

The Regional Municipality of York

Committee of the Whole
Finance and Administration
May 4, 2023

Report of the Regional Solicitor and General Counsel

Delegation Bylaw Update

1. Recommendations

1. Council approve enactment of an updated Delegation Bylaw to incorporate the amendments described in Appendix A.
2. Council approve enactment of an updated Council Recess Bylaw to govern delegation of matters during a Council recess.
3. Bylaws 2018-50 and 2018-51 be repealed.
4. The Regional Solicitor and General Counsel prepare the necessary bylaws to implement the updated bylaws and repeal of Bylaws 2018-50 and 2018-51.

2. Summary

This report seeks Council approval to update the Region's Delegation Bylaw to:

- provide for additional delegation of powers and duties of Council for enhanced administrative and operational efficiency, including
 - appointment and revocation of Risk Management Officials and Risk Management Inspectors under the *Clean Water Act, 2006* (Ontario)
 - appointment and revocation of Municipal Weed Inspectors under the *Weed Control Act* (Ontario)
 - issuance of notices under the *Trespass to Property Act*
 - approval of agreements to locate utilities and to relocate utilities
 - authorizing the Regional Solicitor and General Counsel to submit bylaws directly to Council to address minor administrative matters, such as correcting errors or reflecting organizational changes

- clarify certain existing delegations of powers and duties of Council, including
 - that the authority to approve access agreements is intended only for licences where nominal consideration is payable by the Region
 - that the authority to approve agreements also includes the authority to terminate the agreements in accordance with their terms
 - that the \$500,000 limit on the authority to approve claims and settlements of uninsured claims excludes interest and costs
- add interpretive provisions to clarify routine administrative matters, such as to provide that departments, positions, and titles used in the Delegation Bylaw refer to such departments, positions, and titles as they may be renamed or amended
- ensure delegated authorities align with Procurement Bylaw No. 2021-103 and recent change of the Region’s organizational structure

This report also recommends enactment of an updated bylaw to govern matters during a recess of Council during the summer months and the municipal election period (“**Council Recess Bylaw**”) to remove the reference to the former Purchasing Bylaw 2017-30.

Key Points:

- the updated Delegation Bylaw facilitates responsive, efficient, and fiscally responsible service delivery
- the updated Delegation Bylaw reflects the current organizational structure
- the updated Delegation Bylaw aligns with the Procurement Bylaw
- the updated Delegation Policy complies with the *Delegation of Powers and Duties of Regional Council* policy

3. Background

The *Municipal Act, 2001* permits the delegation of certain powers and duties, subject to conditions

The Municipal Act, 2001 (the “Act”) permits Council to delegate its powers and duties, within certain limits. Generally, administrative powers may be broadly delegated to committees, individual members of Council or Regional staff. The Planning Act similarly provides for broad delegation of planning and development matters. There are limits to the delegation of legislative powers, including the power to adopt an official plan or amendment, and the power to adopt or amend the budget. Similarly, many of the powers under the Expropriations Act reside exclusively with Council.

There are specific provisions for delegating matters during municipal elections

In addition to the general provisions in the Act, Section 275 provides that Council has restricted authority to approve matters during any “lame duck” period. If determined to be “lame duck” (i.e. impossible for three-quarters of the outgoing council to be re-elected) Council will be prohibited from taking certain actions following nomination day, most notably making any expenditure or incurring any liability exceeding \$50,000. This limitation does not, however, apply where Council has delegated its powers prior to nomination day. The extent of the delegation will be subject to the general principles in the Act and will generally be limited to administrative and minor legislative matters.

Council has exercised its authority to delegate its powers to staff for general administrative purposes and during election periods

Council has historically delegated a broad range of powers to staff to facilitate the management of Regional operations and to provide for responsive service delivery.

