

Role and Implications of Alternate Unelected Electoral Area Directors

**DISCUSSION PAPER BY
UBCM Ad-Hoc Committee on Alternate Unelected Electoral Area Directors**

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1. EXECUTIVE SUMMARY

Some regional districts have reported that complications and concerns arise when the extended absence of an electoral area director triggers the need for an unelected alternate to serve on a regional district board for an extended period of time. Over the years, UBCM and the Province have jointly undertaken a number of reviews, considering a range of issues facing regional districts. The purpose of this paper is to examine the specific role of the unelected alternate electoral area director.

UBCM understands that regional districts are impacted when unelected alternate electoral area directors take on a long-term role at the board table. In the more complex situations, the absent electoral area director does not resign, therefore a by-election cannot be called and the unelected alternate continues to serve on the board, potentially until the next local government election.

While some regional districts have shared their experiences anecdotally with UBCM, others have sought UBCM assistance through the resolutions process. The membership has considered two resolutions in which regional districts sought to address problems arising from extended absences of electoral area directors.¹ Members endorsed resolution 2014-B104 from the Regional District of Kootenay Boundary, seeking legislative clarity from the Province about how best to manage extended absences of electoral area directors. More recently, members considered but did not endorse resolution 2016-B71, which requested *Local Government Act* amendments to delete the reference to “illness and injury.” The sponsor, Powell River Regional District, proposed instead that the regional district board should be accorded the discretion to grant leave.

Although the degree of support was different for each resolution, in each case a regional district identified a problem and asked UBCM to help address the problem. With the resolutions serving as initial impetus, delegates attending the March 2017 Regional District CEO/CAO Forum further urged UBCM to study the impacts of long-term direct participation by unelected alternate electoral area directors on regional district boards. In response to its membership, UBCM in April 2017 established an Ad-Hoc Committee on Alternate Unelected Electoral Area Directors (the Committee).

This paper serves as the Committee’s report out on its studies and deliberations. The paper articulates the problems, poses questions, and encourages local government discussion in an effort to seek consensus on a proposed course of action.

It is important to recognize that this paper speaks only to unelected alternate electoral area directors. Alternate municipal directors appointed to regional district boards are local elected officials and are therefore excluded from the scope of this paper. The focus is deliberately narrow, to enable UBCM to act expeditiously and find potential solutions to a defined problem.

1 See Appendix 1 for full text of resolutions 2014-B104 and 2016-B71.

2. BACKGROUND

At the 2017 Regional District CEO/CAO Forum the issue of alternate “unelected” electoral area directors was raised. Discussion focused on the challenges encountered by regional districts when alternates take on a long-term role at the board table due to the extended absences of electoral area directors.

Concerns raised included:

- alternates to electoral area directors are appointed not elected; therefore they are accountable to the elected director, not to the constituents within the electoral area. This is contrary to the fundamental principle of democracy – elected representation.
- the alternate does not always share the same views as the electoral area director and may therefore not accurately represent the interests of the constituents within the electoral area.

Regional districts have provided examples where differences in votes cast by the alternate and the electoral area director have caused confusion and delays in decisions.

- an alternate continues to serve until a by-election is triggered by resignation, or the director appoints a new alternate. Depending on the circumstances an unelected alternate could potentially serve nearly a full term of office.

- *Local Government Act* outlines different criteria for appointing an alternate municipal director versus an alternate electoral area director to a regional board: an alternative municipal director may only be appointed from amongst the mayor and councillors elected to govern that municipality, whereas there is no requirement for an alternate electoral area director to be an elected official.

- alternates may not participate as ‘voting’ delegates at UBCM events since UBCM bylaws require voting delegates to be “elected officials”.
- alternates do not always have depth of knowledge or understanding of regional board operations. As a result, when the number of unelected alternates serving on the same board, outnumber the elected directors, decisions and actions taken by a board may not be in the best interests of the regional board as a whole, or its residents.

Following the Forum discussion, delegates requested that UBCM Past President Al Richmond raise the matter with the UBCM Executive. Delegates specifically asked UBCM to review the scope of the problem and determine if there were any potential solutions.

Past President Richmond raised the issue at the April 2017 Executive meeting. This was not the first time that UBCM had been made aware of these concerns. The matter had previously been raised through UBCM member resolutions (2014-B104 and 2016-B71) and in anecdotal reports from regional district members.

On behalf of an absent electoral area director, the alternate director appointed under this section may take the place of, vote and generally act in all matters for the absent electoral area director, including in relation to a matter delegated to that director by the board.

