

SENATE

MEETING DATE: *January 30, 2012*

AGENDA #: *10.1*

PRESENTED BY: *John McKendry*

Issue: **Senate Bylaw Revisions**

For information:

As presented at the November 28, 2011 Senate meeting, the Senate Governance Committee reviewed the question of proxy (or substitution) for members of Senate.

Senate Bylaws currently state:

1.07 Any member who will be absent from a meeting will notify the University Secretariat prior to the meeting.

1.07.1 The use of alternates for elected members is not permitted.

1.07.2 The use of alternates for a member appointed to Senate by virtue of her/his position with the University is permitted only by those officially acting in that individual's capacity in all respects during her/his absence from the University and with prior notice to the University Secretariat.

At the November 28, 2011 meeting, Senate deferred the issue to the January 2012 Senate meeting to allow for the Deans Council to discuss the issue and to allow the President to inquire into the legal issues of proxy. Following is a memo from the President regarding the legal issues of proxy.

From: John McKendry

January 23, 2012

To: Senate

Re: Proxy Votes

The Governance Committee of Senate discussed the matter of 'proxy votes' at Senate last fall when I brought it to the Committee's attention. This arrangement, intended to accommodate the absences of administrators who sit as Senators, draws attention to a fundamental issue in carrying out the provisions of The University Act.

The provision is not permissible under the Act.

The Committee brought this matter to Senate where it was deferred for discussion outside of Senate. It is returned to Senate based on confirmation by counsel that this is a correct interpretation of the principle brought into question.

The legal community refers to the principle in question in two ways: *Delegatus Non Potest Delegare* and *Persona Delegata* (person delegated). It is a pivotal principle of Administrative Law that says:

A person to whom an authority or decision-making power is given from a higher source cannot in turn delegate again to another person unless the original delegation explicitly authorizes it.

The Legislative Assembly of BC is that “higher” authority. In the context of judicial review, non-observance of this principle can create serious problems for the person or body receiving such an authority and failing to carry out the related duties.

In the case of Senate membership, those members who sit by virtue of their respective offices are the recipients of a specific statutory authority, i.e., they are named. It is also the case that the Act is silent in terms of the “named” person subsequently delegating this “authority” to another person, e.g., an Associate Dean, a Vice Provost or an Associate Registrar.

On the basis of this principle, the use of proxy votes as an accommodation for absenteeism is *ultra vires*, i.e., without authority. This leaves a duty to exercise the responsibilities given and it also underscores the importance of the Senate in governing the academic life and welfare of the University and the role of key officers of the University who are named as Senators in carrying out that governance responsibility.

For **THAT Senate rescind Senate Bylaws 1.07.1 and 1.07.2.**

Approval: