

***A GUIDE***  
***TO***  
***REGIONAL DISTRICT BOARD***  
***DELEGATION***  
***TO***  
***COMMITTEES & COMMISSIONS***

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Governance and Structure

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## INTRODUCTION

This guide deals with board delegation of administrative and operational responsibilities for regional district services to committees or commissions. The guide provides policy advice and information on the legislative framework for delegation.

## THE LEGISLATIVE CONTEXT

### **What can regional district boards delegate?**

Section 176 of the *Local Government Act* provides regional district boards with corporate powers, including the ability to delegate. Specifically, a board has the power to:

*“... delegate its powers, duties and functions, including those specifically established by an enactment, to its officers and employees, its committees or its members, or to other bodies established by the local government.”*

### **What does delegation mean?**

Once a board has delegated a power, duty or function, the delegate (person or body) has the responsibility to act within parameters that the board has set out. This means that, in most circumstances, a board cannot “second guess” the decisions of a delegate.

However, in some cases, the *Local Government Act* provides for reconsideration of certain delegated decision making authority. For example, issuance of development permits and certain delegations to staff.

A board cannot interfere with a delegated body’s decision making, but it can withdraw the delegation if it is dissatisfied.

### **Who can a regional board delegate to?**

#### **Bodies laid out in legislation**

A board can choose different bodies to delegate responsibility for the operation and administration of services. The four main bodies are standing committees, commissions, advisory committees and local community commissions.

#### ***Standing Committees***

Section 795(2) of the *Local Government Act* provides that the board chair may establish standing committees, for matters the chair considers would be better dealt with by committee, and may appoint persons to those committees.

Persons who are not directors may be appointed by the board to a select committee or by the chair to a standing committee provided that at least one member of each select and standing committee is a director.

### ***Commissions***

Section 176(1) (g) of the *Local Government Act* provides regional district boards with the powers to establish commissions to:

- operate services of the regional district;
- undertake operation and enforcement in relation to the regional district's regulatory authority; and
- manage property, or an interest in property, held by the regional district government.

### ***Advisory Committees***

The legislation does not explicitly mention advisory committees. However, the board's ability to establish committees is implicit in broad corporate powers.

### ***Local Community Commission***

Section 838 of the *Local Government Act* provides the authority for the regional district board to establish elected local community commissions. The board must specify in a delegation bylaw what particular service or services a local community commission is responsible for and the level of decision making with respect to those services which are delegated. This could mean that the role of the local community commission is advisory or that it has responsibility for the operation and administration of a service.

### ***Special delegation powers of the regional district board***

Section 800.2 of the *Local Government Act* provides additional flexibility for regional districts to delegate the operation and administration of services. In a service establishment bylaw the board can:

- establish the method for determining the number of votes to which a director is entitled for voting on resolutions and bylaws respecting the administration and operation of a service which can be different from the default weighted voting rules established under section 791 (4) (b); and
- if the administration and operation of the service is delegated to a body established by the board, provide for appointments to the body and establish voting rules for the body in relation to the service.

These special provisions for delegation and establishment of committees and commissions can be used in combination with the basic authorities outlined above. The result is enhanced opportunities for boards and service participants to design and implement management structures which work for the interests of both.

Figure one summarizes the options for delegation and some considerations.

<b>Figure One</b>	
<b>Opportunities For Delegation Within A Regional District Structure</b>	
<i>Level</i>	<i>Considerations</i>
<b>Regional Board</b>	<ul style="list-style-type: none"> <li>• Board may delegate its powers, duties and functions to its committees, its members or to other bodies established by the board</li> <li>• <i>Local Government Act</i> lays out restrictions on delegation, including law making powers that may not be delegated</li> <li>• Board lays out its expectations in a delegation bylaw</li> </ul>
<b>Stakeholders</b>	<ul style="list-style-type: none"> <li>• Comprised of the directors representing the participants in the service</li> <li>• Service establishment bylaw lays out the expectations of the service partnership</li> <li>• Participants in a service have been delegated responsibility for all decisions which relate to the administration and operation of a service. This includes bylaws:               <ul style="list-style-type: none"> <li>○ imposing fees or charges</li> <li>○ providing for preparation of a parcel tax roll</li> <li>○ exercising regulatory authority in relation to a service</li> </ul> </li> <li>• Board could designate the stakeholders as a standing committee or a service commission and delegate responsibility for operation of a service to that committee or commission</li> </ul>
<b>Standing Committee</b>	<ul style="list-style-type: none"> <li>• Section 795(2) of the <i>Local Government Act</i> provides that the chair may establish standing committees, for matters the chair considers would be better dealt with by committee, and may appoint persons to those committees</li> <li>• Persons who are not directors may be appointed by the board to a standing committee, provided that at least one member of each standing committee must be a director</li> <li>• Decision making, but not law making powers</li> </ul>
<b>Commission</b>	<ul style="list-style-type: none"> <li>• <i>Local Government Act</i> 176(1)(g) provides that the board may delegate operation of any service, undertaking of a regulatory scheme or management of property to a commission or committee</li> <li>• Commission or committee may be comprised of both elected and non-elected officials</li> <li>• Decision making, but not law making powers</li> </ul>
<b>Advisory Committee</b>	<ul style="list-style-type: none"> <li>• Board may establish committees to provide advice to the board or to stakeholders</li> <li>• Advisory, but not decision making powers</li> </ul>
<b>Local Community Commission</b>	<ul style="list-style-type: none"> <li>• <i>Local Government Act</i> section 838 provides for elected commission</li> <li>• Responsibilities and powers of the commission laid out in a delegation bylaw</li> <li>• Commission can be either an administrative/operational commission or an advisory commission</li> <li>• Not a corporate body</li> <li>• No law making powers</li> </ul>

