



# Before you begin: An Information Guide to transitioning to the Model Constitution and Bylaws for Congregations (2017)

## Introduction

National Church Council (NCC) at its November 2015 meeting approved the formation of a task force to review the ELCIC Model Constitution for Congregations. Members of the task force included the ELCIC National Secretary along with one representative from each synod.<sup>1</sup> The work of the committee received legal vetting before being adopted by NCC in September 2017.

## Why review governance documents?

The current model ELCIC Constitution for Congregations was adopted in 2010. Regular review of any institution's governance documents is a prudent exercise. For one, it serves as a check to ensure current practices are in line with what is dictated by those documents. Moreover, it provides a mechanism for revising those documents if more effective and efficient ways to meet the needs of the institution are discovered.

## What's changed in the 2017 model?

The most significant change you will notice is a considerable downsizing of the model constitution from 12 articles to three accompanied by a commensurate broadening of the content of the model bylaws. The result is a much clearer division between the constitution, a document that names the organization and defines its purpose and objectives, and the bylaws which define the mechanisms and processes by which the congregation works to achieve those objectives.

Please see below for more commentary on the changes reflected in the 2017 model.

## What is being asked of congregations?

All congregations of the ELCIC are being asked to undertake a review of their constitution and bylaws and begin the process of transitioning to the recommended model documents. When action is taken by the congregation to adopt the new model, such action must be submitted to your respective synod for final approval.

## Attention – BC Synod Congregations

Congregations of the BC Synod are strongly urged to contact their synod office regarding a BC Synod version of a model constitution that is consistent with requirements of the BC Societies Act.

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<sup>1</sup>Task force members were Ms. Linda Grainger (NCC), Rev. James Whaley (BC Synod), Mr. Frank Thede (ABT Synod), Rev. Harold Hesje (SK Synod), Mr. Brian Lorch (MNO Synod) and Rev. Wendell Grahman (Eastern Synod).

## **Can the model be adopted without any adjustment on the part of our congregation?**

Yes, but please be aware that there are a few places where you must fill in information pertinent to your local situation. These are:

- **Constitution – ARTICLE 1** Your congregation's legal name and location and if applicable information pertaining to your congregation's incorporation (i.e., incorporating act, date of incorporation and incorporation number). Please remember to use your legal name if it is different from the name commonly used.
- **Bylaws – PART VI – Section 1** The age a member must attain to be granted voting rights at congregational meetings.
- **Bylaws – PART VI – Section 6** The number of members needed to form a quorum at a congregational meeting.
- **Bylaws – PART VII – Section 1** The number of Congregational Council members (note: no fewer than six)

## **May a congregation change aspects of the model to suit its own needs?**

Yes, there is latitude for customizing the model document to suit local needs but keep in mind that all modifications will need to be ratified by your synod before becoming official. Listed below are some areas where customization might occur.

- **Bylaws PART VI – Section 7** In some circumstances, proxy or absentee voting may be allowed/required because of the congregation's status through incorporation by provincial or federal legislation. Please check the pertinent legislation for information concerning the correct and appropriate use of proxy/absentee voting (including the extent of its power, its duration, revocability and so forth). More detailed discussion of proxy and absentee voting is provided as an appendix to this document.
- **Bylaws PART VI – Section 8** While *Bourinot's Rules of Order* is recommended, other standard sets of practices may be adopted.
- **Bylaws PART VII** A congregation currently using what was labelled ARTICLE IX – Alternate 2 in the 2010 model constitution is welcome to continue using that structure for its congregational council.

## **Are there components of the model which may not be amended?**

Yes. Congregations may not amend ARTICLE II – Confession of Faith.

In addition, any provisions in the bylaws governing the relationship between the congregation and the ELCIC or the congregation's synod office including requirements for communication with or seeking the advice of the synod may not be amended.

## **Other Notable Aspects of the New Model Constitution and Bylaws**

### **1. Bylaws – PART I – Membership – Section 5**

A mechanism is introduced to trigger an annual review of the membership roster including placement of members on a responsibility list and removal of members from the membership roster. The role of the responsibility list is seen as means for tracking members' activity.

### **2. Bylaws – PART II – Reconciliation and Discipline of a Member**

Note the addition of "reconciliation using restorative practices" as being the primary goal when attempting to resolve strife or other matters as a first alternative before considering disciplinary action.

### **3. Bylaws – PART III – Authority**

Section 7 outlines threshold levels for determining the viability of congregations and a process to be followed when a congregation falls below those thresholds.

### **4. Bylaws – PART VI – Section 5 – Notice of Meetings**

In order that information about upcoming congregational meetings reaches all eligible voting members, notice of said meetings must be communicated by mail or electronic mail. By making meeting dates and times known to all members, as opposed to only those who happen to be present when verbal announcements are made, congregations may be able to increase attendance.

