 5, 6, 8, 17.

⁸⁰ *Id.*, s. 12.

⁸¹ *Supra*, note 61, at 155.

⁸² *Id.*, at 282.

⁸³ *Id.*, at 283.

Co-operative Supply Department was established in Winnipeg, and initially supplied flour, feed, coal and apples. In 1913-14, 8,926 tons of apples and 5,336 barrels of apples were supplied. In 1914, lumber, binder twine, fencing and farm implements were added.⁸⁴

Under pressure from the Manitoba Grain Growers Association, the government of Manitoba in 1910 established a system of government-owned elevators.⁸⁵ The farmers anticipated that this move would result in better terms for farmers selling grain, but the government system did not receive sufficient support from farmers and lost large sums of money in its two years of operation. The Manitoba government appeared to be relieved to lease the system to the G.G.G.C. in 1912. In Saskatchewan, pressure from farmers for a government-owned elevator system resulted in a Royal Commission to study their situation, and the Commission recommended that a co-operative, farmer-owned and locally controlled elevator company be set up with government assistance.⁸⁶ The government accepted the Commission's recommendations, and in 1911 the Saskatchewan Co-operative Elevator Company was incorporated by a special Act of the Legislature.⁸⁷ The company was successful, and in 1913 the Alberta Legislature passed a similar Act to incorporate the Alberta Farmers' Co-operative Elevator Company.⁸⁸ The Alberta Act, in addition to empowering the company to operate a line of elevators and to deal in grain, also provided that the company could engage in the supply of goods and chattels to farmers;⁸⁹ the Alberta company immediately commenced a co-operative supply department.

In Saskatchewan, co-operative trading was initiated differently. In 1913, the Provincial government established a Royal Commission to investigate the high cost and difficulty of obtaining agricultural credit. The Commission, in an extensive report, considered the problem of agricultural credit, but also addressed broader problems facing

⁸⁴ Id., at 285.

⁸⁵ Supra, note 61, at 79-89.

⁸⁶ Report of the Elevator Commission, Regina, 1910.

⁸⁷ Saskatchewan Co-operative Elevator Act, S.S. 1911, c. 39.

⁸⁸ Alberta Farmers Co-operative Elevator Act, S.A. 1913, c. 13.

⁸⁹ Id., s. 5.

the rural economy.⁹⁰ The solution proposed by the commissioners was the encouragement of co-operative effort. They stated:

In view of the changing conditions of our economic life, the Commissioners believe that a solution to our problems must be sought along two lines, which after all do not greater [sic] differ:

1. The spread of co-operative effort, especially at present, in the direction of selling and purchasing.

2. The fostering of financial institutions of our own, with sympathies for our own problems and control by our own people.⁹¹

The first recommendation of the Commission was as follows:

1. That, inasmuch as in the experience of older communities cheaper agricultural credit is invariably associated intimately with other phases of agricultural co-operation, such additional legislation be enacted by the Legislature and information and guidance provided by the government as will further facilitate on the part of the farmers of the province the establishment on a sound basis of a system of local and central rural co-operative societies for purchasing and selling farm products and supplies.⁹²

The government responded by establishing the Co-operative Organisation Branch within the Department of Agriculture "to foster in every legitimate way co-operative organisation of farmers for purposes of production, marketing and purchasing of supplies."⁹³ The first Director of the Branch was W.W. Thomson, an agriculture graduate who had studied agricultural co-operation in the other provinces, some U.S. states and Europe.⁹⁴ The legislature also passed two statutes in response to the Commission's report: The Saskatchewan Co-operative Farm Mortgage Association Act⁹⁵

⁹⁰ Report of the Agricultural Credit Commission of the Province of Saskatchewan, Regina, 1913.

⁹¹ Id., at 204.

⁹² Id., at 217.

⁹³ Annual Report, Co-operative Organisations Branch, 1913, at 9.

⁹⁴ Public Service Monthly, October, 1913, at 19.

⁹⁵ S.S. 1913, c. 61.

and the Agricultural Co-operative Associations Act.⁹⁶ Prior to 1913, some local groups had been formed to order carloads of supplies co-operatively. The purpose of the Agricultural Co-operatives Associations Act was to provide legal status for such associations and to simplify incorporation procedures for new associations. Even though prior to the enactment of co-operative legislation co-operatives could only be incorporated under the Companies Acts,⁹⁷ model co-operative by-laws for such incorporation were a long time coming, as they were for co-operatives that did not qualify for incorporation under the Agricultural Co-operatives Associations Act.⁹⁸

5. THE SASKATCHEWAN AGRICULTURAL CO-OPERATIVE ASSOCIATIONS ACT, 1913

The Act provided that five or more persons could incorporate an association "for the purpose of producing, purchasing or selling livestock, farm products or supplies on the co-operative plan".⁹⁹ "Supplies" was defined as "building and fencing material, fuel, flour, feed and such other commodities as may be shipped in car lots and distributed from a warehouse; the word shall not be interpreted as applying to a retail business."¹⁰⁰ This definition immediately gave rise to uncertainty as to the restriction it imposed on the associations. For example, was it necessary to ship "building and fencing material, fuel, flour and feed" in carlots, or did this restriction apply only to "commodities"? The Deputy Attorney-General, T.A. Colclough, sent his interpretation of the definition to the W.W. Thomson, Registrar of Agricultural Co-operative Associations, in a letter dated April 14th, 1914.¹⁰¹ He observed that the Interpretation Act required that the expression "may" in a statute should be construed as permissive, but concluded that to do so would not give a sensible meaning, and that the word should therefore be considered as

⁹⁶ S.S. 1913, c. 62.

⁹⁷ 1901, c. 20, as am.

⁹⁸ A December, 1913 letter from Keen to John Corbett of Gull Lake indicated that a model set of by-laws was not available, although it appeared to be the practice for established co-operatives to send copies of their by-laws to new societies, supra, note 72, Vol. 11, General Correspondence, 1913 A-L. The reason for this given by Keen was that "we have no definite statute for the whole Dominion." Letter from Keen to S. Smith of Star City, Saskatchewan, id., Vol. 12, General Correspondence 1913, M-Y. Standard By-laws did become available from the Department of Agriculture in 1914.

⁹⁹ Supra, note 97, s. 4.

¹⁰⁰ Id., s. 2(3).

¹⁰¹ April 24th, 1914 letter from T.A. Colclough to W. W. Thomson, Director, Co-operative Organisations, Saskatchewan Department of Agriculture, Saskatchewan Archives, Call No. 428, box 1.

imperative. He further concluded that "as may be shipped in carlots" related only to "commodities," and therefore that "building and fencing materials, fuel, flour [and] feed" need not be shipped in carlots. Furthermore, a carlot of "commodities" need not consist of an entire carlot of one commodity, but could contain a number of different commodities. In all cases, however, Colclough was of the view that supplies must be purchased in greater than retail quantities.

The restriction to cash trading espoused by the Rochdale Pioneers and included in the earlier Ontario Act was made applicable to associations in Saskatchewan. An exception permitted associations to purchase on credit real estate to be occupied as business premises, and to take out a mortgage to secure the unpaid balance.¹⁰²

The Act initially required that seventy five per cent of the shareholders be "agriculturists",¹⁰³ thereby effectively preventing the organization of co-operatives in urban centres or amongst industrial workers.¹⁰⁴ The liability of a shareholder to the creditors of the association was limited to the unpaid balance on his shares.¹⁰⁵ At meetings each shareholder was entitled to one vote, and voting by proxy was prohibited.¹⁰⁶ The association was required to send to the Registrar of Co-operative Associations, each January, an annual return including an audited financial statement for the previous year up to the 31st of December. The return was also to be provided free of charge to any shareholder on request.¹⁰⁷

A formula was provided for apportion an association's profits. First, the directors were to set aside not less than 10% of the net profits for a reserve fund, until the fund

¹⁰² Supra, note 97, s. 5.

¹⁰³ Id., s. 8.

¹⁰⁴ Cf. December 31st letter from Thomson to Keen, supra, note 72, General Correspondence, Vol. 13, 1913, T-M. Thomson noted that: "the Act is designed primarily to aid agricultural co-operative associations, but as 25% of the shareholders in any association may belong to the urban population its operation is by no means confined exclusively to the farming community." It appears, however, that Thomson thought that farming communities were more likely to have people experienced in business than would urban groups looking to form co-operatives; consequently it was safer to encourage co-operatives in rural areas than in urban areas. He wrote: "Any restrictions placed on the business of associations will I trust prove not a check to their developments, but rather a safeguard which will prevent many failures which would otherwise result from placing inexperienced men in charge of complicated business concerns." There was also a recognition, on the part of Thomson, that there was a considerable need to develop the "co-operative spirit" among the people of Saskatchewan.

¹⁰⁵ Supra, note 97, s. 12.

¹⁰⁶ Id., s. 14.

¹⁰⁷ Id., s. 15.

had amounted to at least thirty per cent of the paid-up capital stock. Then six per cent interest was to be paid on the paid-up capital stock. The remainder of the profits was to be divided among the patrons (whether shareholders or not) in proportion to the volume of business conducted by each patron with the association. A proviso permitted the association to retain the patronage dividend of a patron who was not a shareholder until the par value of one share had accumulated, when a share certificate was to be issued to the patron.¹⁰⁸ The Act does not refer to "membership" and it must be inferred that there is no distinction between a shareholder and a member of the association. The standard by-laws approved pursuant to the Act provide that either the directors or "not less than one-fifth of the shareholders" may requisition a special meeting, but that if a quorum is not present and the meeting was convened "upon the requisition of members" it shall be dissolved.¹⁰⁹ These provisions imply that "member" and "shareholder" are synonymous under the Act. It follows that a shareholder who had been allotted a share according to the above procedure would have all the same rights in the association as a shareholder who had voluntarily subscribed for a share.

Dissolution of the association required the consent of three-fourths of the shareholders, testified to by their signatures on an instrument of dissolution.¹¹⁰ This provision later caused difficulty when associations wished to dissolve and more than one-quarter of the shareholders had, for one reason or another, ceased to be active members.

The 1913 Act required the Registrar to prepare standard by-laws not inconsistent with the Act that would be applicable to every incorporated association and to submit them for approval to the Lieutenant-Governor-in-Council.¹¹¹ These standard by-laws were approved by Order-in-Council on January 8, 1914.¹¹² The Act permitted co-operatives to pass supplemental by-laws of their own that would become operative if approved by the Registrar and if not inconsistent with the standard by-laws.¹¹³ The standard by-laws provided a comprehensive code for the internal management of the co-

¹⁰⁸ Id., s. 18.

¹⁰⁹ Standard By-laws governing all Associations incorporated under the Agricultural Co-operative Associations Act, Saskatchewan Gazette, 1914, vol. 10, no. 1, at 8, Article I.

¹¹⁰ Supra, note 97, s. 25.

¹¹¹ Id., s. 6.

¹¹² Supra, note 110.

¹¹³ Supra, note 111.

operative, and since they were binding on all co-operatives, these by-laws became the basis for the management of co-operatives in Saskatchewan. These standard by-laws were amended from time to time, but remained in force until 1983, when they were repealed and replaced.¹¹⁴

The standard by-laws of 1914 included precise requirements for meetings. The first general meeting was to be held within two months of the association registering, at a time and place to be determined by the provisional directors.¹¹⁵ The term "provisional directors" is not defined, but must be presumed to refer to the five or more incorporators mentioned in section 4 of the Act. The by-laws further required that the co-operative hold an annual meeting on the second Wednesday of January.¹¹⁶ Thus all co-operatives held their annual meeting on the same day of the year. Special meetings could be held at the directors' call or by written requisition (stating the object of the meeting) of not less than one-fifth of the shareholders. When the directors received the requisition, they were required to call the meeting forthwith, and if they failed to do so within 21 days from the date of the requisition, the requisitionists or any other shareholders amounting to the required number could call the meeting. Each shareholder was to receive a notice in the mail at least 10 days prior to the meeting, and an announcement of the meeting was to be placed in at least one newspaper circulating in the neighbourhood. A quorum for any meeting was one-fifth of the registered shareholders.¹¹⁷

The effect of these standard by-laws was that a co-operative customarily held just one meeting in the normal course of events - the annual meeting. Between annual meetings the directors administered and controlled the business and were not required to involve the members. This was perhaps one of the most unfortunate aspects of the by-laws, since it artificially restricted the amount of interest that members were expected to take in their co-operative. The Rochdale Equitable Pioneers Society held quarterly meetings¹¹⁸ at which the directors were expected to respond to the members' concerns;

¹¹⁴ Co-operatives Act, S. S. 1983, c. 37.1.

