



Improvement District Trustee's Handbook

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and Cultural Development

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Introduction

Improvement district trustees are elected by landowners in order to direct the operation and administration of those public services for which the improvement district is responsible.

Being a trustee requires an investment of personal time and an interest to serve the public during the course of the trustee's term. While trustees may receive modest financial compensation for their duties, being a trustee is not a full-time position with a regular salary.

There is an expectation of improvement district trustees that they will make informed, transparent decisions. However, when a person is elected to be an improvement district trustee, it does not necessarily follow that they have all the knowledge necessary to make informed decisions on every aspect of the improvement district's business. Many decisions made by trustees require an understanding of legislation, insurance, property assessment, taxation, meeting procedures, basic water system design, water quality standards, fire protection, labour relations and bylaw enforcement. Learning about these issues is often an ongoing process for improvement district trustees.

This Handbook is intended to introduce trustees to the fundamentals of improvement districts and explain the role of the trustees – including their financial responsibilities and powers. The Handbook may also be useful to anyone interested in becoming a trustee, or who wants a better understanding of how improvement districts are governed.

What is an Improvement District?

The system of local governance in British Columbia includes municipalities, regional districts, improvement districts and several special purpose bodies such as the Islands Trust. Each of these local governments and special purpose bodies operates independently although their interests do intersect occasionally.

Improvement districts are incorporated by the Province of British Columbia (Province) under the *Local Government Act* (Act) and they are granted certain powers by the legislation. Each improvement district was created when the majority of landowners in a community petitioned the Province to incorporate an improvement district to deliver one or more public services on their behalf. The people with the responsibility for making decisions about the service(s) are elected by the landowners – they are known collectively as the board of trustees.

Improvement districts are located in almost every part of the province but are concentrated on eastern Vancouver Island, in the Okanagan Valley and in the Kootenay region. There are 215 improvement districts in the province and they vary in size from small rural subdivisions to large urbanized areas.

The service most commonly delivered by improvement districts is a community waterworks system. Having a community water system means that landowners within the improvement district do not have to drill and maintain their own wells, or access a surface water source such as a lake, in order to supply their needs. As a result, the management of water can be economized.

Improvement districts were initially created to manage irrigation systems in the Okanagan Valley, but today the majority manage water systems that supply domestic household needs. The other public services typically managed by improvement districts include fire protection, street lighting, parks, dikes, and garbage collection. While an improvement district can manage multiple public services, more than two-thirds manage a single service.

While improvement districts are autonomous corporations, in some circumstances they are subject to direction by the Ministry of Community, Sport and Cultural Development (Ministry). As the Ministry responsible for the local governance system, it has an interest to ensure that the local government system remains open, representative, responsive and accountable to its citizens and that locally elected officials make effective use of their legislative powers.

Powers

There are aspects of several provincial and federal laws that apply to improvement districts such as the *Drinking Water Protection Act*, the *Taxation (Rural Area) Act* and the *Freedom of Information and Protection of Privacy Act*. However, the principal legislation that governs improvement districts is Part 23 of the *Local Government Act* (Act). Unless otherwise stated in the Handbook, all legislative references are to this Act.

The Act states that the Provincial Cabinet may, by Letters Patent, incorporate an area of land and its owners into an improvement district. The Letters Patent contain provisions such as the name of the improvement district, its boundary, and the service(s) for which it is responsible. Letters Patent are explained more fully on page 33.

The Act outlines the powers, obligations and limitations that apply to improvement districts and their boards of trustees. Generally, a board of trustees has all the powers necessary or useful for managing the improvement district's services. Some of these powers include taxation, regulation, the acquisition and disposal of property, borrowing, expropriation, the hiring of employees and the ability to enter into contracts. However, there are limitations to these powers.

One of these limitations is that the powers of the board of trustees do not extend beyond the improvement district boundary. The only exception is fire protection – where a board of trustees may, by bylaw, allow the fire department to respond to emergencies beyond the improvement district's boundary. In all other cases, the board's sphere of influence remains within the boundary of the improvement district and none of its bylaws or resolutions have affect outside its boundary.

Since improvement district powers flow from provincial legislation, a board of trustees cannot override provincial (or federal) legislation. If a board of trustees were to exceed its legislative authority, the Courts could set aside their decision, action or bylaw.

The Board of Trustees

Each improvement district is governed by three or more trustees who are collectively called the “board of trustees”. One of the trustees also serves as the chair – further information about the role of the chair can be found on page 9.

The powers granted to improvement districts in the Act must be exercised by a decision made by a majority of trustees at a legally convened meeting. While the chair may have duties that are not shared with other trustees, such as the duty to chair meetings and sign bylaws, the legislation does not grant the chair powers that can be exercised unilaterally on behalf of the improvement district. Similarly, individual trustees cannot commit the improvement district to any particular action. For example, a chair or a trustee cannot hire a lawyer to obtain a legal opinion unless the board of the trustees votes in favour of the action and authorizes the expenditure. Since each trustee has only a single vote, their powers are exercised through collective decisions rather than individual actions.

The principle of collective decision-making also extends to actions such as speaking on behalf of the improvement district. If a trustee expresses an opinion that is different than the opinion of the board of trustees, the credibility of that trustee, or the board, may come into question. For this reason, many boards of trustees develop a policy regarding who can speak on behalf of the improvement district to the media, its landowners or to other organizations. Often this role is assigned to the chair.

The Role of Trustees

Trustees have several roles including that of community representative, steward of a public service, policy-maker and law-maker.

Representative Role

The board of trustees are elected as representatives of their community and as such, their decisions and actions can affect how people perceive that community.

Candidates for the position of trustee often identify issues that they will address if they are elected. Once they are elected, a trustee may assume that a majority of constituents supported their view of the issues. However, communities often have citizens with different interests and some of those interests may at times be in conflict. Therefore, making decisions that represent the interests of all citizens can be challenging.

Election to office often means that a trustee has access to information that may not be readily available to the public, and therefore trustees will often have a broader understanding of an issue. Conveying their understanding of that knowledge to the public in an open and transparent manner usually results in increased public confidence in the board of trustees. Decisions made by trustees that appear to be uninformed or to have been made “behind closed doors”, often raise public concerns.