- Section 201 (6) *Local Government Act* ²

² See Appendix 2 for the full extracts of s. 200, s. 201 and s. 204 of the *Local Government Act*

3. UBCM ACTION

Upon review of the matter, the UBCM Executive provided direction by way of the following endorsed motion:

That UBCM establish a committee to discuss the issue of alternate “unelected” directors and identify possible courses of action for addressing the challenges faced by regional district boards when elected directors are unable to serve and alternates take on a more permanent role.

Following the April 2017 Executive meeting, committee composition was confirmed comprising a mix of elected and staff representation:

Al Richmond, UBCM Past President (Chair), Cariboo RD

Wendy Booth, First Vice President, East Kootenay RD

Art Kaehn, UBCM Electoral Area Representative, Fraser-Fort George RD

Janis Bell, CAO, Cariboo RD

Jim Martin, CAO, Fraser-Fort George RD

John MacLean, CAO, Kootenay Boundary RD

Following the retirement of Janis Bell in December 2017, John MacLean moved from Kootenay Boundary RD to serve as CAO of Cariboo RD. Paul Gipps, CAO, Fraser Valley RD was appointed to fill the Committee vacancy left by Janis Bell.

Gary Paget, Senior Advisor, Ministry of Municipal Affairs and Housing was also asked to provide technical support to the Committee, recognizing his involvement in previous regional district reviews and his overall knowledge, awareness and work with BC regional districts.

The first meeting of the Committee took place on June 26, 2017. Committee members reviewed previous work related to alternate electoral area directors, discussed many of the issues raised at the 2017 Forum and shared examples of the problems encountered by regional districts.

Committee members defined the problem statement as follows:

Alternates are not elected. And when you have an unelected person sitting at a board table for an extended period of time, making decisions on behalf of a group of residents, this becomes extremely challenging and goes against basic democratic principles.

At the close of its first meeting the Committee agreed to explore the following options at its next meeting:

- a. **Remove the legislative requirement to appoint an alternate.**
- b. **If an alternate is appointed, the alternate must be an elected official.**
The alternate could be a councillor or other elected electoral area director.

- c. In the absence of an electoral area director or an ‘elected’ alternate, the board would be responsible for making decisions.**
- d. Amend the legislation to trigger a by-election within a reasonable period of time (possibly 6 months) in the case of illness or injury of the sitting electoral area director.**

Due to the severity of the 2017 forest fire season, the Committee did not have an opportunity to reconvene until December 2017. At the December meeting, committee members discussed the options identified at the June meeting, highlighting the pros and cons for each. The Committee has chosen to put forward the same menu of options in this paper as a record of the committee’s deliberations, its perspectives and opinions; and to provide a starting point for discussion amongst UBCM members.

4. OPTIONS FOR DISCUSSION AND CONSIDERATION

Each of the four options is outlined below with a summary of the Committee’s discussion and proposed direction where noted.

- a. Remove the legislative requirement to appoint an alternate.**

In light of the concerns raised about alternates, the Committee questioned whether or not alternates should be legislatively required. Communications technology makes available a number of options to facilitate long-distance attendance of directors at board meetings (eg. videoconference or teleconference).

While technology has assisted in making participation more readily available to some electoral area directors, committee members agreed that within the more rural and remote regions of the province connectivity is not as reliable or readily available. Further, technology may not solve every problem. An absent electoral area director may be physically unable to participate due to illness or injury – a situation that technology cannot solve.

It is important to note that the focus of this paper is not about temporary, short-term or one-off absences by electoral area directors. This paper is about electoral area directors who are absent for extended periods of time unable to participate or communicate with the board, administration or other elected directors.

Despite the identified problems, many electoral area directors continue to support the appointment of alternates. These directors consider their alternates to be excellent replacements when they are not able to attend board meetings. Directors noted that their alternates truly represent their interests and the interests of the constituents in the electoral area; noting a solid working relationship and shared understanding of board issues. Consequently, these directors have a comfort level with the continuation of ‘unelected’ alternates.

However, as reported by other electoral area directors, alternate electoral area directors do not always collaborate with the elected director, nor do they necessarily act in the interest of the majority of the constituents in an electoral area or regional district. At the more extreme end of the spectrum, regional districts have reported significant and costly consequences in cases where alternate electoral area directors have served for extended periods of time.

Uncertainty regarding the long-term powers, privileges, and expected conduct of an unelected alternate electoral area director can create governance challenges for staff and other board members. The Committee questioned whether it was appropriate for an 'unelected' alternate to have the same powers as the elected director. For example, if an unelected alternate took in inappropriate action or contravened legislation, what options would be available to the regional district board? It is not clear if existing legislative provisions to censure or impose punitive measures would be applicable to an unelected individual.

