

Policy COU-08: Legal Advice for Council Members on Conflict of Interest

Department:	<u>Corporate & Legislative Services</u>	Policy No.:	<u>COU-008</u>
Sub-department:	<u></u>	Created By:	<u>Paige MacWilliam</u>
Approved By:	<u>Council</u>	Amended By:	<u>Gwendolyn Kennedy</u>
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Meeting No.:	<u>1404</u>	Meeting No.:	<u>1598</u>

 POLICY PURPOSE

To establish criteria to provide for the reimbursement of expenses incurred by a council member in obtaining independent legal advice as to whether the council member is in conflict of interest with respect to a particular matter currently under consideration by council or known to be forthcoming for consideration by council.

 ASSOCIATED POLICIES

FIN-003 Expense Claim Policy

 DEFINITIONS

1. In this policy,

CAO means the chief administrative officer for the Village of Pemberton or their designate;

Conflict of interest is ~~when a member of Council considers that he or she is not entitled to participate in the discussion of a matter, or vote on a question in respect of a matter, because the member has a direct or indirect pecuniary interest in the matter or another interest in the matter that constitutes a conflict of interest (Community Charter, S. 100).~~ is to be interpreted pursuant to part 4, division 6 of the *Community Charter*;

Independent legal advice is advice provided by a lawyer not associated with the Village of Pemberton; and

Village means the Village of Pemberton.

 POLICY

In accordance with section 100 of *Community Charter*, it is the responsibility of each member of council to be aware of their conflicts of interest, to declare all conflicts, and to conduct themselves in accordance with part 4, division 6 of the *Community Charter*, including avoiding participating in discussions (before, during or after meetings) or voting on issues regarding which the member may be in conflict.

A council member who wishes to obtain legal advice as to whether the member is in a potential conflict of interest with respect to a particular matter currently under consideration by council, or known to be forthcoming for consideration by council, may first discuss the matter with the CAO.

The CAO shall determine whether it is in the *Village's* best interest to seek legal advice as to the possible conflict of interest from the *Village's* legal service provider at the expense of the Village. If

the CAO obtains legal advice regarding the possible conflict of interest on behalf of the Village, the advice will be disclosed to council prior to the council member deciding whether to declare a conflict of interest.

A council member who wishes to seek *independent legal advice* is entitled to reimbursement of expenses incurred by the member in obtaining *independent legal advice* up to a maximum of \$400 in a calendar year, subject to the procedures established in this policy. This amount may be increased at the discretion of council.