In 2018, Council enacted the Council Recess Bylaw to specifically provide for the approval of matters where Council meetings are suspended during the summer months or to address issues during any “lame duck” period. This provides broad authority for the Chief Administrative Officer and Regional Treasurer to approve contracts and other forms of commitment, authorize land transactions and settle claims beyond the regular approval limits. The exercise of this authority is subject to the following conditions:

- That the CAO and Regional Treasurer are satisfied that the exercise of the authority is necessary to prevent interruption of service delivery or to avoid incurring unnecessary costs
- That a memorandum outlining the necessity of the approval is submitted to the CAO and Regional Treasurer requesting the approval
- That any contracts or documentation are subject to approval by Legal Services
- That a report is submitted to Council at the earliest opportunity to advise of any matters approved under this authority.

4. Analysis

Staff conduct periodic reviews of the Delegation Bylaw and Council Recess Bylaw to ensure it remains effective

The Delegation Bylaw and Council Recess Bylaw are reviewed periodically to assess their effectiveness. Staff across various business units are invited to provide input.

A comprehensive review conducted in 2016 addressed many substantive issues. In 2018 the Delegation Bylaw was further updated to include greater consistency and clarity in

language. For instance, it clarified that where Council has authorized a Commissioner to execute an agreement, the Commissioner may delegate that authority to staff.

In late 2022 and early 2023 staff conducted another comprehensive review of delegated powers. Every business unit in the organization was invited to provide input. The input received addresses substantive and housekeeping issues, as further outlined below.

Amendments are recommended to provide additional delegated authorities for various matters for enhanced administrative and operational efficiency

Staff recommend delegating the power:

- (a) to appoint certain statutory positions, including Risk Management Officials and Risk Management Inspectors under the *Clean Water Act, 2006* (Ontario) to the Commissioner of Public Works. Risk Management Officials are responsible for negotiating and establishing legally-binding Risk Management Plans with persons engaged in land use activities identified as significant drinking water threats. Risk Management Inspectors help monitor and enforce the Risk Management Plans. Delegating the power to appoint these positions to staff will increase efficiency in making these appointments in a timely manner to ensure continuous service delivery for the benefit of the Region's consumers.
- (b) to issue trespass "notices" under the *Trespass to Property Act* to facilitate the timely protection and security of the Region's properties.
- (c) to approve utility relocation agreements. Occasionally agreements to relocate existing utilities are necessary to facilitate development or address public safety issues, often under tight time pressures. Delegating this power to staff will enable the Region to efficiently approve these agreements where required and as appropriate.
- (d) to approve agreements with utility locate service providers. Under the *Ontario Underground Infrastructure Notification System Act, 2012*, the Region must provide documentation regarding its underground infrastructure within ten (10) business days of receiving a request. Delegating authority to approve such agreements to staff will ensure the Region meets the statutory deadline for providing the requisite information.
- (e) to the Regional Solicitor and General Counsel, on the request of the Commissioner of Public Works, to submit bylaws directly to Council, without an accompanying report, appointing Municipal Weed Inspectors under the *Weed Control Act* (Ontario). Municipal Weed Inspectors help contain the spread of noxious or invasive weeds.

Amendments are recommended to clarify certain existing delegated authorities

Staff recommend clarifying that:

- (a) the \$500,000 limit on the Regional Solicitor and General Counsel’s authorities to approve originating documents for claims up to \$500,000 and settlements of uninsured claims is exclusive of interest and costs, which is consistent with current practice.
- (b) a Commissioner’s authority to approve access licences be limited to transactions where nominal consideration is payable by the Region. This change would harmonize the Delegation Bylaw and the Region’s Acquisition of Land Policy, as licence agreements involving the payment of consideration are treated as agreements of purchase and sale and are processed in accordance with the Acquisition of Land Policy.
- (c) authorizing the Regional Solicitor and General Counsel to submit bylaws directly to Council to address minor administrative matters, such as correcting errors or reflecting organizational changes, without the need of an accompanying report. This provides greater administrative efficiency in handling minor housekeeping matters.

Further, the Delegation Bylaw and Procurement Bylaw authorize staff to approve and execute a wide range of agreements. Occasionally it is also necessary to terminate agreements. Historically the Region has treated the authority to approve and execute an agreement as encompassing the authority to terminate the agreement. However, the authority to terminate agreements is now explicitly addressed in the updated Delegation Bylaw, resolving any doubt about this matter.