¹¹⁵ Supra, note 110, Article I.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Supra, note 57.

early Saskatchewan co-operatives, which had a significant failure rate (50% between 1914 and 1938),¹¹⁹ might have benefited from more frequent members' meetings.

The voting provision in the standard by-laws was as follows:

At all meetings of the association each shareholder in good standing shall have one vote, and a majority vote of the shareholders present shall decide all questions.¹²⁰

The phrase "in good standing" is nowhere defined and its meaning is uncertain. One might assume that it referred to a shareholder who had fully paid for a share, but shares were payable by instalments as provided by the by-laws.¹²¹ In the early co-operatives, shares were often not fully paid-up, and it is improbable that the bylaw was intended to disenfranchise such a large group. More probably, a shareholder was considered to be in good standing if he had paid all the instalments that were due to be paid under the by-laws.

The above voting provision must be read as subject to other sections which provided for other than a majority vote. For example, the supplemental by-law concerning removal of directors was as follows:

The association at any annual meeting, or at any special meeting, duly called for that purpose, may by a special resolution, endorsed by a majority of the registered shareholders, remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.¹²²

Neither "special resolution" nor "ordinary resolution" are defined in the Act or the by-laws, but "special resolution" was defined in The Companies Act, as follows:

s. 121: A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may

¹¹⁹ Co-operative Purchasing Associations in The Province of Saskatchewan, Part I, Department of Agriculture, Bulletin No. 95-A, Regina, 1939, at 19.

¹²⁰ Supra, note 110, Article II.

¹²¹ Supra, note 97, s. 9.

¹²² Supra, note 110, Article III, (emphasis added).

be present in person or by proxy in cases where by the regulations proxies are allowed at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed.¹²³

Since the supplemental by-law refers to a "special resolution, endorsed by a majority of the registered shareholders," its drafters probably intended a "special resolution" to be a resolution passed by a three-fourths majority of the registered shareholders at a properly called general or special meeting and entitled under the by-laws to vote.

The standard by-laws provided that supplemental by-laws necessary for the regulation of the associaton's business could be adopted at a general or special meeting, but in this case by a two-thirds majority of the shareholders present.¹²⁴

The standard by-laws provided that the board of directors be composed of three, six or nine members, elected from the shareholders at the first general meeting. One-third of the board were elected to serve for one year, one-third for two years and one-third for three years.¹²⁵ This method of election provided continuity and a degree of stability, as the board would always include some more experienced members. This gradual replacement of board members has continued to be the general practice in Saskatchewan co-operatives to the present day.

The auditor was elected at the annual meeting of shareholders, and the president, vice-president and the secretary-treasurer were elected at the first board meeting after the annual meeting. It was not required that the secretary-treasurer be a director. If the office of the auditor or of a director became vacant, the board appointed a replacement to serve out the rest of that officer's term.¹²⁶

The general duties and powers of the directors were outlined in the standard by-laws as follows:

¹²³ R.S.S. 1909, c. 72, s. 121.

¹²⁴ Supra, note 110, Article VIII.

¹²⁵ Id., Article III.

¹²⁶ Id.

The directors shall have the general management and control of the business and property of the association and shall have power:

a) To allot and transfer the capital stock of the association subject to the provisions of section II of The Agricultural Co-operative Associations Act.

b) To engage, define the duties and fix the remuneration of such officers and employees as they may deem necessary for the carrying on of the business of the association.¹²⁷

This provision appeared to give exclusive control of the co-operative to the board of directors, and as such, was in conflict with the principle of democratic control as understood by early co-operators. When the Rochdale Pioneers formulated the co-operative principles in the mid-nineteenth century, the principle of democratic control was given particular emphasis. The early co-operators anticipated a participatory form of democracy by which the co-operative members would maintain an active interest in the business affairs of the co-operative, attend meetings regularly, and make resolutions at those meetings. They perceived the board of directors as a body whose role was to put into effect the policies developed by the members and whose powers would be exercised subject to the wishes of the members as expressed in general meetings. The principle that the directors have the exclusive management and control of the business was borrowed from company law, and it seems possible that the rigid application of the principle to the area of co-operative law may have led to unnecessary conflict between co-operative members and the boards of directors that represent them.

The relationship between co-operative law and company law has been an uncertain one. In some respects a co-operative is simply a particular type of limited liability, joint stock company, to which similar legal provisions should apply. For this reason, and perhaps because lawyers employed to draft co-operative statutes would normally be familiar with company law, co-operative statutes are often modelled closely on similar company law statutes. However, co-operatives may also be regarded as a unique enterprise with social as well as economic objectives, and it can be argued that the social objectives have not been given sufficient emphasis in co-operative legislation.

¹²⁷ Id., Article IV.

The 1913 Agricultural Co-operatives Act deemed every association to be a company within the meaning of section 142 of The Companies Act.¹²⁸ That section made sections 26 to 38 inclusive and sections 40 to 61 inclusive of The Companies Act applicable to co-operative associations. Those sections concern the distribution of capital and the liability of members and directors. Thus the definition of "special resolution", a matter raised earlier, is not expressly applicable to co-operatives.

The application of the Companies Act to agricultural co-operatives was considered by the Deputy Attorney-General shortly after the 1913 Act was proclaimed, when an association failed to hold its first general meeting within two months of registration, and the Registrar requested an opinion as to whether the association should be considered to be dissolved for failing to hold its first general meeting within the time appointed by the standard by-laws.¹²⁹ Section 118 of the Companies Act provided that a court could direct that a company be wound up or make any other order as may be just on the petition of any shareholder where the company has failed to hold its first general meeting.¹³⁰ The Deputy Attorney-General stated that since Section 118 was not expressly made applicable to co-operative associations, the procedure in that section was not applicable either, and that a co-operative could only be dissolved in accordance with sections 25 and 26 by resolution of the shareholders. He further stated that the law supports the continuance of a company unless some strong reason is put forward to persuade the court to regard the company as dissolved, and therefore, that the by-law concerning the first general meeting must be considered to be directory rather than imperative.

The final section of the 1914 standard by-laws prescribed the order of business of the annual meeting:

- 1) The meeting to be called to order by the president or acting president.
- 2) The reading and disposal of the minutes of the preceeding meetings.
- 3) Business arising out of the minutes.
- 4) Reports of standing committees appointed at a previous meeting.
- 5) Reports of Special committees appointed at a previous meeting.
- 6) Reports of officers.
- 7) Reports of auditor.
- 8) Unfinished business.
- 9) Nomination and election of officers for the ensuing year.
- 10) Appointment of auditor.
- 11) New business.¹³¹

¹²⁸ Supra, note 97, s. 5 (3).

¹²⁹ June 10th, 1914 letter from T.A. Colclough to Thomson, supra, note 102.

¹³⁰ R.S.S. 1909, c. 72, s. 118.

¹³¹ Supra, note 110, art. 12.

This rather rigid agenda (with minor modifications) continues to be followed by Saskatchewan co-operatives. Consequently, during meetings, the members must listen to a large number of sometimes lengthy reports before they have an opportunity to raise new matters that concern them. Jack Trevena, the former Secretary of Federated Co-operatives Limited, has recently suggested that this rigid meeting format may have had the effect of reducing member participation and of imposing an artificial barrier between members and management. He coined the term "theatrical democracy" to describe this type of members' meeting.¹³²

In summary, the Act of 1913 and the standard by-laws were a valuable tool for the early development of community co-operatives in Saskatchewan, but some provisions were destined to create difficulties for some co-operatives.

There was a good deal of correspondence between Keen and Saskatchewan government officials about the 1913 Act. In particular Keen was disappointed that co-operative retails and urban organisations were excluded from the purview of the Act. Incorporation of these co-operatives remained under the Companies Ordinance. He was also concerned about the requirement for cash only transactions.¹³³ It is apparent that the exclusion of retails from the scope of the Act was as a result of the failure in 1913 of the Saskatchewan Purchasing Company.¹³⁴ In any case, the Government had not intended the Act to be a general co-operatives statute.¹³⁵ Keen concluded that the Act was a compromise but that he should not be too critical of it, as he was anxious not to prejudice the passage of a federal statute.¹³⁶

Nonetheless, in his correspondence with Thomson, Keen was very critical, indicating with regret that "I am unable to say much in its favor."¹³⁷ Others were opposed to it too, and Chipman, editor of the Grain Growers' Guide, while also

¹³² Supra, note 57.

¹³³ January 12th, 1914 letter from Keen to Thompson, supra, note 72, Vol. 13, General Correspondence, 1914, A-M.

¹³⁴ January 20th, 1914 letter from Thomson to Keen, id., Vol. 14, General Correspondence, 1914, N-Y. See December 4th, 1913 letter from J.M. Hill to G.F. Chipman, Editor of the Grain Growers' Guide, explaining the collapse of the Saskatchewan Purchasing Company Ltd., id.

¹³⁵ February 13th, 1914 letter from Thomson to Keen, id.

¹³⁶ January 29th, 1914 letter from Thomson to Keen, id.

¹³⁷ Supra, note 72. In this letter Keen referred to the Act as deliberately excluding co-operative retail stores and wrote: "By virtually excluding urban residents from forming co-operative societies, a section of the people quite as much in need of the advantages of the movement your legislature has enacted class legislation."

considering it wise to be supportive of the initiative, indicated to Keen that he did not think that the Saskatchewan government wanted to enact any type of co-operative act and that the 1913 Act was a compromise. Chipman further indicated that the "co-operative spirit ... is becoming so strong that it cannot be much longer kept down."¹³⁸ Thomson's attempts to gain more support from Keen were not very successful. He stressed that the Act was a first step and that the approach taken by the Act was "both safer and more economical than the conducting of a retail business." According to Thomson, the failure of the Saskatchewan Purchasing Company prompted the trading restrictions in the Act.¹³⁹ It is quite likely, however, that the restrictions were primarily a result of pressure from private business interests.¹⁴⁰

Another matter that Keen thought needed attention in co-operative legislation was a definition provision to clarify what organisations the Act was intended to cover.

It is difficult to assess the impact of Keen's concerns, but it was likely considerable. He urged governments to consult with co-operatives before enacting legislative amendments,¹⁴¹ and Thomson sent him a copy of amendments to the Agricultural Co-operative Associations Act prior to their enactment. The 1915 amendments, for example, included changes to permit the operation of co-operative retailers under the Act (although 75% of the members still had to be farmers) and made the cash business requirements less stringent.¹⁴² Keen also attempted to interest Waldron in following other provincial examples to improve the Saskatchewan legislation.¹⁴³ There may have been competition between Keen and Saskatchewan co-operators on some matters of principle and legislation. Keen was not always as involved in developments as

¹³⁸ January 29th, 1914 letter from Chipman to Keen, id.

¹³⁹ January 20th, 1914 letter from Thomson to Keen, supra, note 133.

¹⁴⁰ See December 4th, 1913 letter from Hill to Chipman supra, note 135. Thomson advised Keen that the practice of co-operatives selling their goods at cost "stirs up endless antagonism with local merchants". See also, November 3rd, 1919 letter from Thomson to Keen, supra, note 72, Vol. 22, General Correspondence, 1919, A-K.

¹⁴¹ December 7th, 1922 letter from Keen to the Premiers of eight provinces, supra, note 72, vol. 29, General Correspondence, 1922, H-Y.

¹⁴² September 14th, and October 5th, 1915 letters from Thomson to Keen, id.; January 5th, 1928 letter from Waldron to Keen, supra, note 72, Vol. 44, General Correspondence, 1928, C-E.