Making open, transparent and informed decisions demonstrates that trustees respect the public’s right to know what issues have, or may have, an impact on their service(s) and how well the trustees are addressing those issues. In order to have a positive relationship with the community, a board of trustees will often:

- hold meetings that are open to the public – unless there are sensitive matters where the interests of the improvement district or an individual would be compromised;
- publish and circulate a newsletter;
- hold public consultation processes;
- enact policies for dealing quickly with public complaints; and,
- adopt a code of conduct for the trustees.

The measure of a community is often determined by how well their representatives perform and since trustees are in a position of trust, it is expected that they will not make decisions that benefit them directly. “Conflict of interest” is the term used to describe this situation and further information about the topic can be found on page 22.

Stewardship Role

The public services delivered by an improvement district can continue for decades – while a single term of office for a trustee is three years. Therefore, it is the board of trustees' responsibility to ensure that the improvement district's resources are used effectively during their time in office and that the public service(s) can be delivered indefinitely.

Trustees must make decisions to ensure that adequate funds are available to maintain current operations and to replace capital infrastructure as it ages. Equally important is maintaining an effective organization to operate and administer the improvement district's services. Therefore, knowledge about the improvement district's history, operations, administration and services needs to be retained and conveyed to future employees and trustees. Policy and procedure manuals are excellent tools for transferring that knowledge.

Policy-making Role

Policies provide direction for both the board of trustees and improvement district employees. Policy-making involves a number of steps such as:

- identifying the issue;
- reaching agreement on the facts and the objectives;
- considering information from as many sources as necessary;
- weighing the implications of various options;
- making a decision based on the information;
- directing staff to implement the decision; and,
- evaluating the policy and amending it as necessary.

Policy decisions can be implemented in many forms. For example, they may appear in the terms and conditions of an agreement, the establishment of watering restrictions, a resolution in favour of allowing staff to attend conferences, or a motion passed by the board of trustees to purchase directors' insurance.

As policy makers, trustees are not directly involved in the operation and administration of the public services for which they are responsible – that duty falls to their employees. Information about the role of employees can be found on page 17.

Law-making Role

The powers granted to improvement districts in the Act can be enacted by the board of trustees by bylaw or by resolution – both instruments are legally enforceable.

The Act lists a number of powers that a board may enact by bylaw such as borrowing, levying taxes and entering into contracts. In all other instances, decisions by the board of trustees can be enacted by passing a resolution.

Some bylaws come into effect upon enactment by the board of trustees while others come into effect when they are registered with the Inspector of Municipalities (Inspector), a senior position within the Ministry. Further information about bylaws including their format, enactment and enforcement, can be found on page 27.

A resolution is an expression of a decision, position, or intent by the board of trustees. A resolution takes effect once it is passed by the board of trustees and does not need to be registered or filed with the Inspector. Resolutions and bylaws are proposed by a trustee at a trustees meeting and decided by a majority vote of the trustees.

The Role of the Chair

The Act requires that a trustee be elected from the board to assume the role of chair. The chair assumes additional responsibilities to those of the other trustees. The selection of the chair occurs at the first meeting of the trustees held each year, or at the first meeting held after the position becomes vacant.

The principal duty of the chair is to preside at board meetings and it is their responsibility to become familiar with the rules governing meetings. The chair is guided by the procedures established by the board of trustees in their meeting procedures bylaw. Where a question on procedure is raised, the chair has the power to decide points of order, although there is opportunity for the other trustees to appeal the decision. Additional information on trustee meetings can be found on page 13.

Each meeting must be presided over by the chair – if the chair is absent, the remaining trustees must appoint one of themselves as acting chair for the purpose of holding the meeting.

Conducting meetings is not without its challenges. For example, there may be a situation in which a controversial subject is being discussed and a person in the audience is acting inappropriately or using offensive language. The chair may ask the person to stop or to leave the meeting. If the person does not comply, the chair may make a motion that the meeting be adjourned and reconvened after a short break, or be adjourned to another day. The decision to adjourn the meeting must be made by a majority vote of the trustees.

As is the case with the other trustees on the board, the chair only has one vote. However, they are often regarded as the person who sets the tone for the board of trustees through their leadership style and the manner in which they conduct board meetings.

Although the board of trustees generally establishes a regular meeting schedule, the chair has the authority to call a special meeting of the trustees. Additional details on special meetings can be found on page 13. In addition, the chair is generally responsible for preparing the agenda for each meeting in consultation with the improvement district's corporate officer. The procedures for establishing agendas, calling meetings and conducting meetings, are detailed in the meeting procedure bylaw enacted by the board of trustees.

It is usually the responsibility of the chair and the corporate officer to sign the minutes of meetings as being correct after they have been reviewed by the board of trustees. This review usually occurs at the next meeting of the trustees.

It is also the chair's duty to sign all bylaws enacted by the trustees – unless the chair was absent from the meeting at which the bylaw was enacted. In that instance, the acting chair who presided at the meeting must sign the bylaw. It is also customary that the chair be a co-signer, along with the corporate officer, to bank accounts or to agreements that have been approved by the board of trustees.

Financial Responsibilities

The board of trustees is responsible for ensuring there is sufficient revenue to finance the costs of operating, administering and maintaining the public services for which the improvement district is responsible.

Budgets, capital financing policies, a cash management system, financial administration and reporting policies, taxes, tolls, reserve funds, debt, fees and developer charges (also called capital expenditure charges) are all tools the board of trustees may use to manage revenues and expenditures.

A budget is an essential tool for estimating revenues and expenditures for the coming year. Some boards create separate budgets – one for operating costs – and one for capital costs. Operating costs generally include day-to-day expenditures such as salaries, employee benefits, heat, electricity, insurance and building maintenance. Capital costs generally apply to tangible capital assets such as land, buildings and infrastructure as well as debt and reserve funds. Operating and capital costs are also separated in the annual financial statements.

