



**SKEENA-QUEEN CHARLOTTE REGIONAL HOSPITAL DISTRICT  
IN CAMERA BOARD MEETING AGENDA  
1889 Skeena Drive in Port Edward, B.C.  
Friday, June 21, 2019 immediately following the Special  
Meeting of the SQRHD**

- 1. CALL TO ORDER**
- 2. CONSIDERATION OF AGENDA (additions/deletions)**
- 3. BOARD MINUTES & BUSINESS ARISING FROM MINUTES**

None.	-
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- 4. DELEGATIONS**

None.	-
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- 5. FINANCE**

None.	-
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- 6. CORRESPONDENCE**

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- 7. REPORTS / RESOLUTIONS**

None.	-
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- 8. NEW/OLD BUSINESS**

None.	-
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- 9. RISE AND REPORT**

- 10. ADJOURNMENT**

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## Email Transmission

### PRIVILEGED AND CONFIDENTIAL

November 21, 2018

File No.: 242 002

**Email: treasurer@ncrdbc.com**

Mr. Sukhraj Gill  
Treasurer  
North Coast Regional District  
14, 342 3<sup>rd</sup> Avenue West  
Prince Rupert, BC V8J 1L5

Dear Mr. Gill:

**RE: Skeena-Queen Charlotte Regional Hospital District Issues**

You have asked for our advice with respect to the proper disposition of surplus funds that would be held by the Skeena-Queen Charlotte Regional Hospital District (“SQCRHD”) following the dissolution of the SQCRHD. There is approximately \$102,485 in the bank account which is income earned from interest earned on the bank balance and that after paying out \$49,485 that needs to be paid back to municipalities, this will leave \$53,000 remaining in the account.

1. You have asked whether this could be transferred to the North Coast Regional District (“NCRD”) as a donation recorded as revenue in NCRD’s general revenue.
2. You have asked whether the money could be transferred to the NCRD, and the SQCRHD shut down with the negative requisition payed to the municipalities through the NCRD rather than through the SQCRHD.

### 1.0 Opinion – Short Answers

In my opinion, the SQCRHD does not have authority to make a grant to the NCRD, or simply to pay money as a transfer of funds to be reimbursed to the public through the NCRD without authority from the Province.

In my opinion, at the time that the Minister dissolves the SQCRHD, the order dissolving the hospital district should incorporate letters patent could provide for a transfer to and vesting of the assets of the SQCRHD in *another hospital district*, but a Minister's order under section 781 of the *Local Government Act* or Cabinet regulation would be required to permit the NCRD to manage the funds held on behalf of the SQCRHD.

There may be reluctance on the part of the Province to do this. The Province may prefer to transfer the assets to the North West Regional Hospital District, something that can be done under section 6 of the *Hospital District Act*.

## **2.0 Background**

### **2.1 The *Hospital District Act***

Under section 2 of the *Hospital District Act*, the Lieutenant Governor in Council (“Cabinet”) must, by order, divide the province into areas for the purposes of the *Hospital District Act*. Under section 2(2) Cabinet may, by order, revoke and replace or amend an order dividing British Columbia into regional hospital districts.

Section 2(3) of the *Hospital District Act* gives Cabinet the power, by order, to dissolve the Greater Vancouver Regional Hospital District specifically so that there is no regional hospital district for that area **and** to provide for the “transfer of the assets and liabilities” of the GVRHD including power to provide that some or all of those assets and liabilities become assets and liabilities of the province itself. That authority is not extended to any other regional hospital district, leaving a gap in the legislation. Note also that in the case of the Greater Vancouver Hospital District, the province ensured that surplus assets would be returned to *itself* rather than to the regional district.

Section 2.1 was added to the *Hospital District Act* to provide for “transitional districts” which would be regional hospital districts that would not be dissolved if a new regional hospital district was created for the same area, as provided for in section 2(2) of the *Hospital District Act*. Section 2.1(4) specifically provides for the coexistence of a transitional district and a regional hospital district. The SQCRHD is a “transitional district” named in Order 1549/95 for the purpose of section 2.1 of the *Hospital District Act*. As such, it remains a regional hospital district under the *Hospital District Act*, but confined to the limited purposes set out in Order 1549/95.

Section 4 of the *Hospital District Act* is authority for the declaration that “municipal regional districts” (defined as regional districts under the *Local Government Act*) are regional hospital districts under the *Hospital District Act*. I have assumed for the purposes of this analysis that the SQCRHD originated as a municipal regional district declared under section 4(1) to be a regional hospital district.

Under section 6(1) of the *Hospital District Act* is the section of the Act that deals specifically with property interests and provides as follows:

#### **“Property**

- 6 (1)** If
- (a) the municipal regional district becomes the regional hospital district for an area, or
  - (b) a district incorporated under this Act is divided, or 2 or more such districts are united, or a new such district is created out of parts of other districts, or the effect of the alteration of boundaries of 2 or more districts is, in the opinion of the Lieutenant Governor in Council, to increase or decrease the obligations of the districts concerned,

the Lieutenant Governor in Council must, by letters patent, provide for the transfer and vesting of the assets, rights, claims and obligations of the pre-existing district or districts, or some of those districts the Lieutenant Governor in Council, having regard to the changes, considers just, **to and in the new or continuing district or districts**, and the assets, rights, claims and obligations are transferred, by the letters patent, and vest accordingly." (my emphasis)

Section 6(2) of the *Hospital District Act* provides that subject to section 6(1) any amendment, recall or reissue of letters patent with or cancellation and issue of new letters patent "does not impair or prejudice the assets, rights claims or obligations of the district".

