

How Live is E-mail? Online Quorum Requirements in Manitoba

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Asynchronous Voting and Quorum Requirements in Manitoba



Introduction

Email has become a primary form of communication in today's world where people always have a smartphone on their person but never use it for speaking. It is not unusual for people to take for granted the use of email in making important decisions in their profession.

Administrative bodies across Manitoba, particularly since the COVID-19 pandemic, have been resorting to email and other forms of asynchronous communication when urgent decisions are required. While electronic decision-making can improve efficiency, Manitoba law imposes important limitations on how boards, councils, committees and other decision-making bodies may conduct business.

The legal issue is whether a body that is required to act through meetings can make binding decisions through an email vote conducted over time rather than through a meeting where participants communicate simultaneously.

The answer, in most cases, is that while legislation or by-laws may permit electronic voting, quorum generally requires a meeting or decision-making process that occurs synchronously. Asynchronous email exchanges alone will often be insufficient to satisfy **statutory requirements** for meetings and decision-making.

Statutory Framework

Authority to Establish Voting Procedures

Manitoba statutes grant organizations broad authority to establish their own procedural rules through **by-laws** or regulations. Such organizations include administrative bodies, **condominium corporations** and other bodies bound by the rules of order. These powers often include the ability to prescribe voting procedures and authorize voting by electronic means.

Where a governing statute authorizes an organization to regulate its own voting procedures, the organization's by-laws will generally govern. However, where the by-laws are silent on a procedural issue, Manitoba's general rules of statutory interpretation may apply.

The Interpretation Act

Sections 19 and 20 of ***The Interpretation Act, C.C.S.M. c. 180***, establish default rules for bodies required or authorized to make decisions collectively.

Section 19 provides that:

- a majority of members constitutes quorum unless another rule applies;
- decisions are made by a majority of members present at a meeting where quorum exists; and
- decisions made without a quorum may be invalid.

Section 20 provides that where two or more persons are required or authorized to act or make a decision, they may do so:

1. at a meeting;
2. by a method of communication that permits simultaneous communication among participants, provided all participants consent; or
3. through a document signed by all persons required to make the decision.

These provisions are significant because they contemplate three permissible methods of decision-making: meetings, simultaneous electronic communication and unanimous written resolutions.

Can Quorum Be Achieved Asynchronously?

The principal challenge with asynchronous voting is the concept of quorum.

Quorum is generally understood as the minimum number of members who must be present and participating in a decision-making process before a body can validly exercise its authority. Manitoba law contemplates quorum in the context of a meeting or other process where members are participating together.

An email vote conducted over several hours or days does not ordinarily involve members communicating with one another simultaneously. Instead, participants respond individually and sequentially. While such a process may collect votes, it does not necessarily constitute a meeting for the purposes of statutory decision-making requirements.

Because section 20(1)(b) of *The Interpretation Act* specifically refers to communication methods that permit participants to communicate with one another simultaneously, an asynchronous email exchange may fall outside the methods expressly authorized by the

legislation.

Judicial Treatment of Quorum

Canadian courts have consistently treated quorum requirements as fundamental to the validity of decisions made by collective bodies.

In *Key v. Cote*, 2025 FC 1329, the Federal Court observed that quorum requires all members to be invited and provided with an opportunity to meaningfully participate in the meeting. Although the case arose in a different statutory context, the court's discussion reflects the broader principle that quorum is tied to meaningful participation in a collective decision-making process.

Courts have also emphasized that quorum requirements are generally subject to strict compliance. Where a body acts without quorum, the resulting decision may be invalid regardless of the merits of the decision itself.

The consistent theme in the jurisprudence is that procedural requirements governing the exercise of statutory authority are not merely technicalities. Failure to comply with quorum requirements may render a decision a nullity.

Are Electronic Meetings Permitted?

Electronic meetings are generally permissible provided they allow participants to communicate simultaneously.

Modern technologies such as videoconferencing and teleconferencing ordinarily satisfy this requirement because participants can hear and respond to one another in real time. Such meetings allow debate, discussion, questions, amendments and voting while maintaining the collective nature of the decision-making process.

Accordingly, organizations seeking flexibility in decision-making may often rely on virtual meetings rather than asynchronous email voting.

Can Asynchronous Voting Ever Be Used?

Asynchronous voting may be permissible where:

- the organization's governing legislation expressly authorizes it;
- the organization's by-laws expressly authorize it;
- the vote concerns matters for which asynchronous voting has been specifically approved; or
- the decision is made through a unanimous written resolution signed by all required decision-makers.

However, absent clear statutory or by-law authority, an asynchronous email vote may not satisfy the requirements for collective decision-making under *The Interpretation Act*.

Even where electronic voting is authorized, organizations should take care to distinguish between:

1. the process by which quorum is achieved and discussion occurs; and
2. the method by which votes are ultimately cast.

A body may, for example, hold an urgent electronic meeting to establish quorum and permit discussion, then permit voting through a secure electronic platform following the meeting if its governing documents authorize that procedure.

Practical Considerations for Organizations

Organizations wishing to conduct business efficiently between scheduled meetings should consider:

- reviewing their enabling legislation for authority regarding electronic voting;
- amending by-laws to expressly authorize electronic meetings and voting procedures;
- clearly defining how quorum is established in virtual settings;
- specifying procedures for urgent meetings;
- distinguishing between routine administrative matters and substantive decisions; and
- implementing procedures for unanimous written resolutions where appropriate.

Carefully drafted by-laws can provide significant flexibility while maintaining compliance with statutory requirements.

Conclusion

Under Manitoba law, quorum generally requires participation through a meeting or another process involving simultaneous communication among decision-makers. While electronic meetings are widely accepted, asynchronous email voting alone will often be insufficient to satisfy statutory requirements governing collective decision-making.

Organizations that wish to rely on electronic or asynchronous decision-making should ensure that their governing legislation and by-laws expressly authorize the procedures being used. In the absence of such authority, decisions made through asynchronous voting may be vulnerable to challenge on the basis that quorum was never properly established and the decision-making process did not comply with applicable statutory requirements.

There is no reason not to take advantage of email in the course of professional decision-making. However, bodies must make sure they are properly supported before inviting asynchronous voting or they risk the invalidation of the decision.

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