Committee members also noted removing the requirement to appoint an alternate electoral area director would create a legislative imbalance, if the practice continues of designating alternate municipal directors. Would it be better to have an unelected alternate or no alternate at all? Or is there another option?

Notwithstanding technology that could facilitate long-distance participation, committee members reached consensus that alternate electoral area directors were still needed. Constituents within an electoral area expect to have their interests represented at the board table and if the elected director is not able to do so, then someone else should be designated to fill the role.

Discussion questions

- i. Should the legislative requirement to appoint alternates be removed? If so, why? If not, why?*
- ii. If there is agreement that alternates should continue to be appointed; what stipulations should be put on that appointment? (e.g. elected/unelected; setting a defined term for an alternate to serve; triggering a by-election)*

**b. If an alternate is appointed, the alternate must be an elected official.
The alternate could be a councillor, mayor or other elected electoral area director.**

If there is consensus to continue to appoint alternates, the Committee proposed a requirement for the alternate to be an elected official, such as a councillor, mayor or other electoral area director. The Committee discussed this option extensively. If implemented, this would remove the concern around "unelected" individuals acting in the full capacity of an elected director of the regional board. While appointing another elected official would get around this concern, it might also create challenges if the electoral area director or councillor were already serving on the board, and each director may only have one vote. Committee

members deliberated on whether one individual could adequately serve two sets of constituents. If the alternate were a councillor, constituents might not feel that the alternate could accurately represent their interests as rural residents within the regional district.

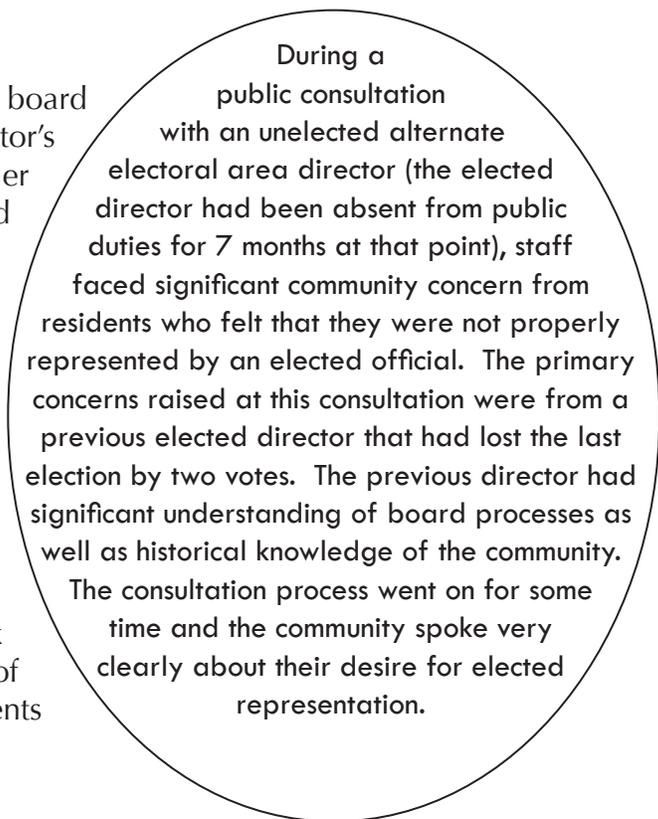
While there are challenges posed by having a sitting elected official serving as an alternate, the Committee considered this to be the best option to ensure that an 'elected' individual would serve on the board. However, the committee proposed a time limit to ensure that the alternate would serve in a temporary capacity, until a by-election could be held. If the direction is to remove the requirement to appoint alternates then the board as a whole is left responsible. This option is discussed in more detail in the next section.

Discussion questions

- i. Is there support for requiring alternates to be sitting elected officials? And if so, should those 'elected' alternates be members of the same regional district as the electoral area director?*
 - ii. What are the implications of having another elected official, from the same regional district, serving as the alternate?*
 - iii. How important is it to create legislative parity between municipal and electoral area directors on the regional district by requiring alternates to be elected officials?*
- c. In the absence of an electoral area director or an 'elected' alternate, the board would be responsible for making decisions.**

When an electoral area director is absent from board meetings, issues or matters relevant to that director's area can often be deferred or tabled until another board meeting. However, in cases of extended absence and when decisions need to be made in a timely manner, the other board members need to carry on with the business of board. While deferral of specific decisions may work on a temporary basis, it does create challenges for the board as a whole in the longer term, especially if the decision to be made directly affects the constituents within the affected electoral area.