Many boards choose to recover operating costs by levying tolls (user fees) that are paid by residents who directly receive a service such as water or garbage collection. Capital costs are generally recovered from landowners by levying taxes on properties that benefit directly or indirectly from the service. A budget can assist in identifying whether cost increases are anticipated and if so, how much the tolls and/or taxes will need to be increased and when.

The board of trustees must establish a method of property assessment if taxation is chosen as a method of cost recovery. In addition, the board must create a Court of Revision and appoint its members to hear and resolve complaints about individual property assessments.

An exception to the requirement to create a method of property assessment occurs where an improvement district delivers a street lighting or fire protection service. In these instances, the board of trustees can ask the Province to collect the improvement district's taxes on the Provincial property tax bill. The amount of the tax for each property owner is based on the improvement district's budget and the taxable assessed value of land and improvements in the improvement district as established by BC Assessment.

The improvement district officer assigned responsibility for financial administration is required to prepare a financial statement for each calendar year. The financial statement must be prepared in accordance with generally accepted accounting principles for local governments and presented to the board for its acceptance. The board of trustees must appoint an independent auditor who provides a report to the board of trustees on the annual financial statement. The report safeguards the interests of the landowners and trustees by stating whether proper accounting procedures are being followed. The report must be in accordance with the form and the reporting standards recommended by the Canadian Institute of Chartered Accountants.

The annual financial statements must be presented to the landowners at the annual general meeting. The annual financial statements must be submitted to the Inspector by May 15 each year.

A board of trustees must make adequate provision in its budget to renew infrastructure when it is required and to raise sufficient funds for that purpose. The board of trustees must establish a reserve fund(s) and those monies must be used only for the specific purpose for which the fund was established.

Another method for financing the renewal or construction of capital assets, is to borrow money through a financial institution. No borrowing can be undertaken unless a borrowing bylaw is enacted by the board of trustees and it has been registered with the Inspector. A public consultation process, such as a referendum, is usually required before the Inspector will register a bylaw that authorizes borrowing.

Meetings

Trustee Meetings

A board of trustees must convene a meeting in order to conduct improvement district business. The meeting must be called in accordance with the provisions in the improvement district's meeting procedure bylaw and there must be a quorum of trustees present. A quorum is a majority of trustees – the quorum for a board with three trustees is two and a quorum for a board with five trustees is three. If one or more trustees leave the meeting and a quorum no longer exists, the meeting cannot continue.

A regular schedule of trustee meetings is usually established in a meeting procedure bylaw. Notice of these regularly scheduled meetings does not need to be given to the trustees once the schedule is established.

A meeting held outside the regular schedule is called a "special meeting" and it can be called either by the chair, or by a majority of the trustees. The meeting procedure bylaw must explain the process for giving the trustees notice of a special meeting.

If the requirements for holding a meeting are not met, the meeting is not legally convened and decisions made, or bylaws enacted at the meeting, could be challenged in the Courts.

The general public will likely be interested to hear about issues affecting the service(s) being managed by the improvement district, and how well their trustees are dealing with those issues. If the trustees allow all meetings to be open to the public, then the public interest can be served. However, there can be circumstances in which the board of trustees believes that it is in the public interest to close a meeting, or portion of a meeting, to persons other than trustees and employees. A meeting that is closed to the public is known as "in camera" and they are limited to situations where the trustees are discussing issues related to the purchase or sale of land, legal issues, or personnel matters.

The chair presides at all meetings and if the chair is unable to attend a meeting, the remaining trustees must appoint one of themselves to act as chair for that meeting.

Voting on motions that are proposed at a meeting by trustees is how the board reaches its decisions and exercises its powers. People other than trustees are not permitted to make a motion or vote on a motion. A suggestion for a motion from a landowner could be discussed by the trustees if one of the trustees agrees to put the suggestion forward as their own motion. The exception to this rule is at the annual general meeting when the landowners decide how much remuneration should be paid to the trustees.

While people other than trustees cannot make motions, they are permitted to speak at trustee meetings. Most meeting procedure bylaws contain the order of events (agenda) to be followed at trustee meetings. Often a time is provided on the agenda when people can address the trustees directly. Some meeting procedure bylaws restrict speakers to people who have previously made a written request to attend the meeting and they have disclosed the topic they wish to discuss. In some cases, an open forum is scheduled during the meeting where anyone can speak on any issue. In order to keep meetings timely, the meeting procedure bylaw may impose a limit on how long each person can speak.

The minutes of all trustee meetings must be recorded; however, the extent of the information recorded is determined by a policy adopted by the trustees. Some minutes only reflect the wording of motions and whether they were passed by the trustees. However a board of trustees may decide to include additional information in the minutes, such as the opinions expressed by the trustees during the meeting and how the trustees voted on motions.

The minutes are usually signed by the chair and the corporate officer as being correct. The certified minutes form a critical part of the improvement district's historical record and it is the responsibility of the corporate officer to keep them safe.

The minutes are public documents and copies must be made to the public upon request. A minor fee for reproducing the bylaw can be charged to the person requesting a copy. The minutes of an in-camera meeting are not available to the public unless the reason for withholding them no longer exists and the board of trustees agrees to release them.

If a trustee is unable to attend meetings for an extended period of time due to an illness or other reason, it may be difficult to attain a quorum to conduct trustee meetings. Without a quorum, no meetings can be held and no business can be conducted by the board. Therefore, a trustee who will be unable to attend meetings for an extended period may want to consider resigning their position so that a by-election can be held to fill the remainder of that trustee's term. The resignation should be made in writing and delivered to the corporate officer.

A trustee cannot be removed from office by the other trustees, the landowners, or any other person.

The Annual General Meeting (AGM)

Every board of trustees is required to hold an AGM that is open to everyone, not just the landowners within the improvement district. Notice of the meeting must be given at least 14 days in advance. The notice can be given by advertising in a newspaper, by sending the notice by first class mail to all property owners, or by posting the notice in a prominent place in the community. Each improvement district's Letters Patent specify the method for giving notice. In cases where there are property owners who live within the improvement district and property owners who reside outside of it, notice should be given by more than one method.