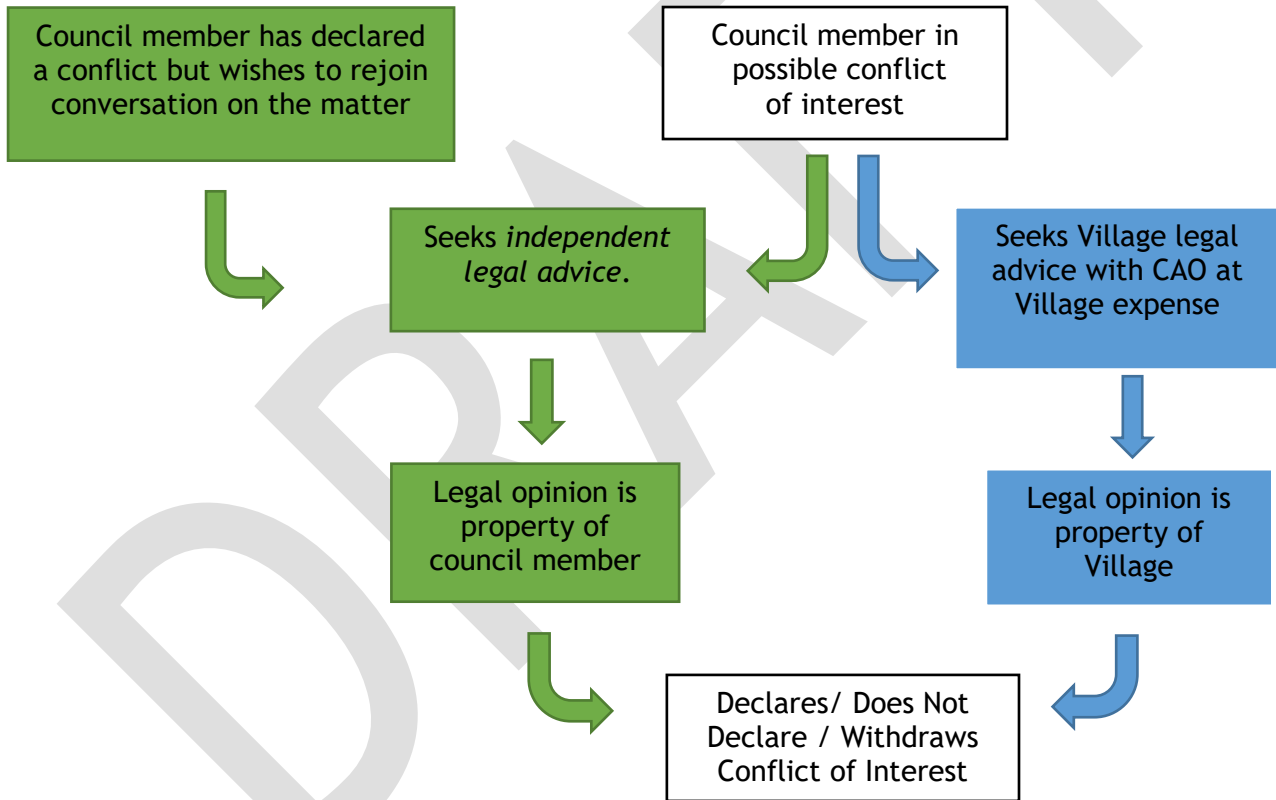
A. PROCEDURES

2. As a preliminary step, a member of council considering a potential conflict of interest may discuss the circumstances with the CAO for an initial opinion on the matter. The CAO will decide whether to seek legal advice from the Village's legal service provider at the expense of the Village.
3. If the CAO obtains legal advice from the Village's legal service provider at the expense of the Village as to a possible conflict of interest, the solicitor-client privilege pertaining to that advice is the Village's.
4. A council member who wishes to obtain independent legal advice as to whether the member is in a potential conflict of interest with respect to a matter currently under consideration by council, or known to be forthcoming for consideration by council, may engage a lawyer to provide such advice and may seek reimbursement for such advice pursuant to this policy at their own expense.
5. If a council member who has declared a conflict of interest wishes to rejoin the conversation on the matter, they must first seek independent legal advice. If it is determined the member was wrong respecting their declaration of conflict of interest or has ceased to be in conflict of interest, the member may withdraw the declaration of conflict by stating in general terms the basis on which they have determined they are entitled to participate.
6. A council member who has obtained independent legal advice shall pay all invoices for the independent legal advice and may seek reimbursement from the Village for the expense, subject to the \$400 limit per calendar year, or another limit determined by council.
7. To be reimbursed for legal expenses under section 5, a council member must submit invoices for the independent legal advice that include enough information to identify that the legal services provided pertain only to a matter of conflict of interest in respect of a defined matter currently under consideration by council or known to be forthcoming for consideration by council.
8. Any advice or opinion arising from a council member's consultation for independent legal advice remains the property of the council member. Council may request a copy of the legal opinion, but the opinion is the property of the council member who obtained it and the council member may refuse to provide it and remain eligible for reimbursement under this policy.
9. If the Village becomes involved in legal action in which the independent legal advice would assist the Village in its defense, it is expected that the council member will make every effort

to provide the Village's solicitor with the independent legal advice and any supporting information.

- 10. Reimbursement will not be provided for legal advice provided by another lawyer or law firm in respect of a matter for which reimbursement has already been provided.
- 11. Reimbursement in accordance with this policy is available only to council members during their term of office.
- 12. Any amounts paid out pursuant to this policy on behalf of a council member will be included in the Annual Report of Remuneration and Expenses as required by the *Financial Disclosure Act*.

DECISION FLOW CHART



APPROVALS AND AMENDMENTS

- 13. Council is responsible for approving this policy and substantive amendments to the policy.
- 14. The CAO is responsible for administrative amendments to the policy.