The following scenario (right) illustrates that a lack of elected representation for an extended period of time can lead to general discontent from the residents within that electoral area.



During a public consultation with an unelected alternate electoral area director (the elected director had been absent from public duties for 7 months at that point), staff faced significant community concern from residents who felt that they were not properly represented by an elected official. The primary concerns raised at this consultation were from a previous elected director that had lost the last election by two votes. The previous director had significant understanding of board processes as well as historical knowledge of the community. The consultation process went on for some time and the community spoke very clearly about their desire for elected representation.

Discussion questions

- i. Depending on the decision to be made by the board, would there be a comfort level in proceeding to let the remaining board members make decisions in the absence of the EA director or their (elected) alternate?*
 - ii. Should there be a set time period for which an (elected) alternate can serve for an absent director?*
- d. Amend legislation to trigger a by-election within a reasonable period of time (possibly 6 months) in the case of illness or injury of the sitting electoral area director.**

Presently, legislation permits an unelected alternate electoral area director to serve the remainder of the director's term of office unless the director appoints a new alternate or the director resigns and triggers a by-election. In instances where an alternate has been serving for an extended period of time, other board members have raised concerns that the alternate is no longer an alternate but is acting in the full capacity of an elected board member. Regardless of the alternate's ability to perform the duties, the fact remains that an alternate is not elected. The situation becomes more tenuous and complicated when the elected director is not capable of serving due to illness or injury, but is not willing to resign.

Based on the experiences reported by regional districts, the Committee members thought a time limit should be put into place to ensure that alternates do not become long serving board members. The prudent, original intent of the legislation was to provide a temporary stand-in for absent directors, not to allow unelected individuals to assume all the rights and privileges of an elected official.

Discussion questions

- i. Should there be legislative amendments to address the "illness or injury" reference that prevents disqualification of a director?*
- ii. Is there support for setting a time limit (i.e. six months) for an (elected) alternate to serve before a by-election is automatically triggered, regardless of the illness or injury exemption?*

5. PROPOSED COURSE OF ACTION

Based on a detailed examination of the role of the unelected alternate electoral area director, the Committee would propose a set of two policy directions in order to address the problems identified with the existing legislation. The policy directions are separate but complimentary, and will bring clarity to regional district governance and operations.

1. That the legislative requirement for appointing alternates remain in place, but that amendments be made to require alternate electoral area directors to be elected officials.

This ensures that the democratic principle of elected representation continues, and it also establishes consistency between the appointment of alternate municipal directors and alternate electoral area directors.

2. That a time limit be placed on how long an alternate can serve in the absence of an electoral area director before triggering a by-election.

Based on the experiences of regional districts, concerns appear to arise after an alternate has served for an extended period of time. The Committee considers the basic democratic principle of elected representation to be paramount to this discussion and is not comfortable retaining the status quo. Citizens have a right to elected representation and when their elected representative is no longer able to serve, a process should be put in place to remedy the situation.

6. CONCLUDING REMARKS

The Committee presents this paper for member consideration. There may be other options that could be considered and the Committee welcomes the discussion. Perhaps no one solution or legislative amendment can address the many scenarios, situations and experiences facing regional districts. There may also be other ways to assist regional district boards: guidance documents, new tools, or a check list that would trigger action when certain thresholds were reached (i.e. time limits for an extended absence); that would provide a board with a course of action to address the problem.

The Committee does not propose to have all the answers. Our paper is intended to provoke healthy dialogue and debate so that regional districts can collectively identify solutions that UBCM can advocate to the Province. Our Committee looks forward to hearing from our members on this matter and wishes to thank each of you in advance for your feedback on this important governance issue.

2016 - B71 Extended Absence From Regional District Board Powell River RD

Whereas subsection 2 of section 204 of the Local Government Act denies a board of a regional district the discretion to deal with an extended absence of a director due to illness or injury;

And whereas the residents of an affected electoral area have petitioned the board of the Powell River Regional District to provide relief at its discretion:

Therefore be it resolved that the Legislature of British Columbia be requested to amend subsection 2 of section 204 of the Local Government Act by deleting the reference to “illness or injury”, thus leaving the granting of leave to the discretion of the regional district board.

Not endorsed

2014 - B104 Absence of Director Due to Illness Kootenay Boundary RD

WHEREAS the role of an Electoral Area Director in electoral area and regional district decision-making is absolutely vital;

AND WHEREAS the current legislation is severely lacking when the absence of the director is due to illness or injury:

THEREFORE BE IT RESOLVED that UBCM petition the Province of British Columbia to provide clearer legislation that establishes respectful, reasonable and responsible guidance as to how Electoral Area Directors and regional districts are to manage extended absences by Electoral Area Directors due to illness or injury.