### **5. Bylaws – PART VI – Section 6 - Quorum**

In defining quorum, it is recommended that congregations use an absolute number as opposed to a percentage-based definition. Congregations should also consider choosing a number for quorum that negates the possibility that the members of the congregational council could themselves represent a majority of those in attendance at a properly called congregational meeting. To this end, it is suggested that quorum be at least two times the number of council members plus one (e.g., if council has six members, the quorum for a congregational meeting would be set at 13).

### **6. Bylaws – PART VII – Section 1 – Election of Congregational Council Members**

Recommended length of council terms is two years but this may be adjusted to suit local needs. In choosing the number of council members and the length of terms, give consideration to succession planning. At an inaugural meeting of a congregation, it is recommended that terms of office be staggered to avoid scenarios in which more than a majority of council members have their terms expire at the same time.

### **7. Bylaws – PART IX – Section 2 – Amendments**

With the transfer of all logistical aspects of congregational operations to bylaws from the constitution, bylaw amendments will now be subject to approval by the congregation's synod.



# APPENDIX 1

## Proxy and Absentee Voting

### A Guide for ELCIC Congregations whose Incorporated Status Requires Proxy and/or Absentee Voting

*October 2017, by Wendell Grahman*

In the ELCIC's Model Constitution and Bylaws for Congregations (2017), Bylaw Part VI Section 7 states:

Proxy or absentee voting shall not be permitted in the transaction of any of the business of the congregation.

This is therefore considered the norm for ELCIC Congregations for any decisions held at congregational (annual) meetings.

Bourinot's Rules of Order<sup>1</sup> is the standard parliamentary procedure for ELCIC congregations. (People may also be familiar with Robert's Rules of Order.<sup>2</sup>) Both of them automatically prohibit proxy voting (unless required by law) as being incompatible with a deliberative assembly in which membership is individual, personal, and non-transferable. In Bourinot's, it is stated that a member needs to be present in order to cast a vote.<sup>3</sup> Sometimes this principle is stated as "one person, one vote" where it is understood that the member, having the best interests of the congregation at heart, is physically present at the meeting and thus able to speak and vote. While proxy voting is widely used in shareholder meetings of public companies, the church is a non-share organization, where proxy and absentee voting are usually limited or prohibited altogether in such organizations.<sup>4</sup>

However, various congregations across the church are incorporated by either legislative action or by choice. Federal legislation and, in some cases, provincial legislation having to do with incorporation for not-for-profit organizations include various provisions for proxy and/or absentee voting. Each incorporated congregation will need to be aware of the legislative context in which it exists and be diligent in keeping up to date with any requirements, including proxy and/or absentee voting. Note that provincial and federal law as legislative acts take precedence over the ELCIC's constitutional and bylaw documents.

#### **Note:**

While proxy and absentee voting may be used by members at a member's meeting, it cannot be used at a meeting of the congregation's council.<sup>5</sup> Councillors have a responsibility to attend council meetings; if they are absent a certain number of times, often prescribed in the bylaws, then the councillor must resign or be removed from the council; one doesn't simply continue on the council participating through proxy votes.

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<sup>1</sup> Bourinot's Rules of Order, Fourth Edition, Geoffrey Stanford, McClelland & Stewart Inc., 1995

<sup>2</sup> Robert's Rules of Order Newly Revised, 11th edition, Henry M Robert III, De Capo Press, 2011

<sup>3</sup> Bourinot's Rules of Order, Fourth Edition, pg 27

<sup>4</sup> Eli Mina, <http://www.elimina.com/insights/rule-proxies.htm>

<sup>5</sup> Bourinot's Rules of Order, Fourth Edition, pg 85

The following will help guide incorporated congregations if they choose to carry out proxy or absentee voting procedures.

- “Many people incorrectly assume that proxy voting is an automatic right that every voter has. They believe proxy voting must be there to prevent the disenfranchisement of absent members. In fact, proxy voting is only permitted if the organization’s governing documents (legislation and/or bylaws) specifically permit or mandate it. If someone insists on voting by proxy and your governing documents do not permit or mandate it, you need to advise the individual that such a vote would not be valid.”<sup>6</sup>
- There is a distinction between absentee voting and proxy voting. Proxy voting can be understood as one form of absentee voting. Absentee voting could take place by:
  - a mail ballot,
  - telephonic, electronic or other communication facility, or
  - appointing a proxy (a person) to vote in one’s stead at a meeting.
- A proxy is the authority to vote given by one person to another. The term can refer to both the document that gives this authorization and for the person who holds it.
- Proxy or absentee voting is appropriate for those kinds of decisions where deliberation is not required (e.g. the election of council members or auditors/ financial reviewers). However, note that some or all of these decisions may normally be made at a congregation’s annual meeting; unless all decisions at an annual meeting are appropriate for proxy voting, it will be difficult and confusing to have proxy voting for only some decisions. Some kinds of congregational decisions either expect conversation in order to reach a decision, or are of a nature such that information can’t be released before the meeting occurs (e.g. the name of a candidate for call). In these cases, proxy and/or absentee voting would be inappropriate.
- When discussion is required or advantageous for an assembly to come to a decision on a motion, the people best able to make an informed decision are those who have been able to participate in the discussion. During the conversation, various perspectives are put forth and hearers are able to incorporate such into their own decision-making process. Those who are not present do not have the same advantage and may well miss significant viewpoints and the tenor of the conversation, and thus cannot express a decision on an equal basis as those who were part of the discussion.<sup>7</sup> In any event, congregations will want to avoid situations in which proxies shift the power from those present (who hear the deliberations and are able to make informed decisions) to those not present.
- A meeting should only deal with a specific agenda without adding new items during the meeting since this is unfair to both those present at the meeting and to those represented by proxy or not represented at all.<sup>8</sup>