¹⁴³ October 19th, 1928 letter from Waldron to Keen, id.

it appears he would have liked,¹⁴⁴ and there was some disagreement.¹⁴⁵ As the lawyer W.B. Francis became more involved in the process of advising the co-operatives on legislation, Keen was put into contact with him.¹⁴⁶

6. DEVELOPMENTS FOLLOWING THE 1913 ACT

Following enactment of the Agricultural Co-operative Associations Act, there was a wave of enthusiasm for the organization of local co-operatives. Thomson reported in April, 1914 that the Co-operative Organisation Branch was receiving 15 enquiries per day regarding incorporation;¹⁴⁷ by the end of 1914, 113 associations had been registered.¹⁴⁸ A few of these co-operatives operated stores, but most of them were operated as local purchasing associations without a store. Local merchants and wholesalers frequently resisted the development of local co-operatives by refusing to sell to them, and farmers quickly realized they could benefit by owning their own wholesale organisation.¹⁴⁹ At the 1914 annual convention of the S.G.G.A., it was resolved to form a trading department and to set aside \$1,000 was set aside for the purpose. In its first six months of operation in 1914, the Trading Department handled \$300,000 in supplies at an estimated saving to the members of \$75,000.¹⁵⁰

The special Act of the legislature incorporating the S.G.G.A. did not provide for trading operations,¹⁵¹ and the Act was therefore amended in 1915 to allow the S.G.G.A. to carry on the business of wholesale suppliers for all commodities ordinarily used in agriculture.¹⁵² An amendment to the Co-operative Associations Act permitted an association to enroll its shareholders, patrons, customers or associate members as

¹⁴⁴ January 31st, 1929 letter from Keen to Waldron, supra, note 72, Vol. 48, General Correspondence, 1929, C.

¹⁴⁵ January 14th, 1929 letter from Waldron to Ketcheson; January 15th, 1929 letter from Waldron to Keen; January 29th, 1929 letter from Keen to Waldron, id.

¹⁴⁶ February 4th, 1929 letter from Waldron to Keen, id.

¹⁴⁷ Public Service Monthly, Regina, April, 1914, vol. 2, no. 9, at 16.

¹⁴⁸ Tenth Annual Report of the Department of Agriculture of the Province of Saskatchewan, Regina, 1914, at 190.

¹⁴⁹ Supra, note 61, at 292.

¹⁵⁰ Id., at 294.

¹⁵¹ S.S. 1908, c. 36.

¹⁵² S.S. 1915, c. 36.

members of the S.G.G.A. and enabled the association to "enter into any arrangement for joint purchase, sharing profits, union of interests, co-operation, joint adventure, reciprocal concession or other plan to further the objects of either association" The amendment further provided that the association could sell farm supplies only to its shareholders and to members of the S.G.G.A.¹⁵³

The law's response to common practices caused problems for co-operatives. For example, many early co-operatives purchased car lots of goods and distributed them directly from the track. In Village of Hafford v. John Gilders, the issue was whether the Hafford Agricultural Co-operative Association, of which Gilders was the secretary, was a transient trader as defined by The Village Act. The judge delivered his judgement at the Great West Hotel in Hafford on the day following the trial and found in favour of the village.¹⁵⁴ The result was that the co-operative required a licence to distribute goods from the track.

In the 1915 amendments the ambiguous definition of "supplies" in the 1913 Act was repealed and associations were empowered "to do anything incidental to the attainment of the said objects, and to forward the interests of farmers and ranchers in every legitimate way, and to purchase, acquire, hold and dispose of real property in Saskatchewan required for the purposes of the association, and to alienate the same at pleasure."¹⁵⁵ While this amendment appears on first reading to have broadened the powers of the associations, the objects contained in section 4 referred to in the amendment continued to restrict the co-operative to "producing, purchasing or selling livestock, farm products or supplies on the co-operative plan." On this basis, the Loreburn Grain Growers Co-operative Association Limited was prevented in 1918 from acting as a hail insurance agent,¹⁵⁶ and in 1920 the Deputy Attorney General advised Thomson that he had "grave doubts" whether the Act allowed a group of farmers to operate a blacksmith's shop.¹⁵⁷ In 1920 the Act was amended to permit co-operatives to operate community halls,¹⁵⁸ and in 1922 the purpose section was widened by permitting

¹⁵³ S.S. 1915, c. 37.

¹⁵⁴ This case is unreported but is referred to in a newspaper clipping in Saskatchewan Archives, supra, note 102, Call No. R-428, file 13a.

¹⁵⁵ Supra, note 154.

¹⁵⁶ July 25th, 1918, letter from Colclough to Thomson, id.

¹⁵⁷ January 15th, 1920 letter from Colclough to Thomson, id.

¹⁵⁸ S.S. 1920, c. 50.

co-operatives to establish and operate on the co-operative plan "any business for procuring and selling farm supplies or rendering services of pecuniary value to farmers ..."¹⁵⁹ Following this amendment, co-operatives were permitted to act as hail insurance agents.¹⁶⁰

The 1913 Act had provided for dissolution of an insolvent co-operative that was still in operation, but since by the Agricultural Co-operatives Act, co-operatives are deemed to be companies under The Companies Act,¹⁶¹ it followed that The Companies Winding-Up Act was applicable to co-operatives. Under that Act, it was possible to apply to a court for a winding-up order, which would be granted if the court was of the opinion that it was just and equitable to do so.¹⁶² In 1923, The Agricultural Co-operatives Act was amended to require the liquidators acting under The Companies Winding-Up Act to notify the Registrar of Agricultural Co-operative Associations of the liquidation.¹⁶³

A. Cash Trading

The restriction to cash trading was amended in 1915 to read as follows:

5(4) The association shall, except as hereafter provided, pay for all goods purchased upon delivery: Provided that any association may purchase upon credit from any other agricultural co-operative association or any company, association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative associations.

(5) No association shall sell its goods, wares or merchandise to its shareholders, patrons or customers except for cash. No credit shall be given.

(6) The directors shall not have power to pledge the credit of the association except as aforesaid or for the purchase price or rental of business premises, salaries and incidental

¹⁵⁹ S.S. 1921-22, c. 52., s. 2.

¹⁶⁰ March 10th, 1925 letter from Deputy Attorney-General Geddes to F.H. Auld, Deputy Minister of Agriculture, supra note 102.

¹⁶¹ S.S. 1913, c. 62, s. 25; S.S. 1915, c. 37, s. 3; S.S. 1923, c. 43, s. 8.

¹⁶² R.S.S. 1920, c. 82, s. 5.

¹⁶³ S.S. 1923, c. 43, s. 9.

expenses, or for moneys temporarily borrowed to pay for goods purchased or expenses incurred in connection therewith or the shipment thereof.¹⁶⁴

This restriction to cash trading was a source of concern to both the managers of the co-operatives and the wholesalers. In the fall of 1919 many wholesale suppliers petitioned the provincial government to remove the restriction. They argued that they were very willing to do business with co-operatives, that the normal method of doing business was to provide credit, and that credit was generally being provided despite the restriction in the Act. They stated that they were willing to put their faith in the farmers' organizations, and that farmers, the co-operatives and the suppliers would benefit from credit transactions.¹⁶⁵ Their cause was endorsed by H.W. Ketcheson, the manager of the Davidson Co-operative Association in a letter to the Minister of Agriculture, C.A. Dunning.¹⁶⁶ The Minister replied in a letter three days later as follows:

I find a somewhat divided opinion, and the division of opinion seems to follow broadly the lines between the strong association such as yours and the smaller one just reaching out. So far as the wholesalers are concerned, they undoubtedly do desire the cash section eliminated, but I sometimes wonder if this desire is altogether in the interests of the small struggling association which a comparatively small amount of unwise debt might easily put out of business. We must bear in mind in considering this question that a very large proportion of our co-operative associations are still in a pioneer condition. Many of their managers are just beginning to acquire experience, and the restriction to cash dealing in the case of an association managed by men of limited experience is not without its beneficial features.¹⁶⁷

A compromise was adopted in 1922, when the Act was amended to permit a retail co-operative with a paid-up capital of at least \$5,000 to pass a supplementary by-law

¹⁶⁴ S.S. 1915, c. 37, s. 2.

¹⁶⁵ Saskatchewan Archives, Call No. M6, File X-0-11, *supra*, note 102, September 15th, 1919 letter from Ashdown Hardware; see also October 25th, 1919 letter from Greenshields Limited, at the time the largest wholesale house in Canada, to Premier Martin.

¹⁶⁶ *Id.*, December 24th, 1919 letter from Ketcheson to Dunning.

¹⁶⁷ *Id.*, December 27th, 1919 letter from Dunning to Ketcheson. At the time, the Davidson Co-operative was one of the largest and most successful in the province.

making the restrictions on credit transactions in the Act inapplicable.¹⁶⁸ The cash trading restriction was considered in Gnaedinger & Sons Ltd. v. Turtleford Grain Growers Co-operative Association Limited.¹⁶⁹ The plaintiff company sold goods to the association but was not paid for them. Some of the goods were in turn sold to customers. The Saskatchewan Court of Appeal held that the intention of the Act was to prohibit credit transactions and that the contract was therefore ultra vires the association. However, the court went on to hold that since the sale of goods was null and void, the property in the goods remained with the plaintiff. The court held that unsold goods should be returned to the plaintiff and that the association should account to the plaintiff for the proceeds of goods already sold. The decision clearly went further than earlier cases to protect the interests of associations' suppliers.

B. Powers of Associations Under the Act

In 1924 the Attorney-General was asked for an opinion as to whether a co-operative could increase its capital by increasing the par value of shares that were already sold. The Rozilee Co-operative Association Limited had passed the following resolution on March 15, 1917:

That the authorized capital of the Association is hereby increased from \$2,000 to \$20,000 by increasing the par value of the Association's 400 shares from \$5 to \$50.¹⁷⁰

The Parkside Co-operative Association passed a similar resolution on March 7, 1923. The Deputy Attorney-General's opinion was that the by-law was not authorized by any statute because neither the Agricultural Co-operatives Act nor The Companies Act provided for an increase in the par value of individual shares, because under The Companies Act, capital could only be increased by issuing new shares, and because the Co-operatives Act contained no provision for imposing a liability on a shareholder "greater than that which he contracted by his original purchase of shares."

¹⁶⁸ S.S. 1921 - 22, c. 52, s. 4.

¹⁶⁹ [1922] 1 W.W.R. 936 (Sask. C.A.).

¹⁷⁰ February 18, 1924 letter, supra, note 102.

C. Apportionment of Surplus

The 1913 Act set out a scheme for distribution of a co-operative's profit. After provision for a reserve fund and interest on capital, the surplus was to be divided among the patrons, whether they were shareholders or not. In 1916 an amendment restricted the division of the surplus to the shareholders, unless the supplemental by-laws provided for distribution to patrons and shareholders. The 1916 amendment also permitted a co-operative by supplemental by-law to provide for patronage dividends of non-members to be accumulated by the co-operative until they amounted to the par value of a share, in which case a share was to be issued.¹⁷¹ A further amendment in 1918 increased the interest rate on paid up capital from 6% to 8%.¹⁷² In 1922, the directors were permitted to retain patronage dividends until the unpaid balance of all shares was fully paid up if the supplemental by-laws so provided.¹⁷³

In 1924, the Co-operation and Markets Branch of the Department of Agriculture had to consider several supplemental by-laws that appeared to infringe the policy of the Act. The Watrous Grain Growers Co-operative Association Limited proposed in a by-law to retain any patronage dividend that was less than 25 cents and to credit the amount to the patron or shareholder who otherwise would have received it. If that individual did not do business with the co-operative for two consecutive years, the amount in that individual's account would be transferred to the association's surplus account, with notice to the individual and a right of appeal to the Board. The Deputy Attorney-General's opinion was that the co-operative had no power under the Act to discriminate between individuals whose volume of business had been large and those whose volume of business had been small. Furthermore, the Act made no provision for the forfeiture of a patronage dividend.¹⁷⁴

The Leask Co-operative Association Limited proposed to retain patronage dividends beyond the value of one share, until the shareholder owned \$100.00 in stock. The Deputy Attorney-General ruled that the co-operative could retain dividends only to

¹⁷¹ S.S. 1916, c. 37, s. 35.

¹⁷² S.S. 1921-22, c.52, s. 7.

¹⁷³ March 18th, 1924 letter from Geddes to Auld, supra, note 102.