Endorsed

Provincial Response

Alternate Electoral Area Directors are appointed by Electoral Area Directors to act in place of a director during the Director’s absence and have all of the authority of the Director, including voting at the board table and participating fully in discussions and decisions. In 2012, as a result of the Regional District Task Force recommendations, the Local Government Act was amended to require that Electoral Area Directors appoint an alternate within 60 days of an Electoral Area Elector being elected. Further, the Local Government Act was also amended to provide the board with the authority to appoint an alternate if the Electoral Area Director failed to do so.

The Ministry of Community, Sport and Cultural Development is interested in ensuring that the regional district legislative framework works effectively and is committed to working with those in the regional district system to improve board operations. The Ministry is open to hearing about specific challenges regional districts have experienced while managing an extended absence due to illness or injury so that it can better understand the issue and determine how to address it.

Legislative References - Local Government Act – Alternate Directors appointed

Alternate directors: municipalities

- 200** (1) The council of a municipality may appoint a council member as an alternate director.
- (2) The alternate director may take the place of, vote and generally act in all matters for an absent municipal director, including a matter delegated to that director by the board.
- (3) If there is more than one municipal director, the authority under subsection (1) may be exercised either
- (a) by specifying, for each municipal director, the council member who is the alternate director for that municipal director, or
 - (b) by appointing a number of alternate directors and establishing a system to determine which alternate director is to act in the place of any absent municipal director.
- (4) As a restriction on subsection (3) (b), at any one time, an alternate director may act in place of only a single municipal director.
- (5) If the council appoints an alternate director, the municipal corporate officer must notify the regional district corporate officer of the appointment in writing.
- (6) An alternate director holds office as alternate director until another council member is appointed as a replacement and the regional district corporate officer has been notified of the new appointment.
- (7) If the seat of a municipal director becomes vacant through resignation, disqualification or death, the alternate director appointed under subsection (1) becomes the municipal director in place of the director whose seat became vacant until a new director is appointed.

Alternate directors: electoral areas

- 201** (1) An electoral area director must appoint an alternate director as follows:
- (a) the appointment must be made within 60 days of
 - (i) the electoral area director being elected, or
 - (ii) the office of the alternate director becoming vacant through resignation, disqualification or death;
 - (b) the person appointed must have the qualifications necessary to be nominated as a director for the electoral area.
- (2) An appointment under subsection (1) takes effect when
- (a) the appointment has been approved in writing by 2 electors who reside in the electoral area that the director represents, and

- (b) the director notifies, in writing, the regional district corporate officer of the appointment of the alternate.
- (3) If an electoral area director does not appoint an alternate director in accordance with subsection (1), the board must, by resolution, appoint a person who has the qualifications necessary to be nominated as a director for that electoral area as alternate director for the electoral area director.
- (4) An appointment under subsection (3) takes effect when the resolution making the appointment is passed, and the alternate director so appointed holds office until the next general local election.
- (5) If the office of an electoral area director becomes vacant through resignation, disqualification or death,
- (a) the alternate director holds the office until that person's successor takes office following the next election for the office, or
 - (b) if the alternate director is unable or unwilling to hold office as director, the board must, by resolution, appoint another person who has the qualifications to be nominated as a director for the electoral area and that person holds the office as provided in paragraph (a).
- (6) On behalf of an absent electoral area director, the alternate director appointed under this section may take the place of, vote and generally act in all matters for the absent electoral area director, including in relation to a matter delegated to that director by the board.
- (7) The electoral area director who appointed an alternate director may appoint, as a replacement for the alternate director, another person who has the qualifications necessary to be nominated as a director for that electoral area.
- (8) An alternate director appointed by an electoral area director holds office as alternate director until a replacement is appointed under subsection (7) or until the next general local election, whichever is earlier.

Legislative References - Local Government Act – Director Disqualification

Director disqualification for failure to attend meetings

204 (1) Subject to subsection (2), a board member is disqualified from holding office in accordance with subsection (3) if the member is absent from board meetings for whichever of the following is the longer time period:

(a) 60 consecutive days;

(b) 4 consecutive regularly scheduled board meetings.

(2) The disqualification under subsection (1) does not apply if the absence is because of illness or injury or is with the leave of the board.

(3) Disqualification under subsection (1) is disqualification until the next general local election from holding office

(a) on a local government,

(b) on the council of the City of Vancouver or on the Park Board established under section 485 of the *Vancouver Charter*, or

(c) as a trustee under the *Islands Trust Act*.