



Bill 68 Amendment

Electronic Meetings Municipal Considerations

Wishart Municipal Law Group

Expertise for Municipalities

Preamble

As of January 1, 2018, members of municipal council, some local boards and committees may be able to participate by electronic means. The Province of Ontario has amended the *Municipal Act, 2001* (Bill 68) to allow municipalities to adopt electronic meeting provisions in their procedural by-law if they deem it prudent under their local circumstances. It is important to note, that while the provision has been made, it is not mandatory and a municipality should not blindly adopt the provision. Any decision a municipal council makes, or by-law they enact, without appropriate scrutiny often has a substantial financial impact. The best course of action is to evaluate the opportunity fully, seeking legal guidance when necessary.

Our research has shown that slightly over fifty (52.5) percent of municipalities we spoke with were unsure if they were going to amend their procedural by-law to include electronic participation. Only twenty percent (19.8%) indicated that they had already amended their by-law or that they were going to adopt the electronic meeting provision. Approximately thirty percent (27.7%) stated they were not going to adopt the electronic meeting provision on the basis that their electorate expected them to participate in person: one such example ***'We feel the residents have a right to expect the council member they elected to show up and attend, not phone in his or her opinion or, not attend but then try to influence decisions when they can't be present and accountable'***.

It is interesting to note that the Province of Ontario opted for an amendment that limited electronic participation, unlike some Canadian provinces who allow meetings to be conducted entirely by electronic means. The Bill 68 Amendment specifically states the individual participating by electronic means **DOES NOT** count for quorum. Therefore, electronic meeting participation is **ONLY** allowed at a duly convened meeting and is not meant to be a mechanism to maneuver around the open meeting rule.

For comparison purposes the Bill 68 Amendment reads as follows:

Section 238 of the Act is amended by adding the following subsection:

Electronic participation

(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is open to the public to the extent and in the manner set out in the by-law provided that any such member shall not be counted in determining whether or not a quorum of members is present at any point in time.

(3.2) The applicable procedure by-law shall not provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is closed to the public.

The *Municipalities Act* of Saskatchewan states:

Meeting through electronic means

125(1) A council meeting or council committee meeting may be conducted by means of a telephonic, electronic or other communication facility if:

- (a) notice of the meeting is given to the public, including notification of the way in which the meeting is to be conducted;

(b) the facilities enable the public to at least listen to the meeting at a place specified in that notice and the administrator is in attendance at that place; and

(c) the facilities permit all participants to communicate adequately with each other during the meeting.

(2) Members of a council or council committee participating in a meeting held by means of a communication facility are deemed to be present at the meeting. 2005, c.M-36.1, s.125.

Does it make sense to allow electronic meetings in your municipality?

Before amending your procedural by-law to include provisions for electronic participation, council will want to consider the implications and whether this type of participation is appropriate for your municipality. If the decision is made to proceed, it is imperative that council define the scope of the provisions, by considering the following:

- the situations where electronic participation will, and will not, be permitted;
- the extent of an individual council member's authority to participate electronically in meetings (i.e. listen only, listen and discuss only, listen discuss and vote);
- logistical issues related to using electronic technology (including notice provisions and permission/agreement of Head of Council/Council in advance);
- The type of electronic technology that will be permitted (eg. Phone, skype, secure video link at designated locations, email/text type participation);
- The frequency and purpose of electronic participation (i.e. Councillor cannot attend physically due to – disability – work out of town – medical illness/treatment – attending a municipal conference; and
- the costs associated with electronic meetings.

ANALYSIS OF THE OPPORTUNITY

To effectively determine if electronic meetings make sense for your municipality, it is important for council to first consider their motive for allowing or not allowing electronic meeting participation.

Motive – Why are we doing this?

When a municipality is considering adopting or not adopting electronic meeting participation provisions in their procedural by-law, it is important that they be clear as to why they are making the decision.

Are we doing this:

- To improve our ability to make decisions?
- To continue what we have been doing, it has always worked for us so far, why change?
- To appease ratepayers prior to an election?
- To capitalize on an expertise a member has about a specific issue and the member is unable to attend the meeting in person?

- To allow equal opportunity to participate for a member who must be away from a meeting for an emergency reason? (i.e. medical, family emergency etc.)
- To allow a member who leaves the municipality for many months (i.e. Snowbird) to keep up with/participate in what is going on?
- To allow an individual who owns property in the municipality but typically resides in another municipality several hours away to participate on an on-going basis?

Once you have examined your motive it will help frame the policy language for your by-law. Assuming council decides to allow electronic participation in meetings they then will need to articulate how this is going to be done.

How are we going to do this – some of the questions that would need to be answered:

- What constitutes a valid reason for being unable to attend? Should each member be given the discretion to judge validity?
- What is the process for requesting electronic participation? How much notice do you need to provide in order to participate in a meeting electronically?
- Who has the authority to approve electronic participation?
- What type of electronic participation will be allowed?
- How many times can an individual participate in a meeting electronically over the course of a year?
- How many individuals can participate electronically at one time? How should you position your approval process to ensure equity and not jeopardize quorum if more than 50% of members request for the same meeting?
- Should the chair of the meeting be allowed to participate electronically (as chair)? Or should the chair be assumed by an individual who is physically present?
- Should a member who is participating electronically be allowed to join a meeting that is underway – i.e., arrive late?
- How would electronic participation be handled right before and after a closed session?
- Should anyone making a presentation (including a delegation) be required to ensure their presentation accommodates members who are/may be participating electronically?
- If a member who is participating electronically cannot see a specific presentation or read a specific report which is the subject of discussion, should the member be allowed to participate in the discussion?
- Should there be a policy whereby all materials to be presented at a meeting must be submitted so many days in advance so that they may be circulated and reviewed prior to the presentation?
- Should the same rules apply to council members and non-councillor committee or local board members?
- What type of electronic means should be permitted? Audio? Visual? Both?
- Should cell phone and satellite connections be permitted in addition to land-line connections?
- Does the municipality have the right phone system and an audio system that will allow for clear projection of voices throughout the meeting place, and for continuous two-way communication? If the meetings are televised or recorded can the electronic communication be heard/seen?
- Is there sufficient internet connectivity to allow continuous streaming?
- Are there proper video monitors in place to project images so everyone in the room can see?

- What happens if a communications link is lost during a meeting? Should the meeting temporarily adjourn until the link is re-established? What if the lost link is with the chair of the meeting?
- Who is responsible for the cost to a member of participating electronically in a meeting?
- Are cost limits necessary?
- If per diem rates apply for attendance at meetings should electronic participation in meetings be considered the same as attending in person? Would there be a different rate?
- What is the main reason for extending the privilege of electronic participation to members? Will it improve the process of local government enough to justify any related financial and labour cost?

Is electronic participation of members at meetings in the best interest of all taxpayers?

To allow or not to allow electronic participation in meetings is a political decision. Councils choosing one way or the other will need to justify their decision to the taxpayer. However, it is imperative that careful consideration is given to the wording in the by-law amendment.

This topic will be discussed at the Procedural By-law drafting workshop hosted by E4m and WMG. For more information about the session please email tammy@e4m.solutions or mmedve@wishartlaw.com.