¹⁷⁴ Id.

the value of one share, and that further dividends must be paid in cash. The same association had hoped to pay additional dividends in goods but this was prohibited.¹⁷⁵

The Maidstone Co-operative Association Limited was incorporated in 1914 and by 1920 had issued 119 shares at a par value of \$25.00 with \$1.00 paid on each share. At the annual meeting on February 21st, 1920 the following resolution was passed:

That we transfer from reserve account the sum of \$2,856.00 to be added to shares 1 to 119 at the rate of \$24.00 per share.

The Deputy Minister of Agriculture was advised that this transaction was prohibited for two reasons. Firstly, the co-operative was subject to the provisions of The Companies Act (except where that Act was inconsistent with the Agricultural Co-operative Associations Act), and a company could not invest its reserves in its own shares. Secondly, the Co-operatives Act required apportionment of profits on the basis of patronage, and to use the reserve fund in the manner proposed would be a contravention of that principle, since the reserve fund is made up of undistributed profits.¹⁷⁶

D. The 1928 Act and Amendments to 1939

In a 1928 letter to Keen, Waldron recognized the following as deficiencies in the Act: some co-operatives were not operated on a co-operative basis and such operation was not required by the Act; co-operation was practically limited to the "agricultural class" because the Act required 75% of the members to be involved in agriculture and because the title co-operative was abused by private traders. He even went so far as to say that "[l]egislation or lack of it, ... was the reason why associations have failed in Saskatchewan" and rather optimistically, that "[n]othing will go wrong in future with amended legislation in force and the U.F.C. to teach co-operation."¹⁷⁷

On the question of the legitimacy of some co-operatives, or rather, of enterprises masquerading as co-operatives, Keen and others recommended careful scrutiny of all applications for incorporation of co-operatives - a practice that was being followed in

¹⁷⁵ November 22, 1926 letter from Dingwall to Auld, *id.*

¹⁷⁶ S.S. 1915, c. 37, s. 18.

¹⁷⁷ April 24th, 1928 letter from Waldron to Keen, *supra*, note 72, Vol. 44, General Correspondence, 1928, C-E. See also January 14th, 1929 letter from Ketcheson to Waldron, *id.*, Vol. 48, General Correspondence, 1929, C.

Saskatchewan and Manitoba.¹⁷⁸ In a 1927 letter to Waldron, Keen indicated that the Co-operative Union wanted to ensure that the Federal and Provincial governments pass legislation "that would end the exploitation of such words as "pool" and "co-operative" by private corporations and individuals."¹⁷⁹

E. Credit Transactions

When the S.G.G.A. Trading Department was established in 1914 the Act had been amended to include the following subsection:

5(4) The association shall, except as hereafter provided pay for all goods purchased upon delivery: Provided that any association may purchase upon credit from any other agricultural co-operative association or any company, association or society incorporated by any special Act of the Province of Saskatchewan having objects wholly or in part similar to the agricultural co-operative associations.¹⁸⁰

The result of the amendment was that co-operatives could purchase on credit from the Trading Department of the S.G.G.A., but not from other wholesale suppliers. In the event that a co-operative was unable to meet its liabilities and ceased business, the S.G.G.A. had a priority over other creditors, since the arrangements with the other creditors were ultra vires. This special treatment for the co-operative wholesaler, while benefitting the Trading Department, was an irritation to the local co-operative managers and other suppliers. Opposition to the restriction on credit was led by H.W. Ketcheson, the manager of the Davidson Co-operative. He believed that the co-operatives should not be placed in a different position than the private traders, since it was difficult to command the support of farmers who were refused credit at the co-operative when credit would greatly benefit them. In September, 1927, Ketcheson wrote to the Minister of Agriculture to explain the difficulty the Davidson Co-operative was experiencing with some customers. He wrote:

It is all very well to encourage cash trading and that is an ideal we should strive for. However, I have been very strongly opposed to the clause in the Act which makes it impossible for an Association to force collections. In fact I think it is a reflection upon our Provincial Legislature to have any such Act. I do not think the Legislature should

¹⁷⁸ Circular No. 7, July 31st, 1940, id., Vol. 217, Monthly Bulletins, 1931-1946.

¹⁷⁹ June 30th, 1927 letter from Keen to Waldron, id., Vol. 40, General Correspondence, 1927, A-D.

¹⁸⁰ S.S. 1915, c. 37, s. 2.

encourage people to be crooked but still that is exactly what the Act does. There are some in the Davidson district that were looked upon as honest and had traded with the Association and paid their bills. It was not generally known in the early stages that the bills were not collectable. Later on as we grew in strength those opposed to our movement carried on a good deal of propaganda with our patrons advising that they did not have to pay their bills. A local lawyer was quite active in this. We have accounts on our books that would have been paid long ago had we been in a position to sue. As it stands a man can stand up and say "yes, I bought goods from the Co-op, but they can not collect it and I am not going to pay". The Legislature says, "yes, you need not pay if you do not wish to do so as we have passed legislation protecting just such guys as you."¹⁸¹

A resolution of the co-operative managers at their annual conference in 1927 called for the abolition of all restrictions on credit transactions.¹⁸² The Co-operative Union of Canada supported the position of the managers.¹⁸³

However, the S.G.G.A. had amalgamated in 1926 with the United Farmers of Canada (U.F.C.) to form the United Farmers of Canada (Saskatchewan Section), and this body had taken over the trading operations of the S.G.G.A. A meeting was held in Regina on December 16, 1927 to consider amendments to the Act. Five representatives of the U.F.C. - Saskatchewan Section attended,, including their legal adviser, W.B. Francis, four government representatives and one representative from the local co-operatives.¹⁸⁴ The result was that the U.F.C. position prevailed and no amendment was made to the Act concerning credit transactions.

7. THE 1928 ACT - RESTRICTION TO AGRICULTURE REMOVED

During the 1920s the Saskatchewan economy prospered, and cities and towns expanded. By 1928, it was generally believed that the benefits of co-operation should be extended to urban residents. The Executive of the Co-operative Trading Association passed a resolution reflecting this belief. The resolutions said that the Act should be amended "in such a manner that any consumers co-operative in Saskatchewan might be

¹⁸¹ September 8th, 1927 letter from Ketcheson to Hamilton, Saskatchewan Archives, Call No. M13, File No. 26 (1926-9), W-Z, supra, note 102.

¹⁸² August 25th, 1927 letter from Baker to Hamilton, id.

¹⁸³ August 30th, 1927 letter from Hamilton to Auld, id.

¹⁸⁴ "Amendments to the Agricultural Co-operative Association Act." Undated. id.

allowed incorporation under the Act".¹⁸⁵ The title of the Act was changed in 1928 to be simply The Co-operative Associations Act,¹⁸⁶ the requirement that 75% of the members be agriculturalists was repealed and all references to farmers or agriculture in the Act were removed.¹⁸⁷

A. Apportionment of Surplus

A "patron", previously undefined in the Act, was defined as a person who purchased more than \$50 worth of merchandise from an association in any one year.¹⁸⁸ The apportionment of surplus section was amended to provide that, after ten per cent of profits were set aside for the reserve fund and six percent interest was paid on paid up capital stock, the remaining surplus be divided among the patrons in proportion to their patronage.¹⁸⁹ The result of this amendment was that a customer, whether a shareholder or not, would not receive a patronage dividend if he spent less than \$50 at the co-operative in that year.

A new section was introduced which permitted co-operatives, to provide by supplemental by-law that no interest be paid on shares. Upon such a by-law being approved by the Registrar, the co-operative was required, if so demanded by a shareholder holding more than one share, to repurchase for cash all shares in excess of one held by that shareholder.¹⁹⁰

In 1931, section 25 was further amended to allow the association to pass supplemental by-laws to permit patronage dividends to be retained in either a share or loan capital account (carrying interest at 6%), and amounts in the share capital account to be applied to the purchase of additional shares. A shareholder could withdraw any amount in a loan capital account after giving ninety days notice.¹⁹¹

¹⁸⁵ May 6th, 1925 letter from Waldron to The Secretary, Co-operative Trading Association, supra, note 72, Vol. 34, General Correspondence, 1925, A-G. The Executive members included Ketcheson and Waldron.

¹⁸⁶ S.S. 1928, c. 54.

¹⁸⁷ Id.

¹⁸⁸ Id. s. 2 (2).

¹⁸⁹ Id. s. 24 (2).

¹⁹⁰ S.S. 1928-29, c. 48, s. 2.

¹⁹¹ Id., s. 25.

Also in 1931, the definition of "patron" was altered to be a non-shareholder purchasing over \$50 worth of merchandise in the year. Patronage dividends were to be divided among "patrons and shareholders."¹⁹² Thus, shareholders would receive a dividend even if their annual purchases amounted to less than \$50.

A further amendment in 1935 permitted the members to provide by supplemental by-law that different commodities should have different scales of dividends, and that the directors could declare that no dividend would be paid on certain commodities.¹⁹³ This provision was further amended in 1936 to permit a higher scale of dividends to be paid to shareholders than to patrons. It also provided that where dividends due to a non-shareholder patron had been retained for three years and had not accumulated to an amount equal to the par value of one share, the patron would be offered an opportunity to claim the amount; if the dividends were not claimed, they would become the property of the association.¹⁹⁴

Keen also often responded to requests from Saskatchewan government officials for information about possible federal legislation.¹⁹⁵ When Saskatchewan was considering the introduction of co-operative credit society legislation, Waldron approached Keen for his assistance.¹⁹⁶ For example, in 1932 Waldron indicated to Keen that the Saskatchewan government wanted all applications for registration under the co-operatives legislation to be submitted to Keen prior to incorporation.¹⁹⁷

Keen had some say in policy matters as well. In 1932 Finlayson was interested in Keen's views on the desirability of amending the Co-operative Marketing Associations Act¹⁹⁸ to allow co-operative marketing associations to accept produce from non-members. Finlayson thought that such a provision would offend the members of the co-

¹⁹² S.S. 1931, c. 56.

¹⁹³ S.S. 1934-35, c. 55, s. 5.

¹⁹⁴ S.S. 1936, c. 75, s. 8. See November 12th, 1932 letter from Arnason to Keen and November 18th, 1932 letter from Keen to Arnason on this point, supra, note 72, Vol. 58, General Correspondence, 1932, A-C. They were both were of the view that government intervention in the affairs of co-operatives should be as little as possible, and that, subject to some minimum standards, the membership should make its own decisions over such matters.

¹⁹⁵ September 4th, 1928 letter from Waldron to Keen, id.

¹⁹⁶ October 8th, 1928 letter from Waldron to Keen, id.

¹⁹⁷ September 5th, 1932 letter from Waldron to Keen, id., Vol. 58, General Correspondence, 1932, A-C.

¹⁹⁸ R.S.S. 1930, c. 144.

operative.¹⁹⁹ Keen's response was ambivalent. He saw both benefits and detriments to the proposal. He thought that efforts should be made to bring non-members into co-operatives "as true co-operators". However, being in favour of stable legislation, he considered it unwise to experiment with amendments to the Act. He also thought that the amendment could be open to abuse.²⁰⁰ Finlayson agreed on this last point and considered it unlikely that the amendment would be enacted.²⁰¹

Another issue arose at this time. Arnason contacted Keen for his views on whether retail merchants should be eligible for membership in retail co-operatives.²⁰² The question was posed in terms of whether this would make the co-operative a wholesale.²⁰³ Keen did not think that co-operative legislation allowed retail merchants to be members of co-operatives; in addition, he considered allowing such membership unwise and probably against co-operative principles.²⁰⁴ Arnason and Keen also discussed disciplinary authority over co-operatives acting in violation of the law.²⁰⁵

In the same year, Arnason asked Keen for his opinion on the creation of a special commodity dividend for co-operatives. Keen asserted that government interference in such matters should be minimal, and in any case, that a general dividend was preferable.²⁰⁶

Arnason advised Keen of changes to the Co-operative Associations Act, made on January 7th, 1933, whereby a co-operative's supplemental by-laws could provide that the

¹⁹⁹ January 30th, 1932 letter from Finlayson to Keen, supra, note 72, Vol. 58, General Correspondence, 1932, A-C.

²⁰⁰ February 2nd, 1932 letter from Keen to Finlayson, id., Vol. 58, General Correspondence, 1932, A-C.