The purposes for holding the AGM are to:

- provide the landowners with a report on the conditions of the improvement district's works;
- present the audited financial statements for the preceding year;
- discuss with the landowners any matter relating to the works or finances of the improvement district;
- have the landowners decide the remuneration to be paid to the trustees; and,
- elect a trustee(s) to succeed any trustee whose term of office expired at the annual general meeting, or whose office became vacant within the preceding 60 days.

The AGM is an excellent opportunity for a board of trustees to provide a report on their accomplishments for the past year and to present their insights for the coming year. It is also a chance to discuss issues with the landowners so that the trustees can gauge the amount of public support for such things as new policies, proposed rate increases, or the options available for financing upcoming capital projects.

The time period for holding the AGM is established in each improvement district's Letters Patent and it is usually between January 1 and May 1. There is no legislative authority for an improvement district to be exempted from this requirement. If the trustees hold the AGM outside of this period, anything that transpires at the meeting, such as the election of trustees, could be subject to challenge in the Courts. If a trustee is not elected according to the legal requirements, any motion, resolution, or bylaw for which the trustee voted could be challenged in Court.

The minutes of the AGM must be sent to the Inspector of Municipalities as soon as they are transcribed and signed by the chair and/or corporate officer.

Special General Meeting

A special general meeting is different than a special meeting. A special general meeting can be called by the board of trustees at any time but is generally held to elect a trustee to a position that became vacant before the end of a three-year term. Other common reasons for holding a special general meeting are to discuss matters such as a large rate increase, or to hold a vote on a proposed borrowing bylaw. Notification of a special general meeting must be given using the same method required for the AGM.

The Role of Employees

A board of trustees has the authority to hire employees to manage the day-to-day operation and administration of the improvement district, to provide support to the board and to implement board decisions.

Every improvement district is required to establish two corporate officer positions. One position is responsible for corporate administration and the second is responsible for financial administration. The same person can be appointed to both positions and assigned any title the board decides is appropriate such as manager, administrator, or corporate officer. A number of mandatory duties are assigned under the Act to each position but the board of trustees can assign additional duties.

Mandatory duties assigned to the corporate officer in the Act include keeping and protecting the minutes of the trustee meetings, bylaws and other records. Mandatory duties assigned to the financial officer in the Act include expending and disbursing funds in the manner authorized by the board of trustees and keeping accurate records of the improvement district's financial affairs.

As an employer, the board of trustees is required to comply with requirements that are set down in provincial and federal legislation such as the *Employment Standards Act*, *Workers Compensation Act* and the *Income Tax Act*.

A job description and/or an employment contract can clarify such things as an employee's duties, salary, benefits, and indemnification. These documents are also important for performance appraisal purposes.

The termination of an improvement district officer **without cause** can only be decided by a vote of at least two-thirds of all trustees, not just two-thirds of the trustees at the meeting. The board of trustees must first give reasonable notice of termination to the officer. The termination of an officer **with cause** can be decided by a majority vote of the trustees and no notice is required to be given to the officer. Given the complexities of employment law, it may be beneficial to seek legal counsel prior to making the decision to terminate an officer or employee.

Trustee/Employee Relations

Trustees are elected to provide leadership, not to operate and administer the day-to-day operation of the improvement district. A trustee who handles financial transactions (for example) could provoke public concerns about fiscal improprieties, whether they exist or not. Also, the actions of a trustee who works on the improvement district's water system could have serious implications if they were to inadvertently damage the water system, or injure themselves.

Similarly, employees do not make policy decisions on behalf of the improvement district. The two roles are independent and a blurring of these roles can result in situations where employees are given conflicting instructions by trustees, or a trustee interferes with an employee's duties. Trustees, in turn, may feel that an employee is over-stepping their role by taking actions that are inconsistent with the board's policies.

These situations can result in a poor trustee/employee relationship and may create unwanted tension, lead to resignations or dismissals and generally reflect negatively on the overall management of the improvement district.

Employees have a fiduciary responsibility (obligation) to advise the board of trustees about the implications for their decisions, particularly if it could cause harm or be contrary to a legislative requirement. However, once an employee has given their advice to the board of trustees, the board's decision must be respected and implemented by the employee.

A board of trustees may wish to use the following tools to foster and maintain a positive relationship with their employees:

- establish a clear line of communication between the trustees and employees;
- provide clear policy decisions and directions;
- keep current and inclusive job descriptions for all employees;
- conduct regular performance appraisals;
- adopt a policy controlling access by trustees to records and the improvement district's buildings, offices and other facilities;
- establish a policy regarding the hours during which trustees or employees can be contacted unless there is an emergency;
- establish a policy that trustees and employees do not issue public statements purporting to reflect the board's opinion without prior approval by the board;

- adopt a code of conduct for the trustees and employees;
- create a package of information to orient new employees and trustees to the improvement district; and,
- establish a strategic plan that outlines key goals and objectives of the improvement district.

Committees

There may be times when a board of trustees will need to reduce its workload or obtain expertise from people other than the trustees or improvement district employees. One of the ways to manage these needs is for the board of trustees to create a committee. There are two types of committees that can be established: a select committee; and a standing committee.

A select committee is established to consider or inquire into a specific matter and then report its findings and recommendations to the board. For example, a committee may be established to investigate options for water treatment, or to review contractor bids. Once the review has been undertaken and a report is presented to the board of trustees, the committee's business is finished and it ceases to exist.

A standing committee is established for matters that are more ongoing in nature. For example, where an improvement district delivers multiple services, the board of trustees may choose to establish a committee that deals with issues related to one of those services. The board may also want to establish a standing committee to deal with specific subjects such as finance, or public works.

The board of trustees establishes select and standing committees and appoints their members. Persons who are not trustees may be appointed to committees, but at least one member of the committee must be a trustee.

Select and standing committees are purely advisory in nature. The board of trustees is ultimately responsible for making all decisions being considered by a committee, and cannot delegate any of its authority to a committee. The board of trustees is not obligated to accept the committee's advice.

