

Report

Date June 1, 2022

File:

Subject Reimbursement of Legal Fees in relation to Conflict of Interest Declaration

PURPOSE

To consider reimbursing Councillor Toporowski's legal fees incurred as a result of declaring a conflict of interest on matters related to Cowichan Tribes.

BACKGROUND

Conflicts of interest may raise complex issues involving both facts and perception. When members of Council consider their potential conflicts of interest, it would be in their best interest if they sought legal advice, especially when it comes to non-pecuniary conflicts. The key consideration is whether a reasonable person would conclude that a private interest or personal benefit could influence or affect the member's decision-making and conflict with their public duties. When in doubt, members tend to err on the side of caution and declare any real or perceived non-pecuniary conflict of interest.

Councillor Toporowski first declared her conflict of interest in relation to being a Cowichan Tribes Council member on January 16, 2019. After the 2022 Cowichan Tribes election, when Councillor Toporowski was not re-elected, she obtained legal advice in accordance with section 100 (4) of the *Community Charter* and withdrew the declaration on May 5, 2022. Councillor Toporowski is requesting to be reimbursed for her legal expenses of \$495.04 (Attachment 1).

DISCUSSION

There is no legislated requirement for an elected official to obtain legal advice on the question of a conflict of interest **prior to making their declaration**. However, under section 100 of the *Community Charter*, when an elected official **withdraws their declaration of conflict of interest, they may only do so after they have obtained legal advice** on the question of conflict and it has been determined that they are entitled to participate in respect to the matter at issue. Although the Municipality cannot seek the legal advice on behalf of the member of Council, there is no restriction on reimbursing the member the associated legal costs.

Sections 108.1 to 110 of the *Community Charter* sets out the penalties for members of Council who contravene the conflict of interest provisions, which includes disqualification from holding office and an order from the Supreme Court to pay the Municipality all or part of the member's financial gain that was obtained as a result of the contravention. In addition to the *Community Charter* provisions, the *Financial Disclosure Act* would apply to any amount paid out to a member of Council as a reimbursement.

Although the Municipality does not have a policy to reimburse members of Council expenses they incur when seeking legal advice, either prior to making or when withdrawing a conflict of interest declaration, a budget amount of \$5,000 for Council legal fees was established in 2019.

OPTIONS

1. **(Recommended Option)** THAT Councillor Toporowski is reimbursed for her legal fees related to the withdrawal of her Cowichan Tribes conflict of interest declaration on May 5, 2022, in the amount of \$495.04.
 - A policy related to conflict of interest declaration and associated legal advice has been added to the Legislative Services' department work plan. It will be brought forward to Council in the future.
2. THAT Council refer Councillor Toporowski's request for reimbursement of her legal fees to a Committee of the Whole meeting for further discussion into the conflict of interest declarations.
 - This option would enable discussion of any constraints Council would like established prior to deciding whether or not to approve the request.

IMPLICATIONS

There is \$5,280 available in the Council legal fees budget for 2022.

It would be in the public interest if members were encouraged to seek legal advice and err on the side of caution when making declarations of conflict of interest without any financial burdens to them personally. This would be consistent with the foundational principles in Council's [Standards of Conduct Policy](#) for integrity and accountability.

RECOMMENDATION

THAT Councillor Toporowski is reimbursed her legal fees related to the withdrawal of her Cowichan Tribes conflict of interest declaration on May 5, 2022, in the amount of \$495.04.

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Attachments: Legal Advice re Conflict of Interest Declaration - Invoice No. 41634