²⁰¹ February 9th, 1932 letter from Finlayson to Keen, id., Vol. 58, General Correspondence, 1932, A-C.

²⁰² June 2nd, 1932 letter from Arnason to Keen, id., Vol. 58, General Correspondence, 1932, A-C.

²⁰³ This was the view of the Attorney-General's Department, and one with which Keen agreed, see June 14th, 1932 letter from Arnason to Keen, and June 17th, 1932 letter from Keen to Arnason, id., Vol. 58, General Correspondence, 1932, A-C.

²⁰⁴ June 7th, 1932 letter from Keen to Arnason, id., Vol. 58, General Correspondence, 1932, A-C. The rationale would be based on the view that a retail co-operative is an association of persons for the provision of non-profit services to themselves. Membership by a merchant, for the purpose of supplying his or her store, would make the co-operative an agent for profit-motivated distribution of goods to third parties (who might otherwise deal with the co-operative). I am grateful to Dr. Brett Fairbairn (Centre for the Study of Co-operatives and the Department of History, University of Saskatchewan) for pointing this out to me.

²⁰⁵ Id.

²⁰⁶ November 12th, 1932 letter from Arnason to Keen, and November 18th, 1932 letter from Keen to Arnason, id.

co-operative could cease paying interest on share capital. He also indicated that Keen's comments on other supplemental by-law provisions would receive consideration.²⁰⁷ In preparing for the introduction of co-operative credit legislation, Arnason was interested in Keen's comments on the Alberta, Nova Scotia, Ontario and Manitoba Acts.²⁰⁸ Keen provided an extensive commentary on the Alberta Act together with information on the Manitoba, Nova Scotia, Ontario and Québec Acts.²⁰⁹ In 1934 Arnason advised Keen that amendments to the Co-operative Associations Act recommended by the CUC would be considered once the Legislature met.²¹⁰ In late 1934 Arnason again requested comments from Keen on proposed changes to the Act; these particular changes were proposed by the Consumers Refineries Co-operative Association Ltd.²¹¹

Keen made suggestions for amendments to the Co-operative Associations Act in late 1934, but unfortunately they were received too late. However, some of his suggestions were included in the amendments as drafted. Keen also suggested that the Act be amended to permit the incorporation of co-operatives without share capital, a proposal that was of interest to Arnason.²¹² Keen also reviewed and commented on the Standard By-laws at the request of Arnason.²¹³

B. Other Amendments

In 1935 the incorporation procedure was amended to give the registrar discretion as to whether to incorporate a co-operative. The words "if he approves of incorporation" were added to the subsection requiring the registrar to endorse the memorandum of association.²¹⁴ In the same year another amendment gave a co-operative the power to substitute its own by-laws for the otherwise mandatory standard by-laws, if the proposed by-laws were not inconsistent with the Act, were approved by two-thirds of the shareholders at an annual meeting or a general meeting called for the purpose, and

²⁰⁷ January 7th, 1933 letter from Arnason to Keen, *id.*, Vol. 63, General Correspondence, 1933, A-C.

²⁰⁸ December 5th, 1933 letter from Arnason to Keen, *id.*, Vol. 63, General Correspondence, 1933, A-C.

²⁰⁹ December 11th, 1933 letter from Keen to Arnason, *id.*, Vol. 63, General Correspondence, 1933, A-C.

²¹⁰ April 19, 1934 letter from Arnason to Keen, *id.*, Vol. 68, General Correspondence, 1933.

²¹¹ December 5th, 1934 letter from Keen to Arnason *id.*, Vol. 68, General Correspondence, 1933.

²¹² January 16th, 1935 letter from Arnason to Keen, *id.*, Vol. 73, General Correspondence, 1935, C-I.

²¹³ October 26th, 1935 letter from Keen to Arnason, *id.*

²¹⁴ S.S. 1934-35, c. 55, s. 2.

were also approved by the Lieutenant Governor-in-Council.²¹⁵ This amendment was repealed in the following year.²¹⁶

C. Other Developments: 1928-1939

In 1929 the U.F.C.'s Trading Department was the nucleus of a new wholesale organization, the Saskatchewan Co-operative Wholesale Society, which was incorporated by a special Act of the Legislature.²¹⁷ H.W. Ketcheson, manager of the Davidson Co-operative became the manager of the wholesale.²¹⁸

The Depression of the 1930's began on October 29, 1929 with the Wall Street crash, and had a devastating effect on the prairies in the following decade. The early 1930's brought severe drought, strong winds that blew away the soil, and a grasshopper plague. Wheat prices dropped to record lows and most farmers were in serious financial difficulty. The hardships stimulated an interest in co-operative development, and particularly after 1934, many new local co-operatives were organized by wheat pool fieldmen travelling from community to community.

In 1929, trade unionists and teachers, primarily in the urban centres, organized the Independent Labour Party of Saskatchewan; it formed a coalition known as the Farmer-Labour Group with the U.F.C. (Saskatchewan Section). The Group unsuccessfully contested the 1930 federal election. In 1932, the Co-operative Commonwealth Federation (C.C.F.) was formed in Calgary and held its first annual convention in Regina in July, 1933. The Farmer-Labour Group joined the C.C.F. in 1935 and contested the federal election, winning two seats, after which the U.F.C. (Saskatchewan Section) terminated its political involvement.²¹⁹

The Co-operation and Markets Branch of the Department of Agriculture played a major role in co-operative development in the 1930's under the leadership of the Commissioner, B.N. Arnason. In 1936 Arnason was charged with preparing credit union

²¹⁵ Id., s. 3.

²¹⁶ S.S. 1936, c. 75, s. 4.

²¹⁷ Supra, note 57, at 147.

²¹⁸ I. MacPherson, Each for All, Toronto: Macmillan & Carleton University, 1979, at 124.

²¹⁹ Supra, note 57 at 147, 151, 154, 156, 158 and 161.

legislation and welcomed Keen's input. The Act was to be based on the Nova Scotia and Prince Edward Island Acts.²²⁰ Keen advised an adoption of the Nova Scotia Act.²²¹

In 1937 the Saskatchewan government was considering amending the Co-operative Marketing Associations Act to provide for membership in a marketing co-operative on a patronage basis. This would permit co-operatives to decide that individual capital investment could be based on the volume of business done with the co-operative. There was concern about the potential confusion among the terms "members", "shareholders" and "patrons". Keen foresaw problems with putting the amendment into practice because of fluctuating volumes of an individual's purchases; he also foresaw problems with members with large families. He thought the solution was to encourage the investment of the surplus funds of each member of the co-operative at a reasonable rate of interest.²²²

In 1937 and 1938 concerns arose over the interpretation given by the tax commissioners to "member" in the Dominion Income Tax Act. Arnason was interested in any progress which CUC had made with the commissioners.²²³ Keen thought that members must be admitted as members of the co-operative, while shareholders were those who had been allocated a share. The mere fact of customers receiving a patronage rebate, he opined, would not make them shareholders.²²⁴

In early 1938 a committee consisting of W.B. Francis, Harry Fowler and Arnason was established to consider revisions of the Co-operative Associations Act. The committee wished to meet with Keen, and in particular, to discuss means of dealing with members whose actions are injurious to a co-operative.²²⁵ Keen agreed to meet with the committee and sent a copy of an Ontario by-law on the subject. He thought that the mere inclusion of a power to expel members would constitute a sufficient discipline on errant members. He also felt that expulsion of members should not be left to a meeting of members. He preferred that this matter be left to the directors.²²⁶

²²⁰ November 25th, 1936 letter from Arnason to Keen, supra, note 72, Vol. 76, General Correspondence, 1936, A-C.

²²¹ December 1st, 1936 letter from Keen to Arnason, id.

²²² Keen also commented on the other proposed amendments. See October 29th, 1937 and December 8th, 1937 letters from Keen to Arnason, id.

²²³ March 2nd, 1938 letter from Arnason to Keen, id., Vol. 88, General Correspondence, 1938, C-H.

²²⁴ March 7th, 1938 letter from Keen to Arnason, id.

²²⁵ May 12th, 1938 letter from Arnason to Keen, id.

²²⁶ May 16th, 1938 letter from Keen to Arnason, id.

Interest had been shown in a students' co-operative residence at the University of Saskatchewan. Registration of such an association would be possible once proposed revisions to the Co-operative Associations Act were passed permitting membership of minors in co-operatives.²²⁷

A question arose as to whether community halls organized on a co-operative basis were exempt from income tax. Keen's response to Arnason indicated that while the Income Tax Act did not allow for such exemption, it could be engineered if the Saskatchewan Co-operative Associations Act was amended to allow for the incorporation of co-operatives without share capital. Then community halls could incorporate under the Act and benefit from the tax exemption under the Dominion Act.²²⁸

A December 29th, 1921 letter from Keen to Ketcheson indicates that the Union had just won an income tax battle for co-operatives.²²⁹ Part of the argument Keen used to get the support of the Saskatchewan government for the Co-operative Union of Canada was that it could, if it were better financed, fight and win more battles with the Commissioners of Taxation.²³⁰ Taxation of co-operatives was an important concern for Keen and for co-operatives generally, and it appears that Keen's and the CUC's efforts in this regard were very beneficial to co-operatives throughout Canada.²³¹ Of course they did not win all battles with the Commissioners of Taxation. In 1922, for instance, an unfavourable ruling regarding the taxation of surplus carried over to reserve or to the following year's accounts was handed down.²³²

Two provisions of the 1939 Act were in direct response to discussions with income tax officials. They were a provision permitting the incorporation of co-operatives

²²⁷ November 10th, 1938 letter from Arnason to Keen, id.

²²⁸ December 12th, 1938 letter from Arnason to Keen, December 12th, 1938 letter from Keen to Arnason, id.

²²⁹ Id., Vol. 26, General Correspondence, 1921, A-J.

²³⁰ October 22nd, 1923 letter from Keen to Waldron, id., Vol. 30, General Correspondence, 1923, A-H. It appears from their correspondence that the Saskatchewan government was quite useful to the Union in terms of educational and bookkeeping assistance. Further, Waldron encouraged Saskatchewan co-operators to meet Keen when he visited the Province and encouraged co-operatives to affiliate with the Co-operative Union of Canada.

²³¹ See, e.g., March 2nd, 1938 letter from Arnason to Keen; March 7th, 1938 letter from Keen to Arnason, id., Vol. 88, General Correspondence, 1938 C-H.

²³² October 22nd, 1922 letter from Keen to the Young Grain Growers Association Ltd., id., Vol. 207, Inquiries, 1919-24.

without share capital and a change dealing with the apportionment of surplus.²³³ Keen pointed out the dangers of relying on the views of local taxation officials in amending the statute without obtaining a ruling from Ottawa.²³⁴ This advice was followed and the amendment was passed. As a result community halls organized on a co-operative basis were exempt from taxation.²³⁵

Beginning in 1934 an annual Conference of Co-operative Trading Associations was organized to stimulate communication between co-operators, and in 1937 the first of many Co-operative Schools was organized at the University of Saskatchewan in Saskatoon.²³⁶

8. THE 1939 ACT

In 1938 the Co-operation and Markets Branch undertook a major study of the performance of co-operatives in the province for the period 1914-1938.²³⁷ Following the study a new Co-operative Act was enacted.

The new Act redefined very broadly the objects for which an association could be incorporated.²³⁸ The Act replaced the term "shareholder" with the term "member" and defined a member as a shareholder, or in the case of an association without share capital, as a person who had complied with the by-laws of the association governing admission.²³⁹ For the first time it was possible to operate a co-operative on a membership fee basis. Applications for membership were subject to approval by the board of directors,²⁴⁰ and memberships were transferable only with the approval of the board.²⁴¹

²³³ February 6th, 1939 letter from Arnason to Keen, id., Vol. 93, General Correspondence, 1939, C-G.

²³⁴ February 15th, 1939 letter from Keen to Arnason, id.

²³⁵ April 21st, 1939 letter from Arnason to Keen, id.

²³⁶ Supra, note 57, at 159 and 165.

²³⁷ Co-operative Purchasing Associations in the Province of Saskatchewan, Department of Agriculture, Bulletin No. 95 (8 parts) Regina, (1939).

