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To the Muskoka Lakes Association and Friends of Muskoka

Re: District of Muskoka Council: Modernization Review

It has come to my attention that District of Muskoka Council has not yet completed the requirement in the *Municipal Act, 2001* (s. 218, (6)) to review the number of members of its council that represent the lower-tier municipalities. I have seen several of the documents prepared by District staff and other interested parties to this review and would like to provide to members of the District Council, through you, with some observations about several of the matters still being discussed.

My interest in municipal government in Ontario is long-standing (over forty years), starting in an academic context but supplemented by personal involvement in organizations active at the municipal level. Since taking early retirement from the University of Waterloo, I have gained extensive (and almost certainly unique) "hands-on" experience in relation to municipal electoral matters in Ontario. I have been engaged as a consultant independently or in collaboration with Watson and Associates by more than twenty-five municipalities in Ontario, a provincial agency in Nova Scotia and citizens' groups, all in relation to municipal election systems. My role has ranged from providing high-level advice to Clerks on principles and processes, to providing external assessments of electoral reviews undertaken by others (staff and/or citizens), to conducting comprehensive independent ward boundary reviews and appearing as an expert witness before the Ontario Municipal Board on cases dealing with electoral arrangements.

In 2015 I was invited to provide a report to the Durham Regional Council Composition Review and recently served as consultant to the Region of Waterloo Council Composition Review (under the *Municipal Act, 2001* (s. 218, (6))). I am also monitoring ongoing composition reviews in two upper-tier municipalities as part of ward boundary reviews still in progress.

There are several issues that I understand are unresolved in the District of Muskoka and I would like to share my professional perspectives here on five of them.

### 1. Representation

Electoral representation arrangements in Canada have been influenced significantly by a decision of the Supreme Court of Canada, *Reference re Provincial Electoral Boundaries (Sask.)*, [1991] (“the Carter decision”) written by Madam Justice Beverly McLachlin. In that decision, the Court ruled that under the equality provision of the Charter of Rights and Freedoms (s.3), the purpose of the right to vote is to give citizens “effective representation.” That is, although population parity is “of prime importance” in electoral redistribution, a system of representation should have regard not only for population parity but other factors such as geography, community history and community interests, since they influence important perspectives that may be held by those who reside in the municipality.

A system of representation should not be deliberately engineered so as to favour one interest over another. Moreover, in an earlier 1989 decision (*Dixon v. A.G. British Columbia*), Justice McLachlin wrote: “In principle, the majority of elected representatives should represent the majority of the citizens entitled to vote. Otherwise, one runs the risk of rule by what is in fact a minority.” Any modifications to the system of representation in Muskoka District should ensure that the seasonal resident majority is not treated as a minority. This principle has been sustained by Ontario Municipal Board (now Local Planning Appeal Tribunal) in numerous decisions pertaining to municipal representation.

Any proposal to assign an equal number of seats to each lower tier municipality will provide a fair and balanced council and can serve to provide the community of interest with the largest population (seasonal) a fair voice on District Council.

### 2. Weighted voting

Under Ontario legislation, the District of Muskoka is an upper-tier municipality that is to all intents and purposes the equivalent of a regional government. No other regional government in Ontario uses weighted voting in reaching decisions on its Council. Some counties – but not all - use weighted voting. The allocation of votes in a weighted vote system varies from the simple (on Perth County Council some have 2 votes while others

have 1 vote) to the more extreme (in Dufferin County Council some members have 1 vote, others 2 or 3 and one has 7). Some use weighted votes only on financial matters, others do not use weighted votes in committee.

Whatever the arrangement, weighted voting would deliberately offset the equal allocation of seats to the lower tier municipalities and complicates the decision-making process when the number of hands that are raised for a vote do not reflect the votes being counted. More importantly, weighted voting may give excessive influence to a minority of individual councillors with “extra” votes who together may not represent the largest community of interest in the District.

Finally, weighted voting only applies to the last step in decision-making and does not take the place of having a complete and diverse set of voices during deliberations at the Council table. In my view, having more voices and clear accountability (one Councillor, one vote) is preferable to reducing the actual number of representatives in the interests of making decision-making by Council more “efficient.”

### 3. Council Size

Three Ontario Regions implemented changes to the composition of their Council before the 2018 municipal election: Niagara, Halton and Durham. In Niagara one additional seat was assigned to a lower-tier municipality; in the other two cases seats were reallocated. Two other Regions initiated reviews at that time but did not complete them (Peel and York) and the District of Muskoka also conducted a review in 2017 but made no change to the composition of its council.

An amendment to the *Municipal Act* in 2017 requires that all regions review the number of members of its council that represent the lower-tier municipality after the regular election in 2018 and every second regular election after that. Halton and Durham are considered to have met the requirement for 2018 so on this basis Peel, York, Muskoka and Waterloo initiated a composition review. York has agreed to add a seat for the City of Vaughan, Peel is seeking to shift two seats from Caledon to Brampton and Waterloo affirmed the existing distribution of lower-tier seats. To my knowledge, no region has as yet reduced its composition under this provision.

