

Correspondence Cox Taylor  
2011 to 2014  
Regarding Resignations

**Andrew Peat**

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**From:** Aurora L. Faulkner Killam <  
**Sent:** October-26-16 13:36  
**To:** Andrew Peat  
**Cc:** Melody Parker  
**Subject:** RE: Salt Spring Island Fire Protection - Question regarding trustee resignation

Board of Trustees  
20 February 2017

Good Afternoon Andrew,

The problem with verbal resignations is one of evidence and proof. In this case, my understanding is that the resignations in question were sufficiently clear, recorded during the course of a meeting, and understood from context to be statements of present intention. That is, there will be no arguable point about what was said, or that the intention at the time was to resign.

Various sections of the Local Government Act and the Community Charter make reference to resignations in writing and provide clarity on when they are effective. The trouble is these are not sections that apply to an Improvement District and the legislature must have intended a difference. I could not locate any regulation making them applicable to the District.

That leaves the District's Letters Patent (which are silent on the issue) and the District's Meeting Bylaw, which does not address the question expressly. However, it does refer to New Robert's Rules of Order, 2<sup>nd</sup> Edition, 1998 as guidance for the conduct of meetings in situations not otherwise provided for. I do not have a copy of this edition at this time.

I also look for guidance in the BC case law and found a *Simon Fraser Student Society v. Gregory*, 2006 BCSC 1873 that was not expressly on point but perhaps helpful. In that case resignations from a society were accepted without ratification (and the question of whether this was proper materially affected quorum for a society meeting). The individuals who argued that the resignations were not effective because they were not expressly ratified pointed to a different edition of Roberts Rules (10<sup>th</sup> ed) that indicates:

The duties of a position must not be abandoned until a resignation has been accepted and becomes effective, or at least until there has been reasonable opportunity for it to be accepted.

The court was not satisfied that this provision applied to the Society and, in any case found that the Society's actual practices did not require formal ratification. Societies and public bodies are very different. However, in the absence of guidance the District's own past practices may be useful.

Assuming, without having confirmed that any statement in the 2<sup>nd</sup> Edition of Robert's Rules will accord with the 10<sup>th</sup> Edition (which is by no means certain), I will suggest that this provision is more of a limitation on officers, than on the bodies they serve upon. I cannot confirm at this time if that is a part of the 2<sup>nd</sup> Edition the District has incorporated into its procedures manual. However, a resignation that is tendered at a meeting is capable of acceptance – all of the people who need to accept it are present, it is "on the record" and the evidentiary issues that might exist otherwise do not. In short, there is likely a reasonable opportunity for it to be accepted that relieves both the office and the District from the relationship.

I don't think anything prevents the District, should it wish to from inviting reconsideration by the resigning Trustee – in effect rejecting the resignation. However, arguably under the circumstances it is not required to do so.

In the absence of clear direction in any policy, Act or other source, an argument can be made on either side. But my inclination is to say that written notice is likely not required in these circumstances. Ultimately, the remaining Trustees

should determine what they believe to be in the best interests of the District in the circumstances. I cannot imagine maintaining a relationship that is dysfunctional with an individual saying he had resigned, but insisting he had not yet resigned in writing is viable over time. However, calmer heads may prevail.

Aurora Faulkner-Killam

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**From:** Andrew Peat [mailto:corpadmin@saltspringfire.com]  
**Sent:** October-26-16 11:21 AM  
**To:** Aurora L. Faulkner Killam  
**Subject:** Salt Spring Island Fire Protection - Question regarding trustee resignation

Aurora could you give me a phone call ASAP, - another legal quagmire/question.

At Monday's meeting two trustees said that they resign – the matter under discussion was contentious.

At has been the District's practise to ask for resignations of trustees to be done in writing, though there is no requirement in the Local Government Act, Letters Patent, bylaws or policy statements to do so. Also, letters of resignation to my knowledge have not been "accepted" at meetings. Similarly, if a trustee resigned, say the position of chair, there has been no motion accepting the resignation rather the CAO would ask directly for nominations.

At Monday's meeting of the Board during an In-camera session to discuss a sensitive matter two members of the Board stated that they resign and left the meeting. The matter got into today's paper - I had an email from the Driftwood reports at 9:00am Tuesday morning! Later yesterday I received an email from one of the trustees that resigned which said that until the District received written notice of his resignation he considers himself to still a member of the board.

My questions to you are: does a verbal resignation communicated to the Board at a duly constituted meeting have the "effect" of creating a vacancy on the Board; is there a necessity for the Board to formally accept a resignation; and is a resignation revocable?

All very technical with nothing in written down in policy/bylaws and trustees have another meeting scheduled for Friday morning to deal with housekeeping matters! "Remaining trustees" have given consent for the meeting to be held on short notice (usually require a week) but a member who "resigned" has withheld his consent.

There is an ancillary question is what do the minutes must report but that can wait – they will be posted on the website before the regular meeting (November 21 2016).

Never simple on Salt Spring.

Andrew