The role of the committee and its purpose must be clearly defined by the board when the committee is established so that its members can focus on accomplishing the task at hand rather than discussing the committee's role. Committees are not intended to undertake or duplicate any actions that are the responsibility of improvement district employees, and committees do not have any authority to give them direction.

Select and standing committee meetings can be scheduled for times that are convenient to its members. In the interest of transparency, committee meetings should be open to the public – just as trustees' meetings should be open.

There can be several advantages for a board of trustees to create committees, such as:

- reducing the time needed to conduct a board meeting by having a committee research and discuss a complex matter and then present a summary to the board;
- appointing persons other than trustees to committees allows the board of trustees to receive input from people who have professional expertise, are directly impacted, or have a particular viewpoint; and,
- providing a forum where all stakeholders can express their opinions may result in a more balanced view of the issue and a more informed recommendation.

The meeting procedure bylaw enacted by the board of trustees contains the procedures to be followed by a committee for scheduling its meetings and conducting its business.

Conflict of Interest

A conflict of interest occurs when a trustee votes on a matter where there is a direct or indirect opportunity to further their private interests. The Act does not contain specific provisions regarding the issue of conflict of interest for improvement district trustees. However, a trustee can be convicted of a conflict of interest under common law.

Since there are a wide range of circumstances in which a conflict of interest can exist, there is no specific listing of situations that a trustee can consult in order to determine if they are in a conflict of interest. For example, if a trustee votes in favour of a contract with a company that is owned by the trustee's spouse, a conflict of interest almost certainly exists. However, if the contract was with a brother-in-law, or a former business partner, a conflict of interest may not exist. Each situation is unique and depends on the relationship between the parties and other relevant information.

The Courts have recognized that a conflict of interest does not exist where the interests of elected officials are in common with other people. For example, trustees are not in a conflict of interest when they set tax levels and establish regulations that affect all property owners in the improvement district.

If a trustee believes they may be in a conflict of interest, they can take steps to avoid or minimize the potential risk. The *Community Charter* outlines conflict of interest rules for municipal councils and regional district boards that can serve as a guideline for improvement district trustees. One course of action would be for the trustee to state the reason that they may be in a conflict of interest at a trustees meeting and then:

- remove himself/herself from any part of a meeting during which the matter is under consideration;
- refuse to participate in any discussion related to the matter; and,
- refrain from voting on the matter or attempt in any way to influence the voting on the matter, whether before, during, or after a meeting.

In some cases, even the appearance of a conflict of interest can cause harm to a trustee's reputation and affect the public's confidence in the board. When a trustee is not sure whether they are in a conflict of interest, obtaining a legal opinion may clarify the situation. The board of trustees may consider adopting a policy as to whether or not the cost for obtaining legal opinions will be borne by the individual trustee, or by the improvement district.

Liability

Improvement districts have the status of a “legal person”. This means they can initiate a legal action, or be the subject of a legal action. For example, if a water main owned by an improvement district bursts and damages private property and the board of trustees does not compensate the property owner, the property owner could seek damages from the improvement district through the Courts. Similarly if a person damages the improvement district’s water system, the board of trustees may choose to recover any cost to repair the damage from that person through a Court action.

The Act contains limits on the types of actions that can be brought against an improvement district, the trustees, committee members and employees. For example, they are not liable for damages arising out of the performance of their duties unless they are found guilty of dishonesty, gross negligence, malicious or wilful misconduct, libel or slander, by the Courts .

An improvement district is not liable in any action based on nuisance if the damages arise, directly or indirectly, out of the breakdown or malfunction of its sewer system, water system, or dike. The Courts have made decisions that establish the duty of care, tests of reasonableness and considerations for contributory negligence that would determine the outcome of any Court action.

A risk management analysis can be very useful for minimizing the risk for liability. Many insurance carriers can provide advice about the actions the board of trustees can take to manage risk. For example, in some improvement districts it may be considered that the main risk for liability lies with the improvement district’s aging infrastructure. Therefore, a risk management strategy could be targeted to that issue. The risk management process involves identifying potential hazards and implementing the appropriate measures to reduce or eliminate those hazards.

Insurance

Even though there are limitations on the legal actions that can be brought against an improvement district, its trustees, employees and committee members, purchasing insurance is another way to manage risk.

There are a wide variety of insurance plans available and the one best suited to an improvement district will depend on factors such as the complexity of their operations, the risks involved with the types of service(s) delivered by the improvement district, and the cost of the insurance plan. Insurance policies can cover such things as earthquakes, flood, crime, accidental death, and employee bond. Personal liability insurance can also be purchased for trustees.

Insurance carriers can provide advice about the amount of insurance coverage that would be sufficient to cover claims for personal injury, death, property damage, or third party or public liability claims. The minimum amount recommended by most insurance underwriters is \$2 million.

Indemnification

Despite having a risk management system and insurance in place, the actions of a trustee or employee can be challenged in Court – which means that costs will be incurred by the trustee or employee to defend the action. A board of trustees has the ability to indemnify (pay the costs) incurred by a trustee or an employee in defence of a Court action. The improvement district can pay costs for:

- trustees;
- officers;
- employees;
- volunteer fire-fighters;
- a volunteer who participates in the delivery of services by the improvement district under the supervision of an officer or employee; and,
- select or standing committee members.

The costs must be related to an action or prosecution against that person in connection with the performance of that person's duties. The costs that may be paid are strictly related to the person's defence (e.g. legal costs, Court costs, or any other cost necessarily incurred as part of a Court proceeding or to protect or defend the person), or damages recovered against the person. However, improvement districts cannot pay a fine imposed as a result of the person's conviction for a criminal offence.

There are two methods by which the board of trustees can authorize payments in defence of a Court action. The first method is for the board to enact a bylaw that identifies which of the positions noted above that it will make payments for, and what type of payments it will make (i.e. whether the improvement district will pay defence costs, damages, or both). This bylaw would be enacted proactively – that is, the board of trustees would consider whether or not it wanted to pay these costs before any legal action had been initiated.