Amendments are recommended to add interpretive provisions to clarify routine administrative matters

The updated Delegation Bylaw includes several new interpretive provisions, which clarify the continued application of the Delegation Bylaw to and during routine organizational changes, such as renaming departments, positions, and titles and updates to the Procurement Bylaw.

Amendments are recommended to align the Delegation Bylaw with the Procurement Bylaw, reflect the Region’s corporate reorganization and align with the Council Recess Bylaw

On November 30, 2021, Regional Council enacted and passed Procurement Bylaw 2021-103, which took effect on January 1, 2022 and replaced the former Purchasing Bylaw 2017-30. In addition to having a different name, the Procurement Bylaw also contains additional exclusions. For example, it now excludes “agreements for the procurement of works of art” and “agreements for the procurement of goods or services mandated by regulatory agencies”. These and other exclusions from the Procurement Bylaw have been added to the updated Delegation Bylaw.

In 2022, the Region merged its Transportation Services and Environmental Services departments into one Public Works department headed by the “Commissioner of Public Works” and created two new General Manager positions within the department. The updated Delegation Bylaw reflects these changes.

Amendments to the bylaw governing delegation of authority during Council recess are also recommended

As noted above, authority to approve matters during summer recess or election periods is set out in a separate bylaw and subject to certain conditions. It is recommended that this distinction be preserved, however one key amendment is proposed, namely to align the provisions in the Council Recess Bylaw with the Procurement Bylaw to ensure consistency. The former Purchasing Bylaw provided for the Chief Administrative Officer to award contracts in excess of the regular approval limits during periods when Council meetings were suspended in the summer months or during an election period. This provision was referred to in the Council Recess Bylaw, but the current Procurement Bylaw does not contain any equivalent provision.

The updated Delegation Bylaw supports the strategic objective of ensuring reliable, responsive, effective, efficient, and fiscally responsible service delivery described in the 2019 to 2023 Strategic Plan

Through the appropriate delegation of powers to staff, the updated Delegation Bylaw facilitates responsive, efficient, and fiscally responsible service delivery by reducing the administrative burden on the Region.

5. Financial

There are no direct financial implications associated with this report.

6. Local Impact

There is no local municipal impact associated with this report.

7. Conclusion

The *Municipal Act, 2001* provides for the delegation of the powers and duties of Council, subject to certain limitations. Council has enacted bylaws to delegate a broad range of matters to staff to facilitate the management of Regional operations and administration. These bylaws are reviewed periodically to assess their effectiveness. As a result of the most recent review, it is recommended that the Delegation Bylaw be amended to incorporate additional matters and clarify other matters as described in this report, certain statutory appointments, agreement terminations, and administrative bylaw matters.

For more information on this report, please contact Matthew Klasen, Senior Associate Counsel, Municipal and Corporate Law at 1-877-464-9675 ext. 71475. Accessible formats or communication supports are available upon request.



Recommended by:

Dan Kuzmyk
Regional Solicitor and General Counsel



Approved for Submission:

Bruce Macgregor
Chief Administrative Officer

April 21, 2023

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Appendix A – New/Amended Provisions

APPENDIX A

New/Amended Provisions

The updated Delegation Bylaw incorporates the revisions shown in the tables below, as well as updated department/title/position names and other minor edits.

Body (New Provisions)

The appointment of any designate under Bylaw No. 2018-50 remains in effect under this bylaw until revoked or amended, notwithstanding the repeal of Bylaw No. 2018-50.
A reference in this bylaw, or in any other bylaw or in any documentation authorizing the appointment of a designate pursuant to Section 4.4, to any Regional department or to any title or position held by a delegate is a reference to the department, title or position as amended or renamed.
The provisions in Part VI of the <i>Legislation Act, 2006</i> , S.O. 2006, c. 21, Sched. F, as amended or replaced, shall apply to this bylaw.
Where used in this bylaw, “include”, “includes”, “including”, and similar formulations, denote that the subsequent list is non exhaustive.