## **2.2 Order 1549/95**

By Order 1549/95, letters patent were issued to provide for the continued functioning of the regional hospital districts referred to in Schedule "A" to the letters patent for limited purposes associated with debt retirement. SQCRHD was included within Schedule "A" and the effect of the letters patent was to limit the regional hospital districts' exercise of powers pursuant to the *Hospital District Act* to limited purposes. No provision was made in Order 1549/95 for the disposition of any surplus assets of any of the hospital districts following upon their final dissolution.

## **2.3 Local Government Act**

There is a limited but interesting overlap between the *Local Government Act* and the *Hospital District Act*.

Section 338(2)(d) of the *Local Government Act* treats regional hospital districts declared under section 4 of the *Hospital District Act* as a service of the regional districts that do not require a bylaw. There are additional references to regional hospital district services in section 339 and 342. Section 342(5) seems to equate regional hospital districts with the services of General Administration and Electoral Area Administration which are established as services that require neither the approval of the inspector, nor the electors, nor even an establishing bylaw.

Administration services can thus be provided to regional hospital districts through the regional district.

If the regional hospital district is a regional service under the *Local Government Act*, albeit one that is administered in accordance with the *Hospital District Act* rather than the *Local Government Act*, then the Minister's authority under the *Local Government Act*, section 781 should be applicable to enable the NCRD to accept a transfer of assets remaining with the SQCRHD and to manage and dispose of those assets.

## **3.0 Discussion**

The first question touches on the purposes for which a hospital district exists. Regional hospital districts are statutory corporations. Statutory corporations are limited to exercising powers that

either appear expressly in the statute creating the corporation or that can be necessarily implied from an expressly granted power.

The purposes of regional hospital districts are set out in section 20 of the *Hospital District Act*. This includes authority under section 20(1)(b) “to grant aid for the establishment, acquisition, reconstruction, enlargement, operation and maintenance of hospitals and hospital facilities.” There is no subsidiary power to make grants for other purposes or to dispose of surplus assets to another public authority, as there is in the case of other local governments under the *Local Government Act* or *Community Charter*. But that authority is not in my opinion it is therefore very doubtful that the SQCRHD could simply transfer funds from its account to the NCRD as a grant or otherwise, as this would be the exercise of a power outside of the powers to make such grants expressly given to the SQCHRHD under the legislation.

In contrast, where hospital districts are being reconfigured, section 6(1) of the *Hospital District Act* gives Cabinet the power, by letters patent, to provide for the transfer and vesting of assets as Cabinet “considers just” to new or continuing districts. The use of the words “considers just” denotes a broad grant of discretionary authority to be exercised by Cabinet. It would certainly be “just” to ensure that the monies collected and held as surplus by the SQCRHD should be used to benefit those taxpayers that had contributed to the funds.

However, the actual wording of section 6(1) of the *Hospital District Act* contemplates a vesting of assets in the “new” or “continuing” districts, and not in the regional district itself. For that there would have to be other authority provided.

Section 51 of the *Hospital District Act* contains a broad power to make regulations which supplements the regulation-making power of a general nature under section 41 of the *Interpretation Act*. However, in my opinion, neither section 41 of the *Interpretation Act* nor section 51 of the *Hospital District Act* specifically provide Cabinet authority to make regulations for the transfer of SQCRHD assets to the NCRD.

Unfortunately, in my opinion, this would require a legislative amendment. There might be some appetite for the province to do this given that there may be other hospital districts that find themselves in the same situation. It is “just” that these monies be returned to the public that was served by the SQCRHD. I suspect, however, that the province’s preference would be to have any surplus monies turned over to the replacement hospital district, being the North West Regional Hospital District under section 6(1) of the *Hospital District Act*.

However, there is an argument based on the wording of section 338(2)(d) and s 342(5) of the *Local Government Act* that a regional hospital district originally established under section 4 of the *Hospital District Act* is to be considered a *regional service* for the purposes of the *Local Government Act*. In that case, it could be said that the NCRD has a residual interest itself in the assets, as assets that are connected with a regional service that is being administered by the SQCRHD. In that case, section 781 of the *Local Government Act* would be applicable:

### **Further Powers in relation to assets**

**781** The minister may confer on a local government further powers to manage and dispose of assets, including taxation revenue, that the minister considers necessary or advisable.

I would propose that this authority be used as the basis for a Minister's order granting the NCRD authority to manage and deal with the surplus of the SQCRHD upon its dissolution. There is a comprehensive definition of "manage" in the Act that includes, among other things, the term "administer". That would be a simple matter that could be done at the time of the dissolution of the SQCRHD.

Alternatively, if the Minister is reluctant to use that authority, there is, in addition, authority for the Lieutenant Governor in Council to grant powers to a regional district by way of regulation under section 296 of the *Local Government Act*.

The Surplus Land Transfer Regulation B.C. Reg 220/94 is an example of a regulation authorizing the Capital Regional District to formally transfer surplus lands from its solid waste service to its parks extended service.

This argument is dependent on the SQCRHD originally having been designated under section 4 of the *Hospital District Act*, so that if there is any flaw in that process (which I haven't reviewed but for which there should be documentation at the Ministry) then these powers would not be applicable.

### **4.0 Conclusion**

In my opinion it is therefore the province that must specifically provide for the disposition of the surplus monies in the SQCRHD accounts by way of either a Minister's order under section 781 of the *Local Government Act* or a regulation under section 296 of the *Local Government Act*.

If you would like me to explore this with Ministry officials or if Ministry officials wish to discuss this matter with us, I would be happy to meet with them here in Victoria.

Yours truly,

**STEWART McDANNOLD STUART**

Per:



Colin Stewart\*

CS/ce

\* Law Corporation