This proactive approach means the board would not be put in the difficult position of making a decision about payment in the middle of a Court action. However, once the bylaw is enacted, the board of trustees is obligated to pay the costs it has set out in the bylaw, regardless of how they view the merits of the case.

The second method is for the board to wait until an action or prosecution is brought against one of the people in a position noted above, and make decisions on a case-by-case basis. A decision by at least two-thirds of all trustees is required to pay the person's defence costs, damages recovered against the person, or both, not just

two-thirds of the trustees present at the meeting. This means that the trustee against whom the prosecution or action is brought can vote on the motion to indemnify himself/herself.

The second approach is more reactive. It allows the board to make individual decisions as the need arises and on the basis of the merits of the case. However, since the board may decide against the indemnification, it does not provide the certainty that some trustees may prefer. In addition, it may appear that the trustees' decision to indemnify one trustee but not another shows favouritism.

The Act restricts the board of trustee's ability to recover costs from individual trustees, officers, employees, or volunteers. If the improvement district is faced with a Court action in its own name, the board of trustees cannot commence a suit against any of these individuals to recover its legal costs or damages unless the claim relates to gross negligence, or the person acted contrary to the terms of their employment or an order given by their supervisor.

When considering the matter of indemnification, trustees may choose to consider the following:

- providing for the indemnification of trustees may reassure potential candidates for office about the limited potential for personal liability;
- indemnifying staff members may assist in attracting and retaining professional staff;
- deciding on a policy as to what positions to indemnify in advance, should avoid the perception of favouritism or bias;
- indemnifying a person can be controversial since the public may perceive that their taxes or tolls are going toward legal fees instead of into the maintenance or operation of services; and,
- enacting an indemnification bylaw may have an impact on liability insurance rates.

Enacting an indemnification bylaw does not necessarily mean that insurance is no longer necessary for trustees, officers, employees and volunteers as a means of coverage against claims.

Bylaws

The Act does not specify the form, content, or order of information contained in bylaws. However, there is a generally accepted format for bylaws that includes such things as using a unique number and name to differentiate one from the other.

Bylaws are an important expression of policy by a board of trustees. Over time, policies may change so conducting a regularly scheduled review of bylaws will ensure they are still relevant.

A board of trustees can only amend or repeal a bylaw by enacting a second bylaw to amend or repeal the first. A bylaw cannot be used to amend a resolution and a resolution cannot be used to amend a bylaw.

A bylaw is deemed to be valid unless it is set aside by a Court of competent jurisdiction, is declared invalid by a Provincial statute, or has been repealed or amended by the board of trustees.

When drafting a bylaw, it is important for a board of trustees to consider factors that could leave a bylaw vulnerable to challenge in the Courts. For example, the intent and wording of the bylaw needs to be clear and its provisions must be applied consistently.

Prior to January, 2009 a bylaw enacted by a board of trustees did not come into effect until it was registered with the Inspector of Municipalities. Following a two-year consultative process, the legislation was changed to allow specific types of bylaws to come into effect as soon as they are enacted by the board of trustees. The following table clarifies when each type of bylaw comes into effect:

| <i>Bylaws in Effect Upon Registration</i> | <i>Bylaws in Effect Upon Enactment</i> |
|--|---|
| Taxation | Tolls |
| Meeting Procedures | Agreements |
| Capital Expenditure Charge | Reserve Fund Establishment / Disbursement |
| Indemnification | Capital Expenditure Charge Disbursement |
| Latecomer Agreements | Assessment |
| Borrowing | Connection Charge |
| Regulation | Miscellaneous Charge |
| Fire Department Operations & Regulations | Officer Position Establishment |

A copy of those bylaws listed in the right-hand column of the table *Types of Improvement District Bylaws* (on the previous page) must be filed with the Inspector as soon as possible after they have been enacted by the board of trustees.

Two copies of each bylaw in the left-hand column of the table *Types of Improvement District Bylaws* (on the previous page) must be sent to the Inspector for registration purposes. When the bylaw is registered, one copy is retained by the Ministry and the other copy is returned to the improvement district.

Every bylaw enacted by the board of trustees must be signed by the chair presiding at the meeting and stamped with the improvement district seal. The corporate officer also certifies the bylaw as being correct.

Bylaws are considered public documents and photocopies must be provided upon request. A minor fee for reproducing the bylaw can be charged to the person requesting a copy. The corporate officer of the improvement district is legislatively required to safely maintain all bylaws. Adopting a policy against loaning bylaws to trustees or other individuals will minimize the risk that a bylaw will become damaged or lost.

Bylaws are usually prepared by the corporate officer on direction from the board of trustees. Typically, a bylaw is introduced at a meeting of the trustees, the wording is debated and once it is satisfactory to a majority of the trustees, it is enacted (adopted). If the bylaw is introduced at a meeting but further information is required before the board of trustees is willing to enact it, the enactment can occur at a subsequent meeting. Once a bylaw has been enacted, the wording can only be changed by the enactment of a second bylaw which amends or repeals the first bylaw.

Bylaws can be enacted at any legally convened meeting of the board of trustees and there is no requirement in the Act for any bylaw to be approved by the landowners. However, if a board of trustees intends to enact a bylaw that will have a significant impact on the landowners, such as a substantial tax increase, the board may decide to distribute information to the landowners about the need for the increase and/or hold a special general meeting to discuss the matter.

Where a bylaw requires registration with the Inspector, the Inspector can refuse to register the bylaw or take any other action the Inspector considers is in the interest of the improvement district or the Provincial government. For example, the Inspector could require that a board of trustees undertake a public consultation process prior to registering the bylaw. Public consultation is commonly required for bylaws that have a significant impact on the landowners. An example where public consultation may be necessary is a borrowing bylaw that will require a large increase in taxes to repay the debt.

A bylaw cannot be made retroactive – they are effective upon their enactment or registration. For example, if the board of trustees intends to introduce a toll increase on March 1, the bylaw must be enacted prior to that date.