²³⁸ S.S. 1939, c. 68, ss. 5-7.

²³⁹ Id., s. 2 (2).

²⁴⁰ Id., s. 17 (2).

²⁴¹ Id., s. 18.

A procedure to expel members was introduced (and is still in effect). The directors could order the expulsion of a member by a two-thirds vote at a properly called meeting (provision was made for repayment of shares). The member was entitled to appeal the order at the next general meeting, where a majority of the members present could confirm or rescind the order.²⁴² It was not specifically stated in the Act that the member was entitled to be heard at the directors' meeting. However, in the Supreme Court of Canada case of Marcotte v. Société Coopérative Agricole de Ste. Rosalie, Abbott J. stated that, since the Board was acting in a quasi-judicial capacity, the member was entitled to be heard.²⁴³ The case might be distinguished on the basis that there was no appeal to the general membership and therefore the Board's decision was final. With the changing attitude of the Supreme Court to the principle of audi alteram partem in recent years, and with the influence of the Charter of Rights and Freedoms, it is likely that a court would hold that the member had a right to be heard at both the directors' and the general meeting. The Manitoba statute so provides.²⁴⁴

In the 1939 Act, the provision for the apportionment of surplus required the directors, after setting aside ten per cent of the surplus for a reserve fund, and paying interest on paid-up capital, to set aside "not more than ten per cent of the surplus as an educational or community fund."²⁴⁵ This was the first time that the Rochdale principle of perpetuating the co-operative philosophy through educational works²⁴⁶ was embodied in a Saskatchewan co-operative statute.

At various times prior to the passage of the 1939 Act, Keen and Waldron had discussed the co-operative principle of education. The need to disseminate information about the activities of the various co-operatives in Canada was well-recognized: co-operatives could learn a great deal from each others' successes and failures.²⁴⁷ Even at the early stages of development in Canada there was concern about the inadequate attention directors and managers of co-operatives paid to education and to the need for

²⁴² Id., s. 10.

²⁴³ [1955] S.C.R. 294.

²⁴⁴ S.M. 1976, c. 47, s. 109.

²⁴⁵ S.S. 1939, c. 68, s. 25.

²⁴⁶ D. Ish, The Law of Canadian Co-operatives, Toronto, Burroughs, 1981, at 6.

²⁴⁷ See, e.g., February 19th, 1923 letter from Keen to Waldron, supra, note 72, Vol. 30, General Correspondence, 1923, A-H.

education funds.²⁴⁸ Keen pointed out that it "seems almost impossible to get societies to see that money spent in co-operative education is not only money well spent but absolutely imperative for the welfare of the movement."²⁴⁹ On a similar point, Keen also voiced concerns about the "lack of a sense of responsibility and of appreciation of our principles by the directors" and about managers who know "nothing of and [are] not interested in co-operative philosophy from which all permanent economic success arises."²⁵⁰

The new Act provided that the association could be dissolved by a three-fourths vote of the members at any duly constituted meeting called for the purpose of considering the resolution.²⁵¹ Presumably, this meant a three-fourths vote of the members actually attending the meeting. This provision replaced the requirement that three-fourths of the shareholders living within 35 miles of the head office sign the resolution.

The Co-operation and Markets Branch conducted a thorough study of the effect of customer credit on the co-operatives²⁵² but no significant amendment was made to the credit provisions of the Act.

9. AMENDMENTS TO THE STANDARD BY-LAWS BETWEEN 1914 AND 1950

The Standard By-laws, drafted in 1914, were amended in 1927, 1937, 1939 and 1942. It has not been possible to determine the particular circumstances which led to these amendments, and it is probable that any documents concerning these amendments have now been lost.

However, there are a few exceptions including two letters from Keen to Arnason containing detailed comments on the Standard By-laws.²⁵³ He questioned the need for annual meetings of all co-operatives to be held in January of each year, the duplication

²⁴⁸ July 14th, 1923 letter from Keen to Waldron, id.

²⁴⁹ July 25th, 1923 letter from Keen to Waldron, id.

²⁵⁰ March 15th, 1922 letter from Keen to Booth, Vol. 28, id., General Correspondence, 1922, A-G. These exact same issues continue to be raised in 1988.

²⁵¹ S.S. 1939, c. 68, s. 33.

²⁵² Supra, note 238, Part V.

²⁵³ October 26th, 1935 letter from Keen to Arnason, supra, note 72, Vol. 73, General Correspondence, 1935. See also September 25th, and 28th, 1936 letters from Keen to Arnason, id., Vol. 76, General Correspondence, 1936 A-C.

in giving notice of meetings to members directly and in a local newspaper, and the prohibition against a member being an auditor of a co-operative. Keen seemed to have envisaged directors overseeing the operations and management of co-operatives in some detail for he considered it desirable for boards to comprise many committees (including grocery, drygoods and hardware committees). As a consequence, he was in favour of boards of directors being comprised of at least six members and not more than twelve. He thought that there should be a minimum patronage requirement for eligibility for election to the board of directors and that it was worthwhile to consider disqualifying directors who were in arrears with payments to the co-operative. He thought that disloyalty by a director, defined as including doing business with a competitor of the co-operative when it could have been carried out with the co-operative, should be grounds for disqualification. Keen also thought that it might be desirable to take the drastic step of denying voting rights to members who made purchases below a fixed amount per annum. He raised the issues of the appointment of auditors, their and secretaries' duties and the quorum at meetings. While these comments cannot be treated as agreed to by all co-operators, they are issues that were raised by an influential co-operator. As such, they illustrate some of the concerns that gave rise to changes in the by-laws over time.

Keen considered that a vacancy on the board of directors should be filled by the unsuccessful candidate with the most votes at the last annual meeting at which there was a directors' election, with that person holding office until the next annual meeting. He saw this as preferable to the board arbitrarily filling the vacancy.

Other background on changes to the Standard By-laws includes later correspondence among Arnason, Keen, Fowler, Francis and McCaig.²⁵⁴ This dealt with such matters as the first general meeting of a co-operative, deferral of annual meetings, members requisitioning meetings, quorum at meetings, nomination of candidates for the board of directors, number and removal of directors, bonding of officers, meeting credentials, retirement of members, statutory reserves, the election of auditors and the powers of the Registrar.

²⁵⁴ February 3rd, 1941, August 6th, 1941 and April 1st, 1942 letters from Arnason to Keen; February 11th, 1941, September 9th, 1941 and October 4th, 1943 letters from Keen to Arnason; May 14th, 1941 letter from Francis to Arnason; June 2nd, 1941, letter from Fowler to Arnason; May 30th, 1941 letter from McCaig (President, Saskatchewan Co-operative Wholesale Ltd. to Arnason, *id.*, Vol 102, General Correspondence, 1941, C-I; Vol. 105, General Correspondence, 1942, A-C; Vol. 109, General Correspondence, 1943, A-C.

In 1927, Article VIII of the Standard By-laws was amended by inclusion of a section entitled "Advice".²⁵⁵ It was suggested that every association should pass by-laws dealing with the following matters:

- (1) Regulating the manner in which calls may be made on the unpaid portion of shares, and providing penalties for nonpayment of such calls.
- (2) Providing how patronage dividends shall be paid to nonshareholder patrons, e.g., whether paid in cash or credited on account for capital stock.
- (3) Providing such rules as may be required for the regulation of the business of the association and defining any special duties which may be assigned to any officer or servant of the association.

These administrative matters had probably caused problems for some associations. The advice section also included a set of suggested supplemental by-laws, and an offer by the Registrar to provide to any proposed association, free of charge, a set of suitable by-laws, on being informed in detail of the nature of the proposed association's business.

The provisions concerning meetings were amended in 1937,²⁵⁶ 1939²⁵⁷ and 1942.²⁵⁸ Prior to 1937 only annual and special meetings were provided for, but in that year the following section was added under Article I:

3. Other General Meetings. - In addition to the annual meeting, a general meeting of the association may be held quarterly or half yearly or at such other time and at such hour and place as may be determined by the directors.

In 1939, a section was added stating that the association could hold a semi-annual meeting in June or July "for the purpose of reviewing the financial results, the progress and problems, or any business of the association."

Clearly, the intention of these amendments was to stimulate greater member involvement in co-operatives' business affairs. However, the quorum for any

²⁵⁵ Standard By-laws Governing Agricultural Co-operative Associations, Saskatchewan Gazette (1927), Order in Council dated June 25th, 1927 Article VIII.

²⁵⁶ Standard By-laws approved by O.C.285/37 on March 8th, 1937 Saskatchewan Gazette, (1937).

²⁵⁷ Standard By-laws approved by O.C.1410/39 on September 5th, 1939 Saskatchewan Gazette, (1939).

²⁵⁸ Standard By-laws approved by O.C.502/42 on June 1st, 1942 Saskatchewan Gazette, (1942).

membership meeting was reduced in 1937 from one-fifth of the members to one-tenth of the members living within twenty miles of the head office. In 1939 this was changed to ten members or one-tenth of the number of members, whichever was less.

In 1939, more comprehensive provisions were made concerning procedures and duties of the board of directors. Provision was also made for an executive committee of the directors and for special committees to perform special duties. Of particular interest was a new section concerning membership administration:

7. The directors shall keep the members informed regarding the business of the association and encourage interest, discussion and support on the part of the members. The directors shall develop and foster a sense of ownership and responsibility on the part of the membership by the following:

1. By presentation of periodic reports regarding the conditions of the business, the operation of various business policies, by publicising the activities of the association in the local press and in other ways;

2. By arrangement of business and educational meetings of the association as frequently as conditions warrant;

3. By maintaining direct and personal contact with members to explain the business and progress of the association and solicit their support;

4. By encouraging active participation in the affairs of the association at meetings and by the appointment of special committees of the members where feasible and publicising the activities of such committees;

5. By encouraging the organisation of study and discussion groups regarding the principles and practices of co-operation and dissemination of co-operative literature;

6. By identifying with, and lending the support of the association to, the social educational and economic problems and affairs of the community to the extent that this does not interfere with the main objects for which the association is organised;

7. By affiliation with, or the support of, other co-operative associations to foster the development of the co-operative movement.

This section had two effects. It clearly set out the duties of a co-operative director and it also imposed upon the board a statutory obligation to perform those duties. At common law, a director is expected to demonstrate the degree of skill that may reasonably be expected from a person of his or her knowledge and experience. The purpose of the section was to raise the standard of performance of boards of directors; by including specific provisions in the standard by-laws it could be argued that the directors were made aware of their precise duties and that the common law standard of performance was thereby raised. Clearly, provincial officials hoped to improve directors' performance and thereby increase members' involvement in their co-operatives.

In 1941 Arnason and Keen discussed an amendment to the Co-operative Associations Act that would allow co-operatives to adopt a "revolving door plan" of financing. The committee felt that this had already been provided for in the new Act. Keen felt that the wording of section 25 of the new Act - "subject to the provisions of the by-laws" - did not give the co-operative power to vary the terms of the Act. He did feel that Arnason's argument that section 10 allowed for the adoption of the revolving door plan for financing was stronger because of the words "notwithstanding anything in the Act contained". He considered it odd, however, that a co-operative could enact a valid by-law which would conflict with the specific requirements of the Act.²⁵⁹ According to Francis, changes in the Standard By-laws were proposed in 1941 mainly to improve clarity and consistency.²⁶⁰ McCaig showed particular interest in provisions regarding the nomination of directors and control over their conduct.²⁶¹ The revisions to the Standard By-laws also gave considerable latitude to co-operatives on the subject of holding their annual meeting and to new co-operatives regarding holding their first general meeting.²⁶² Keen was concerned that the Standard By-laws were becoming too lengthy and too rigid, having the effect of placing co-operatives in a strait jacket. He

²⁵⁹ February 3rd, 1941 letter from Arnason to Keen, February 11th, 1941 letter from Keen to Arnason, supra, note 72, Vol. 102, General Correspondence, 1941, C-I.

²⁶⁰ May 14th, 1941 letter from W.B. Francis, id.

²⁶¹ May 31th, 1941 letter from J. McCaig, Saskatchewan Co-operative Wholesale Society Ltd, id. Fowler considered that a good job had been done in the revision.