There was apparently further impetus for change when the Ontario Regional Review (the Fenn-Seiling review of the eight regional municipalities plus Oxford and

Simcoe Counties) was directed to consider this question but that report has never been released. Simcoe County is considering a reduction (it has a 32-member County Council – the largest municipal council in Ontario) but has not yet reached an agreement on an alternative (the proposal recommended by a Governance Committee is for 21 members, including the 16 Mayors and 5 councillors directly elected in five wards formed from groups of the lower-tier municipalities with weighted voting). Despite the fact that Toronto City Council was reduced in Bill 5, there has been no formal direction from the Province to reduce the size of municipal councils.

Any decision on the reduction of Muskoka District Council should be based on validated advantages that derive from a smaller council: the optimal size of a Council depends on the purpose and role Council is expected to play as both a decision-making and representative body. A larger number of councillors increases the ability of residents to have access to District councillors, but it can slow down and complicate the decision-making process on the floor of council if every councillor feels a need to weigh in on every discussion. For many people, smaller councils are more “efficient” at reaching decisions, so are therefore preferred. However, councils need to be large enough to ensure that all of the community’s interests are represented on council.

If, as the adage has it, municipal government is “closest to the people”, the number of representatives subject to public accountability for their actions (that is, through the ballot box) is a key indicator of how close or remote the council is to the community. In my view, a District Council of 12 seriously compromises the ability of significant communities of interest having a voice and being heard.

#### 4. The Environics study

While Environics is a credible firm, using its “common evening location” of cell phone devices technique to develop a demographic profile of Muskoka District is puzzling and questionable. The District Staff report from November 4, 2020 (MM-3-2020-1) includes a table (pages 2 – 3) that includes five limitations to the Environics methodology that are, in my opinion, so transparently overwhelming that the tool has little credibility in this context and the data are highly suspect. For example, it is not clear how these data separate households where cell phones are used in addition to a landline (conceivably the case in the three towns) and those where the cell phone is used instead of a landline. Is

this a reason why the population calculations are consistently higher in some municipalities and lower in others than other traditional sources show?

The District already has a long-standing technique to capture supplementary demographic information (the Second Home Study) and has routinely used the data for official purposes (such as making policy decisions). If its reliability is being questioned in this review, the District should address whatever it believes those shortcomings rather than relying on the results of a questionable tool for estimating the population as a foundation for building the District's key democratic decision-making structure.

In cases where an Ontario Municipal Board ruling addressed the population data used to established electoral representation, official local and external information (such as that generated by MPAC or the equivalent of the Muskoka Second Home Study) have been held to be the most plausible sources. In my opinion, tracing the location of cell phones falls a long way from those standards.

#### 5. Elected vs Appointed Chair

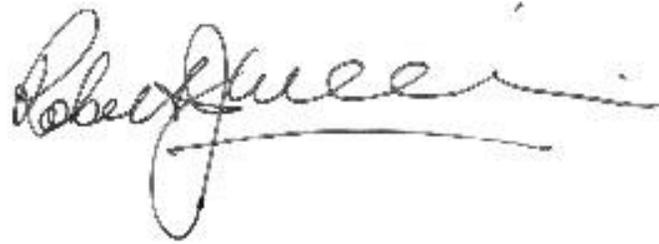
There is no consistency across Ontario's regional governments on the method for determining the Regional Chair. In the early years of regional government all chairs were appointed by the Council, just as County Wardens have always been chosen; in a sense, the role was, in the language of the Municipal Act, primarily to serve as "the head of council." Gradually the role expanded as the Chair played a part beyond just presiding over the council and it was seen more like the role of a mayor in a lower-tier municipality. Since all lower-tier "heads of council" in Ontario must be elected at-large, the idea was adopted on a piecemeal basis for some upper-tier municipalities (appointed in Muskoka, Niagara, York and Peel but elected in Durham, Halton and Waterloo).

There is a democratic rationale for a directly elected Chair, since incumbents are now assumed to exercise a leadership role in a large municipal corporation. Taxpayers have a not unreasonable expectation that there should be electoral accountability associated with the position.

However, the practical implication is that anyone who wishes to serve in the office would have to conduct an election campaign across the entire upper-tier municipality – a process that requires considerable financial and other resources. In the case of Muskoka, reaching all of the District's residents is additionally complicated given that permanent

residents are dispersed over a large area and the seasonal residents are not normally residing in the District during the full municipal campaign period. A nomination can be filed on any day on or after May 1 in the year of the election but under Bill 218 (*Supporting Ontario's Recovery Act, 2020*), the nomination day for a regular election was amended to fall on the third Friday in August instead of fourth Friday in July. This change may further complicate campaign activities, fund-raising and election expenses across such a large municipality but, in any case, a District-wide election would make it expensive and logistically challenging to provide the residents the information they need to make an informed vote. In my opinion, the District Chair should be appointed by Council as at present and not directly elected by voters.

I trust that these remarks are of some value to members of Muskoka District Council as you work towards completing your composition review.

A handwritten signature in black ink, appearing to read "Robert J. Williams". The signature is fluid and cursive, with a long horizontal stroke at the end.

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specializing in municipal electoral systems***