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<sup>6</sup> Eli Mina, <http://www.elimina.com/insights/rule-proxies.htm>

<sup>7</sup> Lorch and Associates, Robert’s Rules on Voting Procedure, <https://www.dropbox.com/s/ztq68iq43vzbxi/Proxy%20Voting.pdf?dl=0>

<sup>8</sup> Bourinot’s Rules of Order, Fourth Edition, pg 91

## Proxy Voting Guidelines

- The following example can be used to appoint and authorize a proxy vote:

The undersigned Member of <NAME OF CHURCH> hereby appoints \_\_\_\_\_ as the proxy of the undersigned to attend and act at the Meeting of Members of the said Church to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and at any adjournment(s) thereof in the same manner, to the same extent, and with the same power as if the undersigned were present at the said meeting or such adjournment(s) thereof.

Dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ Signature of Member \_\_\_\_\_

- Due to the nature of the church being a non-share organization, it is inappropriate for a non-member to be or hold a proxy since the nature of the organization is primarily in the interest of its members. The Bylaws should make it clear that the proxy holder must be a voting member of the congregation.
- The notice for the meeting needs to include a reminder that members have the option to vote by proxy, provided that the proxy represents no more than one member (in addition to him/herself, if the proxy is also a member) at such meeting. The notice would also provide information regarding by what date and to whom the proxy form is submitted.
- Note also, that when one appoints another as a proxy to vote on one's behalf, one surrenders any control to the proxy such that the proxy may vote responsibly according to his/her own conscience.
- A proxy may be scrutinized by the secretary and its validity ultimately determined by the chair of the meeting.<sup>9</sup>
- Some form of procedure should be agreed upon so that all are confident that proxies are valid and handled appropriately during voting.
- The report of the result may indicate the number of votes that were determined by proxy.
- A proxy may be revoked by giving a written statement to the chairperson of the meeting before the meeting begins.

### Note:

Quorum for congregational meetings: A majority of those entitled to vote at a meeting, present in person or by proxy, constitutes a quorum, unless otherwise provided in the by-laws.<sup>10</sup> Despite this, congregations might keep in mind that proxy voting can discourage attendance. Members' presence and voice can help the assembly reach a well-rounded decision.

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<sup>9</sup> Bourinot's Rules of Order, Fourth Edition, pg 89

<sup>10</sup> Bourinot's Rules of Order, Fourth Edition, pg 89

## Absentee Voting Guidelines

- Voting by mail or by telephonic or electronic means may be used only if,
  - (a) the votes may be verified as having been made by members entitled to vote; and
  - (b) the corporation is not able to identify how each member voted.<sup>11</sup>
- Any method of absentee voting must set out procedures for collecting, counting and reporting the results of any vote.
- All voting members must have the same access and privilege; no member must be perceived as having an advantage.
- Ballots should be printed and marked so as not to be easily falsified. Such a mark could be a numbering system or some other way not necessarily evident to the recipient of each ballot.
- Ballots are mailed to each voting member (multiple ballots to the same household are mailed in separate envelopes).
- An accompanying letter would outline the question to be voted upon, the procedure of the balloting process, and a reasonable deadline by which all ballots need to be submitted. The time between the mailing of the ballots and the deadline for them to be returned should be roughly equivalent to the regular notice that the congregation receives about a congregational meeting, plus reasonable time for the ballots to travel through the postal system. Ballots could be returned by mail or in person, as long as this is made known in advance.
- When a proxy notice or a mail-ballot is mailed/sent to a member, the inclusion of any information that will help the member make a responsible decision is prudent.
- All ballots returned should be “sealed” in some manner such that the vote is not evident to the handler of the ballots.
- All ballots should be stored together in a secure place and not otherwise disturbed until the day of the ballot counting.
- Ballot counters should be two or more persons, and at least one or more shall not be a member of council.
- Results of the ballot are announced or published in any usual way as long as every voting member has some kind of access to get the information.

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<sup>11</sup> cf Canada Not-for-profit Corporations Act, 2009, c. 23, s. 171(1); also CNCA Regulations, <http://laws.justice.gc.ca/eng/regulations/SOR-2011-223/page-4.html#h-32>