²⁶² August 6th, 1941 letter from Arnason to Keen, id.

felt that as much latitude as is reasonably justifiable should be given to individual co-operatives.²⁶³

In 1942 Keen was concerned about the supplemental by-law regarding retirement of members - he thought it was ultra vires the Act. Arnason was interested in Keen's reasons and asked for his comments on the statutory reserve.²⁶⁴ This latter point continued to be of interest into 1943. Arnason thought that allocation of the statutory reserve should not be encouraged.²⁶⁵

10. AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT 1944-1950

In June 1944, a C.C.F. government was elected in Saskatchewan with a large majority and a stated enthusiasm for co-operative development. T.C. Douglas became Premier and L.F. McIntosh was the first minister of the new Department of Co-operation and Co-operative Development.²⁶⁶ Douglas formed an economic advisory committee chaired by G.E. Britness, and an Economic Advisory and Planning Board with George W. Cadbury, a British economist and member of the British Labour party, as its chair. Cadbury advised the Cabinet on economic and co-operative development.²⁶⁷

The new C.C.F. government did not immediately make major amendments to co-operative legislation. In the first session of the legislature in the fall of 1944, only a very minor amendment to the Act was made,²⁶⁸ following correspondence between the Registrar, the Deputy Attorney-General, W.B. Francis and others.²⁶⁹

In 1944 the question of retaining patronage dividends was much debated. Arnason and Keen discussed a co-operative retaining a member's patronage dividends and placing them to the member's credit in a share capital account until it amounted to the value of a share and then issuing a share to that member. Arnason was concerned about the desirability of such a provision and even about whether it would be authorized by the

²⁶³ September 9th, 1941, letter from Keen to Arnason, id.

²⁶⁴ April 1st, 1942 letter from Arnason to Keen, id., Vol. 105, General Correspondence, 1942, A-C.

²⁶⁵ October 4th, 1943 letter from Arnason to Keen, id., Vol. 109, General Correspondence, 1943, A-C.

²⁶⁶ John H. Archer, Saskatchewan: A History, Western Producer Prairie Books, Saskatoon, 1980, at 261.

²⁶⁷ Id., at 274.

²⁶⁸ S.S. 1944 (2nd Session), c. 44.

²⁶⁹ October 19th, 1944 letter from Blackwood to McIntosh, supra, note 102.

Standard By-laws.²⁷⁰ Keen thought that retaining of patronage dividends would be permissible under the by-laws existing at the time, although he doubted the legality of issuing of share capital in a manner not in accordance with usual practice. In terms of co-operative practice, Keen thought it unwise to encourage a policy whereby people were recognised as members when they had not specifically sought membership.²⁷¹

It would appear that Keen viewed legislative activity of the provincial and federal legislatures as potentially damaging. In other words, he had no illusions about the attitude of governments towards co-operatives. In one graphic example, he asked all members of the CUC to keep track of legislative developments in their provinces and asked them to "bring to our notice legislation calculated prejudicially to affect the interests of co-operative societies when it is being introduced."²⁷² For example, it was not until amendments were made to Saskatchewan's Pharmacy Act in 1946 that co-operatives had the right to operate pharmacies.²⁷³ Keen was quick to point out the positive effects of the CUC's interventions. For example, he took the credit for staving off changes to the Criminal Code which would have "prohibited the payment of purchase dividends by co-operative societies in Canada."²⁷⁴

In 1946 a number of minor amendments were made. Their general thrust was to make the directors' previously absolute discretion to decide certain matters subject to "such conditions as may be set forth in the by-laws."²⁷⁵ The maximum interest payable on loan or share capital was reduced from 6% to 5% (and remained at that level until 1983).²⁷⁶ Also the maximum percentage of the surplus to be set aside for an educational or community fund was reduced from ten to five percent.²⁷⁷

In 1947, more extensive and important amendments were made to the Act. The Registrar was given increased authority to decide in any particular instance whether the

²⁷⁰ December 27th, 1944 letter from Arnason to Keen, supra, note 72, Vol. 116, General Correspondence, 1944, C-G.

²⁷¹ January 4th, 1945 letter from Keen to Arnason, id., Vol. 121, General Correspondence, 1945, C-F.

²⁷² Circular No. 3, March 31, 1936, id., Vol. 217, Monthly Bulletins, 1931-46.

²⁷³ Sask. Druggists Concerned over Co-ops Future Plans, Drug Merchandising, June 1st, 1946, at 53

²⁷⁴ Circular No. 3, 1937, supra, note 273.

²⁷⁵ S.S. 1946, c. 65, ss. 5, 7-10.

²⁷⁶ Id., s. 5.

²⁷⁷ Id., s. 11

incorporation of a co-operative was economically advisable or otherwise feasible.²⁷⁸ Co-operatives were permitted to pass supplemental by-laws which were not consistent with the standard bylaws, provided they were approved by the Registrar.²⁷⁹ This measure was passed in recognition of the diverse membership and extent of co-operatives' operations in the province.²⁸⁰

In 1946 a community association dissolved and the shareholders wished to divide the assets, amounting to \$2,500, amongst themselves. The Act did not permit any part of the surplus to be paid to shareholders as interest or dividends, but it did not clearly state the method for disposing of a surplus at dissolution.²⁸¹ At the suggestion of Mr. Blackwood, the Deputy Attorney-General, the legislature amended the Act to provide that the surplus at dissolution of a community association "shall be used for the purpose of providing services for social welfare, health, civic improvement, education, or for other objects of a benevolent or charitable nature."²⁸² The restrictions on credit transactions were reduced slightly by a provision that, where an association had paid up capital over \$5,000, the members could pass a special resolution, supported by three-quarters of the members present at an annual or a special meeting, to permit sales on credit.²⁸³ Previously the resolution required the signatures of two-thirds of the shareholders living within 20 miles of the head office.²⁸⁴ The Registrar was aware that many associations were conducting credit transactions without legal authority and he hoped to legitimize these transactions by passing suitable supplementary by-laws.²⁸⁵ The provision establishing an educational or community fund, first passed in 1939, was repealed.²⁸⁶ The Registrar suggested that such expenses should be paid out of the

²⁷⁸ S.S. 1947, c. 72, s. 3

²⁷⁹ Id., s. 7.

²⁸⁰ June 20th, 1947 letter from the Registrar to secretaries of co-operative associations, Saskatchewan Archives, Call No. 110, File 19(g), supra, note 102.

²⁸¹ October 29th, 1946 letter from Blackwood to Arnason, id.

²⁸² S.S. 1947, c. 72, s. 8.

²⁸³ Id., s. 9.

²⁸⁴ S.S. 1939, c. 68, s. 24.

²⁸⁵ Supra, note 281, at 2.

²⁸⁶ S.S. 1947, c. 72, s.10.

association's operating expenses, rather than out of its surplus.²⁸⁷ Following the amendment, no minimum or maximum amount was required to be spent on member education or community work.

In 1948, only minor amendments were made to the Act.²⁸⁸ In 1949, amendments were passed concerning the association retaining patronage dividends as share capital. One such amendment stated that, where the supplementary by-laws required the purchase of additional shares from patronage dividends, one share could be issued to the spouse of the member on the written request of that member, and the spouse then became a member.²⁸⁹ Thus it became possible for a spouse to become a member against his or her wishes! Also, in 1949, provision was made for the amalgamation of co-operatives.²⁹⁰

11. THE CO-OPERATIVE ASSOCIATIONS ACT, 1950

In 1949 and 1950, a major revision of the Co-operative Associations Act was undertaken. The Registrar prepared a draft of the proposed new Act that a committee of the Co-operative Union of Saskatchewan revised. The committee sent the revised draft to co-operative leaders and other government officials for further comment. George Cadbury of the Economic Advisory and Planning Board,²⁹¹ E.F. Scharf, the editor of The Co-operative Consumer,²⁹² and Hon. T.J. Bentley²⁹³ all made a number of suggestions.

The revised Act was much longer than previous Acts because it was intended to fulfill three distinct purposes. Firstly, it was intended to be a comprehensive statement of the law as it affected co-operatives. The Registrar wished to avoid reliance on The Companies Act as much as possible. Secondly, the Act was intended as a guide or

²⁸⁷ Supra, note 282, at 3.

²⁸⁸ S.S. 1948, c. 67.

²⁸⁹ Id.

²⁹⁰ Id., s. 7.

²⁹¹ December 23rd, 1949 letter from Cadbury to Douglas, Saskatchewan Archives, T.C. Douglas collection, Call No. R-33.1, File 111, supra, note 102.

²⁹² January 30th, 1950 letter from Scharf to Arnason, Saskatchewan Archives, Call No. 110, File 19(g), id.

²⁹³ Supra, note 293. February 6th, 1950 letter from Bentley to Douglas id. See also Recommendations of C.U.S., December 17, 1949, id.

handbook for the 967 associations then incorporated. Thirdly, it was drafted to deal with new types of co-operatives that were emerging.²⁹⁴

The new Act provided a definition of "co-operative basis" for the first time:

2(4). "Co-operative basis" means the carrying on of an enterprise organized, operated and administered in accordance with the following principles and methods:

- (a) each member or delegate one vote;
- (b) no voting by proxy;
- (c) race, creed or political beliefs no bar to membership;
- (d) services primarily for members;
- (e) interest on share capital not to exceed five per cent per annum;
- (f) services to members and patrons as nearly as possible at cost, in that:
 - (i) savings or surpluses arising from yearly operations are paid to members or members and patrons in proportion to patronage, use or contribution, after provision for operating expenses and valuation reserves, subject to the bylaws; or,
 - (ii) in the case of community service associations as defined in Part IV, savings or services are placed to reserve for maintenance or improvement of services provided by the enterprise, or donated for community welfare, and no patronage dividends or interest or dividends on share capital are paid;²⁹⁵

The definition was intended as a general guide to co-operative principles, and as a basis for deciding whether to register a new association or whether to strike an existing association from the Register.²⁹⁶ Generally, co-operative leaders approved of the definition.

The new Act continued to distinguish between "members" and "patrons", despite the objection of E.F. Scharf who believed that there was no necessity for any reference

²⁹⁴ December 7th, 1949 letter from Arnason to Douglas, *id.*

²⁹⁵ S.S. 1950, c. 66, s. 2 (4).

²⁹⁶ Supra, note 292.

to "patrons" in the Act.²⁹⁷ A "patron" was defined as "a person not a member but using the services of the association to such extent as may be provided in the by-laws."²⁹⁸ A patron was entitled (under the definition of "co-operative basis") to a share of any surplus where the by-laws so provided.

Following a recommendation of the Co-operative Farming Conference,²⁹⁹ the Registrar had intended to make three the minimum number of members required to incorporate a co-operative. However the C.U.S. thought that the number should remain at five (Cadbury also wanted a higher minimum), and Arnason heeded the advice and left the minimum at five, with an exception for production associations which could have three incorporators.³⁰⁰ In a letter to the Premier, Arnason mentioned that as a matter of policy a retail consumer co-operative would not be incorporated if less than thirty members supported it.³⁰¹

The new Act included a number of sections concerning administration and the board of directors that were previously included in the standard by-laws. Some provisions from The Companies Act referring to such matters as contracts and conflict were incorporated.

The Act also included a series of special sections concerning particular types of co-operatives. The sections that concerned consumers' co-operatives dealt particularly with the problem of credit transactions. The minimum paid-up member capital required before a supplementary by-law approved by a special resolution could permit sales on credit was increased from \$5,000 to \$10,000.³⁰² The Act attempted to delineate the responsibilities of the directors and employees of the association with respect to ultra vires credit sales. The Act stated that, where the directors authorized a credit transaction that was not permitted under the Act, and if the association so requested, the directors would be personally responsible for any loss incurred by the association as a result of the transaction. The extent of the personal liability was restricted to the amount of their

²⁹⁷ Supra, note 295, at 2.

²⁹⁸ S.S. 1950, c. 66, s. 2 (7).

²⁹⁹ Supra, note 295.

³⁰⁰ S.S. 1950, c. 66, ss. 5 (1) and 76.

³⁰¹ Supra, note 295. See also December 28th, 1949 letter from Arnason to Douglas, supra, note 102.