## **What can regional district boards not delegate?**

Section 191 of the *Local Government Act* provides restrictions on a board's ability to delegate. A board may not delegate in the following areas.

1. *Bylaw making*  
Only the board has legislative or law making powers even though voting on particular bylaws may be restricted to the participants in the service.
2. *A power or duty which is only exercisable by bylaw.*  
This includes, for example, the power to:
  - levy parcel taxes;
  - expropriate property;
  - acquire land; and
  - appoint officers.
3. *A power or duty to suspend or terminate a local government officer or an auditor.*
4. *A power or duty to consider an action or decision where reconsideration is mandated in statute and hold a hearing.*  
(Section 193 also contains a significant restriction on the ability of a board to delegate as it limits delegation of matters where the “law” or an enactment requires a hearing by elected officials only.)

Please note that common law requires a “hearing” before the board when it makes certain quasi-judicial type decisions even though a hearing is not mandated by the *Local Government Act*.

5. *A power or duty established in legislation that the local government gives its consent or approval to recommendations on or acceptance of a decision or action or other matter.*

This includes, for example:

- consent for service establishment;
- consent to removals of land from the Agricultural Land Reserve;  
and
- consent for an application for a liquor licence.

All of the above provisions protect the key interests of: the board; regional district officers and staff; the province; and the public.

Section 922(8) *Local Government Act* and common law also prohibit the delegation of development variance permits.

### **How are boards to delegate?**

Section 192(1) of the *Local Government Act* provides that a local government may only delegate a power, duty or function by bylaw adopted by an affirmative vote of 2/3 of the votes cast.

A local government may, by bylaw, adopted by a majority of votes cast, amend or repeal a bylaw to reduce or revoke the delegation (*Local Government Act* section 192(2)).

### **How are mandatory reconsiderations of decisions or appeals handled?**

If a local government delegates a power to make decisions, and the legislation establishes a right to have a delegated decision reconsidered by the local government, then the local government must, by bylaw, establish procedures for appeals. These procedures must clearly indicate how a person may appeal decisions, and how the board will undertake hearing the appeal. In this regard, a local government has the same authority as that conferred on the delegate.

Examples of areas where an appeal or reconsideration is provided include:

- development permits;
- temporary commercial and industrial use permits; and
- heritage permits.

### **How are hearings handled?**

Section 193(1) of the *Local Government Act* provides that if a regional district is required, by law, or authorized by an enactment, to hold a hearing in relation to a bylaw, action or other matter. The holding of the hearing may only be delegated, either specifically, by class of hearings or generally, to one or more directors. The delegation decision must be made by a majority of votes cast.

If the holding of a hearing is delegated and the power to make the regional district decision, in relation to the same matter is not delegated, the local government must not make the decision until the delegate reports to the local government, either orally or in writing, the views expressed at the hearing.

As discussed above, a regional board's ability to delegate a public hearing does not include the ability to delegate the hearing of an appeal, where an applicant has the right to an appeal.

## **KEY POLICY CONSIDERATIONS RESPECTING DECISIONS TO DELEGATE**

### **What does administration and operation mean?**

The legislation does not define administration and operation. However, in practice, the definition of what can be delegated must be consistent with the objectives of broad corporate powers and must keep in mind what cannot, by law, be delegated.

### **Why delegate to a committee or commission?**

Delegation to a committee or commission can assist the participants in a service by providing a dedicated forum to discuss issues related to the management and operation of a particular service.

Without delegation, all issues related to the service get discussed at the regional board. This can frustrate board members, who are not responsible and have limited interest in the service, and participants who have a strong interest in service issues.

Delegation of specific services to a board or commission can assist the regional district board to focus on the needs of the region as a whole. This may help the board develop a stronger regional identity and an enhanced ability to deal with corporate or region wide issues.

### **What could the board delegate?**

Some possible areas where a regional board may wish to consider delegating include:

- *Planning* - short and long term with respect to a service;
- *Budgeting* - service operating and capital budgets for the service and recommendations to the board;
- *Expenditures* - approving expenditures based on the budget approved by the board;
- *Contracting* - entering into contracts based on limits and policies established by the board;
- *Operational policies and procedures* - establishing policies and procedures to guide the operation of the service; and
- *Operational decisions* – day-to-day decisions with respect to the operation of the service.