Schedule “A” (New Provisions)

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
Agreements for educational or training services where the service provider is prescribed by a regulatory body	Commissioner responsible for the program or project to which the service relates	
Agreements and documents relating to attendance of staff at conferences, seminars, courses and conventions	Commissioner responsible for the matter to which the agreement or document relates	
Agreements for the procurement of advertising for Regional services or programs	Commissioner responsible for the service or program to which the advertising relates	
Agreements for the procurement of services required by the	Commissioner of Finance	

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
Procurement Office to comply with the Region's Procurement Bylaw and applicable trade treaties		
Agreements for the procurement of goods or services mandated by regulatory agencies	Commissioner responsible for the matter to which the agreement relates	
Agreements for the procurement of works of art	Chief Administrative Officer	
Agreements and documents relating to subscriptions to newspapers, magazines, or other periodicals, as well as digital research resources	Commissioner responsible for the matter to which the subscription relates	Digital research resources must comply with the Region's applicable technology policies
Agreements and documents relating to association membership fees	Commissioner responsible for the matter to which the agreement or document relates	
Agreements for purchases from other government bodies	Commissioner responsible for the matter to which the agreement relates	
Submit bylaws where an action is authorized by Regional Council and if the recommendation to introduce or amend a bylaw has been omitted or if there is an error in the reference to the bylaw that should be amended or if it is necessary to repeal a bylaw to give effect to an action authorized by Council or to correct an error, including placement on the Council agenda without requiring in each instance an accompanying report to Council	Regional Solicitor and General Counsel	
Submit bylaws directly to Regional Council to correct technical errors, to update bylaws to refer to the current statute, provision, position/title, or department, to reflect organizational or governance changes or to refresh content for	Regional Solicitor and General Counsel, in consultation with the Regional Clerk	

Column 1 Delegated Authority	Column 2 Delegate	Column 3 Conditions/ Restrictions
readability, accessible and clear language and format		
Signing cheques and other documents in connection with Trust Accounts established in accordance with O. Reg 246/22 under the <i>Fixing Long-Term Care Act, 2021</i>	Any two of: Manager(s), Financial Services and Business Planning; Accounting Supervisor(s), Community & Health Services Department, Integrated Business Services Branch	
Establishing turning movement restrictions on Regional roads	Commissioner of Public Works	
Appointments of, and revocation of appointments of, Risk Management Inspectors and Risk Management Officials under Part IV of the <i>Clean Water Act, 2006</i>	Commissioner of Public Works	
Appointments of, and repeal of appointments of, area weed inspectors under Section 6 of the <i>Weed Control Act</i>	Commissioner of Public Works	Commissioner of Public Works to request Regional Solicitor and General Counsel to submit bylaw directly to Regional Council
Agreements for the provision of transit charter services by the Region	Commissioner of Public Works	Compliance with the Region's Transit Charters Policy
Agreements with Metrolinx or such successor agencies and other participating transit agencies to govern the joint procurement of transit buses	Commissioner of Public Works	
Agreements for the procurement of railway flagging and protection services in relation to work performed adjacent to a railway crossing	Commissioner responsible for the infrastructure to which the agreement relates	
Issuing notices under the <i>Trespass to Property Act</i>	Commissioner responsible for the program, project, or property to which the notice relates	
Agreements for the procurement of services of expert witnesses or factual witnesses for proceedings	Regional Solicitor and General Counsel	

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
before the courts or administrative tribunals		
Agreements for the procurement of legal services	Regional Solicitor and General Counsel	

Body (Amended Provisions)

Despite any provision of this bylaw, a delegate shall not approve any matter or execute any document unless the transaction or activity to which the matter or document relates has been approved by Regional Council. For greater certainty, a transaction or activity shall be deemed to be approved by Regional Council where such transaction or activity:...