³⁰² S.S. 1950, c. 66, s. 68.

investments in the co-operative.³⁰³ It became an offence under the Act for an officer or an employee of a consumers' association to purchase or sell goods on credit, except in accordance with the instructions of the directors.³⁰⁴ E.F. Scharf, writing in the Co-operative Consumer, was concerned that this provision interfered unnecessarily with the employment relationship between the associations and their employees,³⁰⁵ but the Registrar chose to leave the section in the new Act.

The following section was introduced concerning the qualifications of directors:

72. A consumers' association may, by supplemental by-law, provide that no member shall be eligible for election as director if any amount owing by him is in arrear or if he has failed to purchase or obtain from the association, during its preceding fiscal year, goods, wares or merchandise of such value as may be mentioned in the by-law.³⁰⁶

E.F. Scharf objected strongly to this provision. He said that it served no useful purpose and contravened the democratic principle of co-operatives. In a letter to the Registrar he said: "It would constitute, in my opinion, a sort of fascist tendency in a co-operative organization."³⁰⁷ George Cadbury was of the same opinion,³⁰⁸ but the section remained.

Part III of the Act dealt with "production associations" and was based on the experience gained up to 1950 with co-operative farming associations.

Part IV was concerned with community service associations and contained provisions concerning them that resembled those in earlier legislation.

Part V was entirely new and concerned housing associations. At that time they were an emerging form of co-operative and the Department had only limited experience with them. Part VI, dealing with federations, was based on the previous Act. A new set of standard by-laws was also drafted to accompany the new Act.³⁰⁹

³⁰³ Id., s.69.

³⁰⁴ Id., s.70.

³⁰⁵ Supra, note 293, at 3.

³⁰⁶ S.S. 1950, c. 66, s. 72.

³⁰⁷ Supra, note 293, at 2.

³⁰⁸ Supra, note 292.

³⁰⁹ Standard Bylaws approved by O.C.1669/50 on September 30th, 1950, Saskatchewan Gazette, 1950.

12. AMENDMENTS TO THE CO-OPERATIVE ASSOCIATIONS ACT, 1950-1960

The Act was next amended in 1952. A new section required every association except community service associations to provide all members annually with a statement of their share capital or other amounts to their credit, and with the amount credited to them from the surplus in the most recent fiscal year.³¹⁰

The provision allowing one share to be assigned to a spouse from retained patronage dividends where the supplemental by-laws permitted it was re-enacted so that a supplemental by-law was no longer required. On August 1, 1952, the Registrar wrote to all secretaries of co-operatives to explain the new amendments, and advised them that the assignment of a share to a spouse was at the request of the transferor and with the approval of the transferee.³¹¹ In fact, this does not appear to have been the case. No provision was passed requiring the consent of the transferee, and the phrase "on the written request of the member" that appeared when the measure was introduced in 1949 was left out of the revised Act in 1950, and was not included in the 1952 amendment. Thus, the assignment could in theory legally be made without the approval of either spouse, though it is clear from the Registrar's letter that that was not the intended result.

The 1952 amendments also provided that where a special resolution had been passed to permit credit purchases or sales, the resolution became void if the co-operative's paid-up capital fell below the statutory minimum required for such a resolution.³¹²

Further amendments were made in 1953 at the suggestion of C.U.S., except that the Co-operative Union had requested the abolition of restrictions on credit transactions, and Premier Douglas's government could not see its way to supporting that proposal (Douglas was the Minister of Co-operation and Co-operative Development from 1949 to 1960).³¹³ The amendment enabled co-operatives with supplemental by-laws permitting

³¹⁰ S.S. 1952, c. 80, s. 9.

³¹¹ August 1st, 1952 letter from the Registrar to Secretaries of co-operatives, Saskatchewan Archives, C.U.S. Collection, Call No. 110, File 19(g), supra, note 102.

³¹² S.S. 1952, c. 80, ss. 16 & 17.

³¹³ February 12th, 1953 letter from Arnason to Lloyd, (Woodrow Lloyd's brother and President of C.U.S.) Saskatchewan Archives, supra, note 102.

credit transactions to pass by-laws restricting the amount of such transactions and confining them to particular classes of goods designated in the by-law.³¹⁴

Other amendments required the directors of a consumers' association to examine the condition of the business regularly, to prepare inventory at least semi-annually, and to examine all credit transactions regularly to ensure that they were in conformity with the Act.³¹⁵

In November 1953, a meeting held between C.U.S. and Department officials³¹⁶ resulted in further amendments to the Act in 1954. The provisions that had previously appeared in the standard by-laws concerning withdrawal of members were revised and included in the Act. Also, allowance was made for meetings of members by districts.³¹⁷

Further, insignificant amendments to the Act were made in 1956,³¹⁸ 1957³¹⁹ and 1959.³²⁰

13. THE CO-OPERATIVE ASSOCIATIONS ACT, 1960

In 1959, the Department of Co-operation and Co-operative Development decided to undertake a further major review of the Act, and W. Hamilton, the Executive-Secretary of C.U.S., sent a circular letter to all co-operative associations and to Federated Co-operatives Limited (F.C.L.) requesting that the co-operatives consider the present legislation and make suggestions for amendments that would facilitate co-operative development.³²¹ There were a number of replies, including one from the Archerwill Co-operative Association Limited, in which the secretary commented that he believed that it was the first time that the local co-operatives had been invited to comment on the legislation under which they operated.³²² The most prominent concerns

³¹⁴ S.S. 1953, c. 81, s. 9.

³¹⁵ Id., s. 11.

³¹⁶ Minutes of meeting held on November 12th, 1953, Saskatchewan Archives, supra, note 102.

³¹⁷ S.S. 1954, c. 55, ss. 2 & 6.

³¹⁸ S.S. 1956, c. 43.

³¹⁹ S.S. 1957, c. 63.

³²⁰ S.S. 1959, c. 1.

³²¹ May 21st, 1959 letter from Hamilton to Secretaries of co-operatives, Saskatchewan Archives, supra, note 102, C.U.S. Collection, Call No. 110, File 93.

³²² June 16th, 1959 letter from Archerwill Co-operative Association Limited to Hamilton, id.

expressed in the responses were that there should be no limit on the authorized share capital as this caused bureaucratic delays when co-operatives wished to expand their services, that spouses of members should automatically have full membership rights, and as usual, that credit restrictions should be abolished. Mr. T.P. Bell, the Locals' Finance and Control Director, made the following comment concerning the credit restrictions:

Although the thought behind these three sections dealing with sales on credit is most admirable, they appear to be impractical. We say impractical because doing business requires some granting of credit and these sections of the Act have had little effect on those associations that have continued to abuse the practice of extending credit. Some associations have attempted to register a credit by-law, but because of their present accounts receivable position, the registrar has not seen fit to register same. It would appear that we are doing nothing more here than forcing these locals to continue to operate outside the requirements of the Act.³²³

With the support of F.C.L. and C.U.S., restrictions on credit transactions were abolished in the revisions of 1960; finally, a principle that dated back to the Rochdale Pioneers and had caused difficulties for local associations since 1914 was eliminated. After 1960 the local co-operatives were free to enact their own credit restrictions.³²⁴

One of the most vexing problems facing the Registrar in 1960 was that of spouses' memberships. It will be recalled that the Act had previously provided that, where one spouse had accumulated more than one share from retained patronage dividends, a share could be transferred to the other spouse with the approval of the directors. It was generally believed that both spouses must approve the transfer, though this was not made clear in the Act.

H.L. Fowler, the President of F.C.L., made the following comments on this problem in a letter to W. Hamilton:

Then there is the age-old question of what might be termed "dual membership." Section 32 could be made to read that both husband and wife are members without the necessity of one having to transfer shares to the other. The Municipal Act has similar provisions, and The Co-operative Act could have it too, but there has always been a resistance.

³²³ July 2nd, 1959 letter from F.C.L. to Hamilton of C.U.S., *id.*

³²⁴ S.S. 1960, c. 74, s. 67 (a).

It is not good enough to say that the present Act is workable, and that all you have to do is The fact is that it has not done, and I have been at two annual meetings this year, Saskatoon and one other, where this thing was one "holy schmozzle," and a disgrace to the co-operative movement.³²⁵

After considering the above comment, the Deputy Minister, B.N. Arnason, drafted the following proposed by-law and sent it to L.L. Lloyd, the President of C.U.S.:

an association may, by supplemental by-law, provide that the wife of any member in good standing shall have the right to vote at annual or special meetings of the association even though she is not the holder of a share or has not paid a membership fee.³²⁶

Ultimately, this was not considered to be satisfactory and the resulting amendment closely resembled the previous provision. The new provision stated that where a married member had acquired more than one share, one share could be transferred to the spouse at the written request of the spouse and with the approval of the board of directors. Also a married couple who owned or purchased two shares could apply for joint membership.³²⁷

In 1960, the phrase "patronage dividend" was changed to "patronage refund," presumably to avoid any suggestion that it was a profit from investment and therefore taxable. The term "patronage refund" is a more accurate description. Also the proportion of the surplus required to be set aside in a reserve fund by a consumer co-operative was reduced from ten per cent to five per cent.³²⁸ The Act also included a new section listing uses to which the fund could be put.³²⁹ Another minor amendment reduced the minimum number of directors for a community service association, production association, housing association or federation to three.³³⁰

³²⁵ June 17th, 1959 letter from Fowler to Hamilton, supra, note 322.

³²⁶ June 11th, 1959 letter from Arnason to Lloyd, id.

³²⁷ S.S. 1960, c. 74, s. 29.

³²⁸ Id., s. 72.

³²⁹ Id., s.73.

³³⁰ Id., ss. 79, 85, 88 and 98.

14. CONCLUSIONS

This paper's concentration on the development of co-operative law in Saskatchewan is justified by the Co-operative Movement being and having been, in the words of George Keen, "much more highly and extensively developed in Saskatchewan than in any other province."³³¹

It was recognized early that the particular conditions of the Canadian west required different approaches to the co-operative principles which were, after all, derived from consumer co-operatives operating in working class, urban England. In one letter George Keen wrote:

We are agreed that special conditions of the west militate against the carrying out of Co-operative principles as to the personal attendance of the members at meetings and that we shall be under the necessity of adapting ourselves to conditions as we find them.³³²

An account of the unfolding of co-operative law in Saskatchewan provides a window on the achievements of co-operators who saw the need to ensure that they had more control over their economic destiny than private businesses operating in the province were prepared to allow them.³³³ These co-operators achieved a great deal, as is exhibited by the size, strength and importance of co-operatives to Saskatchewan's economic mosaic. Partly as a result of the efforts these co-operators, the economy of Saskatchewan is quite different to that of other Canadian provinces.

The development of co-operatives in Saskatchewan has left an important legacy. The law applicable to co-operatives could and can help or hinder their development, or it can constitute a neutral force. The nature of appropriate legislation gives rise to disagreements amongst co-operative activists to this day and can be expected to continue to do so in the future. The law as developed, however, should be seen as a monument to

³³¹ July 31st, 1940 Circular No. 7, *id.*

³³² May 8th, 1911 letter from Keen to The Saskatchewan Purchasing Company, *supra*, note 72, Vol. 8, General Correspondence, 1911, M-Z. October 22nd, 1925 letter from Keen to Waldron, *id.*, Vol. 34, General Correspondence, 1925, A-G. November 20th, 1923 letter from Keen to Waldron, *id.*, Vol. 30, General Correspondence, 1923, A-H. See also, April 11th, 1925 letter from Keen to Waldron, *id.*, Vol. 34, General Correspondence, 1925, A-G. It was also difficult for co-operatives to obtain competent legal advice because lawyers, more used to dealing with private traders, were not well-aware of the application of law to co-operatives. See *e.g.*, May 3rd, 1921 letter from Keen to Ketcheson, *id.*, Vol. 26, General Correspondence, 1921, A-J.

³³³ For an account of the history of Québec co-operative law, see C. Gregoire, *L'Evolution De La Législation Coopérative Québécois*, (1971), 4 Rev. du Canadian C.I.R.I.E.C. 35

a desire to achieve another way of organizing economic activity with a concentration on people, democratic values and community purposes which emphasises service rather than profit. In the face of the intense opposition from the turn of the century to today this must be seen as an incredible achievement.

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