Please note the first two items in the list, planning and budgeting, are advisory functions, as full decision making authority continues to reside with the board. In the other four areas, full decision making authority can be delegated.

In general, the board should be willing to delegate the authority to do all things required to administer and operate the service. However, this must be consistent with the board's statutory authority and limits, and board policy and procedures.

### **What should a board not delegate?**

A regional district board will want to give careful consideration to its delegation bylaw. In general, the board will want to retain its role in overall regional policy and retain authority or constrain the delegated body's authority.

Some key areas to consider:

- overall regional budget;
- financial management policies;
- contracting policy, including limits on delegated contracts;
- purchasing policy;
- legal advice;
- legal risk management;
- human resource policies;
- risk management policies; and
- communications policies.

### **What is the purpose of a delegation bylaw?**

The purpose of a delegation bylaw is to clearly lay out the delegation scheme. It protects the overall interests and establishes the expectations of the board, the service participants and the delegated body.

The board can delegate its responsibilities knowing that its interests have been considered, while the delegated body has clear authority and scope to manage the service knowing that the board has clearly established its limits. In short, the delegated body has scope for independent action within a policy and legal framework established by the board.

### **What should be included in a delegation bylaw**

Some of the key elements of a delegation bylaw are summarized in Figure Two.

<b>Figure Two: Elements of a Delegation Bylaw</b>
<ul style="list-style-type: none"><li>• title;</li><li>• definitions;</li><li>• composition of the delegated body;</li><li>• method of appointment;</li><li>• limitations on delegation, as determined by the board;</li><li>• no further delegation rule, as laid out in the statute;</li><li>• service or services to be administered;</li><li>• administration and operational responsibilities of the delegated body;</li><li>• voting rules or how decisions are to be made, including use of weighted votes;</li><li>• procedures or the applicability of board procedures bylaw or committee or commission procedures;</li><li>• communications to the board;</li><li>• operating policies;</li><li>• reconsideration of decisions</li></ul>

### **How do the service establishment bylaw and the delegation bylaw differ?**

A service establishment bylaw is constitutional in nature. It sets out the basic parameters of the service or the rules of the partnership.

Therefore, the rules for changing the bylaw are relatively onerous and involve the consent of the participants. The simplest approach to changing the bylaw requires consent of 2/3 of the participants and board approval.

An establishing bylaw solely involves the participants and sets out the terms and conditions of the "marriage." If the terms and conditions of the service are agreed upon by the participants and consent is given, then the board performs its legislative role when it adopts the establishment bylaw by a simple majority.

The delegation bylaw sets out the expectations of the board, with respect to the authority and responsibilities of the delegated body. The bylaw is adopted by the board and can be amended or repealed by the board. It does not require consent of the participants. Furthermore, it is administrative in nature and is more likely to be changed over time. Delegation requires a 2/3 vote of the board, but only a simple majority is required to amend the delegation bylaw or withdraw the delegation.

Delegation of responsibilities should only be done in a delegation bylaw. A delegation bylaw, concerns the regional district board relinquishing its authority and the board must be able to pull back its authority, if necessary. As discussed above, the voting requirements reflect the seriousness of the board's decision.

### **How are a service establishment bylaw and a delegation bylaw linked?**

The service establishment bylaw sets out the basic parameters of the service. This could include the rationale for delegating the administration and operation of the service to a commission or committee. In addition, the bylaw may lay out specific rules regarding the structure of the commission as provided for in 800.2(1).

*"If the administration and operation of the service is to be delegated to a body established by the board, provide for appointments to the body and establish voting rules for the service in relationship to the service."*

The actual delegation of board responsibilities will be made by the board in a separate delegation bylaw.

### **What role does the delegated body have in developing policies?**

A major role of a service committee or commission is the development of operational policies for a service. This needs to be differentiated from the role of the regional board in developing overall regional policies.

The board should ensure that a delegation bylaw does not fetter the discretion of the board to act within areas of authority that cannot be delegated, and that the bylaw does not delegate authority for developing overall regional policies that should remain with the full board.

**What does “fettering of discretion” mean?**

There are two types of "fettering of discretion." One is not permitted; the courts have repeatedly insisted that local governments (and other persons who exercise statutory powers of decision) cannot bind themselves in such ways that they no longer exercise their statutory discretions. In other words, a regional district board cannot act in such a way as to prevent a future regional board from exercising discretion or a statutory power, except to the extent permitted by legislation.

There is another type of 'fettering' that is permitted. Any decision that may lawfully be delegated to another person or entity can be delegated, and the delegated person or entity has the full authority to act. For example, a board could fetter its discretion to award contracts by delegating purchasing authority to staff.