Bylaws generally have less of an impact unless there are incentives for people to comply with its provisions or there are consequences if they do not. One incentive that the board of trustees can offer is a discount when a tax or toll is paid in advance of the due date. The amount of the discount must be identified in the tax or toll bylaw. However, the most common method for encouraging people to comply with a bylaw requirement is to establish a penalty clause in the bylaw.

When a property owner does not pay their taxes by the deadline established in the tax bylaw, a certain percentage of the tax, as specified in the bylaw, can be added to the outstanding amount as a penalty. Interest on the original tax and the penalty can be charged beginning on March 1 of the following year. If any amount remains unpaid 24 months after the initial deadline, the board of trustees can arrange to sell the property at a tax sale to recover the taxes and penalties, as well as the cost to conduct the tax sale.

In the case of an unpaid toll, a certain percentage of the toll, as specified in the toll bylaw, can be added to the amount owing as a penalty. If the toll remains unpaid for a long period of time, the trustees may decide to discontinue delivering the service to the property for which the toll is owing. Reasonable notice must be given to the property owner or resident before service is terminated.

Every tax, toll, or charge must be established in a bylaw and if unpaid it forms a lien on the land on which it was imposed. However, the lien is generally not recoverable until the property is in the process of being sold. At that time the purchaser, or their realtor, lawyer and/or bank will usually discover the lien by calling the improvement district which is listed on the title of every property in the improvement district as a potential charge holder. The discharge of the lien then becomes a matter of discussion between the property owner and the purchaser.

An alternative method for recovering unpaid charges is for the board of trustees to make an application for payment under the *Small Claims Act*.

A person acting in contravention of a regulatory bylaw must be given an opportunity to comply with its requirements. The first step is for the corporate officer to send the property owner a written notice of the violation, citing the bylaw section being contravened and stating what the owner must do to comply with the bylaw within a stated timeframe.

The notice should be sent by registered mail or be hand delivered. An injunction could be sought to cease the activity or remedy the condition if the property owner does not comply with the notice and immediate action is required because non-compliance might result in damage to property or the water system. Alternatively, steps could be taken to lay a charge under the provisions of the *Offence Act*. A penalty of up to six months in jail or a \$2,000 fine, or both, can be imposed by the Court if a summary conviction is obtained from the Court, .

Where legal action against a person for contravening a bylaw is being considered, evidence of the incident needs to be obtained and documented. The evidence can take the form of notes, observations, names of witnesses, location, dates and time. A legal action will have a greater chance of success if the board of trustees acts on the advice of legal counsel.

Improvement districts cannot use tickets or levy fines to enforce their bylaws.

Elections

Trustees are elected for three-year terms and the election occurs at the AGM. As such, the trustee's term is considered to begin at the AGM at which they were elected and to end at the AGM three years later. If a trustee resigns their position before the end of their three-year term, then a by-election must be held and the person elected to that position serves for the remaining portion of the three-year term.

A by-election does not have to be held if a trustee resigns within the 60 days prior to the AGM. The by-election is held according to the same procedures established in the improvement district's Letters Patent for the annual election of trustees. For many improvement districts, this means that the by-election must be held at a special general meeting.

The three-year terms for trustees are staggered so that the term of at least one trustee expires each year. The intent of this staggered system is to provide continuity on the board of trustees so that knowledge can be passed on to new members.

If there is only one candidate for a position on the board, then that person is elected by acclamation.

Each improvement district's Letters Patent, as well as the Act, establishes the eligibility requirements to be a candidate for a trustee position. Variations in the eligibility requirements do occur between improvement districts. For example, some Letters Patent, set out that when a trustee ceases to be a landowner in the improvement district, they are disqualified from holding office. In other improvement districts, a trustee who ceases to be a landowner can continue to hold office until their term ends, but they are disqualified from being a candidate for trustee again.

One of the underlying principles of a democratic society is the right to choose community representatives in an open, fair and honest process. The Act and Letters Patent contain the election rules improvement districts must follow. They include:

- eligibility requirements;
- notice requirements;
- ability to use statutory declarations;
- time period within which the election must be held; and,
- method for challenging an election within 14 days of holding the vote.

As there are many election procedures that are not identified in the legislation or Letters Patent, it is very important for a board of trustees to decide all other procedures necessary to meet the principles for an open, honest and fair election, such as the:

- appointment of a returning officer;
- establishment of a voters list;
- nomination process;
- conduct of the vote;
- appointment of scrutineers; and,
- safekeeping of ballots.

Adopting clear election procedures can reduce the likelihood of inconsistencies from one election to another and potential allegations of misconduct.

Letters Patent

Improvement districts are brought into existence by the Province through a Cabinet Order that authorizes the enactment of a document known as Letters Patent. The Letters Patent identify the unique characteristics of the improvement district. For example, the Letters Patent commonly contain the following provisions:

- *Improvement district name.* In some cases, the name of the improvement district reflects the service for which it is responsible. Two examples would be the ABC Waterworks District and the ABC Fire Protection District. The words “improvement district” appear in the names of nearly half of all improvement districts.
- *Boundary description.* Every improvement district contains a description of its boundary.
- *Object(s).* These are the public service(s) which the improvement district is responsible for delivering, such as waterworks or fire protection.
- *Voter and trustee eligibility.* While the principle eligibility requirements are stated in the Act, additional eligibility requirements are often included in Letters Patent. The principle eligibility requirements are that a person must be 18 years of age, a Canadian citizen, a resident of British Columbia for six months and a landowner in the improvement district.
- *Number of trustees.* The number of trustees is always an uneven number and varies between three and nine depending on the size of the improvement district and the number of services that it delivers. Half of all improvement districts have three trustees – only 11 improvement districts have more than five trustees.
- *The first election of trustees.* Following the enactment of Letters Patent, the first election is held to fill the trustee positions. The first election establishes staggered terms of office so the terms do not all expire in the same year.
- *Trustee remuneration.* At the AGM, the landowners decide the amount of remuneration to be paid to the trustees as compensation for the time the trustees dedicate to their duties.
- *Incorporation date.* The incorporation date for each improvement district is the date that its Letters Patent were signed by the Lieutenant Governor - unless the Letters Patent specify a subsequent date.

