



Office of the Regional Solicitor
Legal and Court Services

Memorandum

To: Regional Council

From: Joy Hulton
Regional Solicitor

Date: November 17, 2016

Re: **Appointment of alternates to attend meetings of Committee and Council**

At its meeting on November 10, 2016 Committee of the Whole received a report on the Review of Regional Council Governance, and directed that staff report back to Council on November 17, 2016 with information on the ability for a member of Council to substitute an alternate or proxy whenever the member is unable to attend a meeting.

As noted in the report, there is currently limited scope for a member to appoint an alternate. The *Municipal Act, 2001* (the "Act") provides for a local municipal council to appoint one of its members in circumstances where a member of Regional Council is unable to act for more than one month. There is, however, no provision for appointment on an ad hoc basis where a member is unavailable to attend a meeting. A legislative amendment would be required to implement this proposal.

The terms "proxy" and "alternate" are often used interchangeably, however there is a notable distinction. Generally, a person voting by proxy is acting on clear instructions as to the way in which a vote is to be cast. Typically a proxy is a substitute appointed to attend a meeting where the principal cannot physically attend, however the proxy has limited autonomy. For example, the *Municipal Elections Act* provides for proxy voting where a person is unable to physically attend the polling station. Another example is a proxy vote of a shareholder under the *Business Corporations Act*. In each case, the proxy is acting under the specific direction of the principal. There is no provision in the *Municipal Act, 2001* that would permit voting by proxy.

By contrast, the appointment of an alternate generally confers all the powers of the principal on the appointee. This is more appropriate in the context of a municipal council and supports the principles of accountability and transparency which underpin municipal governance. Appointment of an alternate would permit local councils to have full representation at Regional Council. The alternate member would be entitled to participate fully in the consideration of matters and vote on his or her own behalf.

In 2015, in response to a discussion paper released by the Ministry of Municipal Affairs, the Region submitted proposals for amendments to the Act, including requesting that members be permitted to participate in Council meetings remotely. The rationale for that proposal was to promote active representation by all Council members in cases where physical attendance may be challenging. The power to appoint alternates would further support this principle and ensure that all constituencies are represented at Regional Council.

The Ministry has not yet responded to the Region's submission on amendments to the Act, however it is recommended that Council's request with respect to appointment of alternates be submitted to the Ministry for consideration in its current legislative review.

Joy Hulton
Regional Solicitor

JH/jh

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