(b) "is included in a **plan**, program, project or activity which has been approved by Regional Council"

Each Commissioner shall maintain a record of each document executed under this bylaw and shall file such record with the Regional Clerk **unless otherwise directed.**

Schedule "A" (Amended Provisions)

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
Agreements with Federal or Provincial governments, municipalities, agencies, institutions and community partners for Regional undertakings, program delivery and administration	Commissioner responsible for the program or project to which the matter relates	Approval of the plan , program or project by Regional Council
Submission of service and program plans, notices , and reports as required by any legislative authority	Commissioner responsible for the program or project to which the matter relates	
Agreements for the exchange, receipt or release of information under the <i>Municipal Freedom of Information and Protection of Privacy Act</i> or the <i>Personal Health Information Protection Act, 2004</i>	Commissioner responsible for the program or project to which the matter relates	

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
Confidentiality <u>and non-disclosure</u> agreements	Commissioner responsible for the program or project to which the matter relates	<u>The agreement must allow the Region to make full internal disclosure on a confidential and need-to-know basis to Regional Council, management and applicable staff, unless otherwise approved by the Chief Administrative Officer</u>
Agreements for the provision <u>procurement</u> of audit services <u>provided in relation to internal audit conducted by the Audit Services Branch, including forensic investigation services</u>	Chief Administrative Officer and Director, Audit Services	
Admission agreements for long term care and seniors' <u>adult</u> day programs	Commissioner of Community and Health Services	
Investment Transactions	Commissioner of Finance <u>and/or Director, Treasury Office</u>	As set out in the Region's Investment Policy
Signing cheques and other financial instruments and agreements respecting banking services	Any two of: Regional Chair; Chief Administrative Officer; Commissioner of Finance; Deputy Treasurer <u>(s)</u>	Not applicable
Agreements respecting utilities <u>(including utility relocations and utility locates)</u> , telecommunications and other services required to service Regional lands and facilities <u>or to facilitate a third party or Regional project</u>	Commissioner responsible for the Regional infrastructure or facility to which the agreement relates	
Agreements permitting the Region access to or encroachment on lands for Regional purposes	Commissioner responsible for the Regional infrastructure to which the agreement relates	<u>The agreement must be for nominal consideration</u>
Applications and documentation with respect to permits, approvals or licences with respect to any Regional undertaking, including	Commissioner responsible for the program or project to which the matter relates	

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
data licences, <u>data sub-licences and data sharing licences</u>		
Scheduling and giving notice of public meetings concerning proposed amendments to Regional Official Plan <u>or issuing other notices under the Planning Act or the Development Charges Act, 1997</u>	Chief Planner or Commissioner of Finance	
Agreements, <u>including licences</u> , for the occupancy of <u>third party</u> lands and facilities for Regional purposes, <u>programs, events and activities</u> , including public meetings, staff training and workshops	Commissioner responsible for the program requiring the facility	Does not include leases
Agreements, <u>including licences</u> , permitting the occupancy of Regional lands and facilities by third parties	Commissioner responsible for the Regional infrastructure or facility to which the agreement relates	Does not include leases Compliance with standard conditions including provision of insurance coverage
Transfers, applications, notices and documents required under applicable legislation and the <u>Ontario electronic land registration system (Teraview)</u> Teraview land registration system to register all Regional documents, including those that preserve any right, title or interest in lands	Regional Solicitor <u>and General Counsel</u> or Commissioner of Corporate Services	
Agreements for the purchase of services from <u>licensed</u> child care providers, <u>housing with supports operators and emergency and transitional housing operators</u> homemakers and domiciliary and emergency hostel providers	Commissioner of Community and Health Services	
Originating documents for claims on behalf of the Region	Regional Solicitor <u>and General Counsel</u>	Value of the claim not to exceed \$500,000 (<u>exclusive of interest and costs</u>)

<u>Column 1</u> Delegated Authority	<u>Column 2</u> Delegate	<u>Column 3</u> Conditions/ Restrictions
Settlement documents for uninsured claims including settlements under the <i>Expropriations Act</i>	Regional Solicitor <u>and</u> <u>General Counsel</u>	Value of the settlement not to exceed \$500,000 (<u>exclusive of interest and costs</u>)