

MEMO TO: Chair Mai

FROM: General Counsel Chahbar

SUBJECT: O. Reg. 463/97 (Electronic Meetings & Meetings Attendance)

DATE: December 12, 2024

Question at Law

What requirements are in effect in relation to legislative amendments to O. Reg. 463/97 [Electronic Meetings and Meetings Attendance] and when do any such amendments come into full force and effect?

Summary of Conclusions

The short answer to your question is that the applicable provisions of O. Reg. 463/97 do not come into force and effect until September 1, 2025. Specifically, section 10(2) of O. Reg. 313/24, stipulates that section 2(3) and 5 through 9 of the Electronic Meetings regulation (O.Reg. 463/97) will come into force on September 1, 2025.

As such, the provisions requiring trustees to seek written permission of the Chair to attend virtually are not technically required until the provisions of the legislation take effect on September 1, 2025.

Detailed Analysis

O. Reg. 313/24 advances a series of amendments to O. Reg. 463/97 (Electronic Meetings and Meeting Attendance). While I will not delve into all of the amendments contained therein, for the purposes of this analysis, I will focus on those provisions that will impact the Board of Trustees as well as the Director of Education.

Section 7 of O. Reg. 463/97

Section 7 deals with board meetings and member attendance. It is this section that requires that all members of the board be physically present at board meetings. Specifically, as of this moment, section 7(1) reads:

7(1) The policy shall require that all members of the board be physically present in the meeting room of the board at every regular meeting of the board and every regular meeting of a committee of the whole board.

As of September 1, 2025, section 7(1) will be amended to read (Amendments highlighted in red for your ease of reference):

7(1) ~~The policy shall require that~~ All members of the board be physically present in the meeting room of the board at every regular meeting of the board and every regular meeting of a committee of the whole board.



Despite the foregoing, there are enumerated exceptions to this mandatory requirement for physical attendance that are outlined at sections 7(3) through 7(5) of the regulation. I will not quote them verbatim, but will provide a synopsis for you.

Effective September 1, 2025, if a trustee wishes to participate in a board meeting electronically, they must satisfy the following requirements:

- Provide notice to the Chair of their intent to attend electronically;
- Submit the request to the Chair in writing and articulate the reasons for the proposed electronic attendance; and
- Provide the written request to the Chair before the subject meeting is called to order.

It should be noted that there are no retroactive provisions afforded in the legislation. A trustee may not simply attend electronically without permission and then furnish the request after the meeting. The request must precede the commencement of the meeting, failing which, the trustee will be deemed to not have been in attendance.

Enumerated Exceptions to Physical Attendance

The Chair (or Vice-Chair if the Chair is the individual making the request) may approve the request if they are satisfied that the request from the trustee satisfies one of the requirements outlined at section 7(5) of the regulation, which are:

- The member's primary place of residence within the area of jurisdiction of the board is located 125 kms or more from the meeting location;
- Weather conditions do not permit the member to travel to the meeting location safely;
- The member cannot be physically present at the meeting due to health-related issues;
- The member has a disability that makes it challenging to be physically present;
- The member cannot be physically present due to family responsibilities in respect of spouse, parents, children or dependent relative, a person who is dependent on the member for care or assistance and who consider the member "to be like a family member".

In addition to the foregoing, the chair must give consideration to the impact the approval of the request would have on the number of physical members present in the board (can't permit if approval would mean fewer than one member + chair would be present)

Director of Education/Designate

Section 8 of the regulation requires that the Director or designate "shall" be physically present in the meeting room for each meeting of the board, including committee of the whole. It should be noted that there are no legislated exceptions outlined in the legislation for the director or designate the same way there are for the trustees.

As such, if the director is unable to attend for reasons beyond those articulated above, that does not appear to be an issue. The Director may be absent with markedly more latitude and may determine their designate accordingly.



When does this take affect?

Section 10(2) of O. Reg. 313/24 states:

“Subsection 2(3) and section 5 to 9 come into force on September 1, 2025.”

For the sake of clarity, section 5 to 9 of O. Reg. 463/97 deal with:

- 5 – Meetings to be open to the public
- 6 – Committee meeting and member attendance
- 7 – Board meetings and member attendance
- 8 – Board and committee meetings, director of education attendance
- 9 – School closures

Conclusion

Based on my interpretation, trustees who are emailing you now are technically following the proper procedure that will come into effect on September 1, 2025. Despite the foregoing, I do not believe that this is a mandatory step just as of yet.