The wording of Letters Patent has changed substantially since improvement districts were first established in the 1920s. Many Letters Patent contain references to legislation that no longer applies to improvement districts, or contain provisions that have since been amended. For example, blanket amendments regarding voter eligibility were made to all improvement district Letters Patent in 1985, 1987 and 1993. Therefore the provisions in some older Letters Patent may no longer be applicable.

Some of the provisions in an improvement district's Letters Patent can be amended if a request from the board of trustees is approved by the Province. The most commonly requested amendment is to re-describe the improvement district's boundary to include additional parcels of land.

The boundary extension process is usually initiated when the owner of a parcel of land located outside an improvement district boundary wants the improvement district's service(s) delivered to that parcel of land. If the service is capable of being delivered at a cost that is acceptable to the property owner, then the board of trustees can submit a request to the Ministry for an amendment to the improvement district's Letters Patent to include that parcel within its boundary. The decision whether to amend the Letters Patent is made by the Provincial Cabinet.

Dissolution

Communities evolve over time depending on the availability of employment, new development, changing populations and housing affordability. A time may occur when there is a lack of volunteers willing to serve as trustees, a lack of resources to manage improvement district service(s), or a need to access capital infrastructure grant programs not available to improvement districts. In these circumstances, the trustees and landowners may decide that there are greater advantages to having a regional district or municipality manage the service(s) for which the improvement district is responsible. In these cases, the Province can revoke the improvement district's Letters Patent and transfer ownership and responsibility for those services to the regional district or municipality. This process is known as "dissolution" or "conversion".

A Provincial Cabinet Order is required to transfer the improvement district's assets, liabilities and bylaws to the municipality or regional district and to revoke the improvement district's Letters Patent. The Act does not require that a vote of the landowners be held. However, Cabinet will consider the opinion of the landowners before making a decision.

The local government taking over responsibility for the improvement district's service(s) is obligated to ensure the funds collected from the landowners of the former improvement district, are used only for the purpose for which they were originally collected.

Further information about the implications and process for conversion can be found in the Ministry's Improvement District Conversion Guide. The Ministry supports the transfer of improvement district services to a municipality or regional district where there is local support to do so.

Contact Information

The Local Government Division of the Ministry of Community, Sport and Cultural Development partners with local governments and their professional organizations to develop advice about the system of local government in British Columbia. A wide range of informative material is available from the Division's website. Division staff are also available to provide advice by phone and email.

Local Government Division contact information:

4th Floor, 800 Johnson Street, Victoria
Mailing address: P.O. Box 9839, Stn Prov Govt
Victoria, B.C. V8W 9T1
Phone: 250 387-4020
Facsimile: 250 387-7972
Website: <http://www.cscd.gov.bc.ca/lgd/>

For toll free access call Enquiry BC:

Call 604 660-2421 in Vancouver or 1-800-663-7867 elsewhere in B.C.

Appendix

Ministry Website

The Ministry's website contains information about improvement districts, as well as the Improvement District Trustees Handbook and other publications.

Ministry Website: <http://www.gov.bc.ca/cscd/>

Local Government Division: <http://www.cscd.gov.bc.ca/lgd/>

Improvement District Information : <http://www.cscd.gov.bc.ca/lgd/pathfinder-id.htm>

Improvement District Trustees Handbook: http://www.cscd.gov.bc.ca/lgd/gov_structure/library/trustees_handbook.pdf

Improvement District Manual

The Manual contains information supplemental to the topics in the Improvement District Trustees Handbook, as well as additional topics and sample documents such as bylaws. A copy of the Manual is provided to every improvement district by the Ministry and additional copies can be ordered from Crown Publications at:

[Crown Publications Queen's Printer for British Columbia](#)

PO Box 9452 Stn Prov Govt.

Victoria, B.C., Canada, V8W 9V7

Phone: 250 387-6409

Fax: 250 387-1120

Email: crown@crownpub.bc.ca

The Manual is also available online at: http://www.cscd.gov.bc.ca/lgd/gov_structure/improvement_districts/improvement_district_manual.htm.

Improvement District Conversion Guide

This Ministry publication explains the implications and process for transferring the services operated by an improvement district, to a municipality or regional district. The Improvement District Conversion Guide is available online at:

http://www.cscd.gov.bc.ca/lgd/gov_structure/library/improvement_district_conversion_guide.pdf

Improvement District Governance Policy

This publication presents the policies of the Ministry with respect to its responsibilities for overseeing the system of improvement districts in the province. The Improvement District Governance Policy is available online at: http://www.cscd.gov.bc.ca/lgd/gov_structure/library/Improvement_District_Governance_Policy.pdf

Water Supply Association of BC

This Association represent over 50 water suppliers in the Okanagan and Kootenay regions of the province and many of them are improvement districts. The Association is actively involved in water issues by keeping members informed about initiatives, lobbying governments and working with other agencies involved with water issues.

The Association can be contacted at:

Water Supply Association of BC

Box 22022

Penticton, B.C. V2A 8L1

Phone/Fax 250 497-5407

Email: info@wsabc.ca

Website: www.wsabc.ca

Coastal Water Suppliers Association

This Association represents water suppliers in the Coastal and Vancouver Island region. The Association provides ongoing support and awareness to its members and their associates by working in partnership with related Ministry agencies and water related organizations. The Association can be contacted at:

Coastal Water Suppliers Association

Box 720

Crofton, B.C., V0R 1R0

Phone: 250 701-2168

Email: coastalwatersuppliers@gmail.com

Email: cwsa@shaw.ca

Website: www.cwsa.net

The Local Government Act (and other provincial legislation)

This information is free to the public and can be accessed through the Internet at:

<http://www.bclaws.ca/> The legislation is also available at most local libraries. Copies of the legislation can be ordered for a cost from:

Electronic Publishing

Queen's Printer for British Columbia

Phone: 604 927-2914

Toll Free: 1-866-236-5544

Fax: 604 927-2025

Email: BC.Laws@gov.bc.ca

