

SUPREME COURT
OF
BRITISH COLUMBIA

SEAL

VICTORIA
REGISTRY

OCT 14 2025



No. **2512336**
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**RE: THE VILLAGE OF SAYWARD IN THE MATTER OF SECTION 129 OF THE
COMMUNITY CHARTER, SBC 2003, C. 26**

PETITION

ON NOTICE TO: Not Applicable [pursuant to *Community Charter* section 129(6)]

The address of the registry is:
850 Burdett Avenue
Victoria, BC V8W 9J2

The Petitioner estimates that hearing of the petition will take 2 hours if unopposed.

- This matter is an application for judicial review.
 This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

- the person(s) named as petitioner(s) in the style of proceedings above
 the Village of Sayward

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition;
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response within the time for response.

Time for response to petition.

A response to petition must be filed and served on the petitioner,

- (a) If you were served with the petition anywhere in Canada, within 21 days after that service,

- (b) If you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) If you were served with the petition anywhere else, within 49 days after that service, or
- (d) If the time for response has been set by order of the court, within that time.

| | | |
|-----|--|--|
| (1) | The ADDRESS FOR SERVICE of the petitioner is: Email address for service of the petitioner is: | Phoenix Law Corporation 203 – 1005 Broad Street Victoria, BC V8W 2A1 Attention: Dana J. Goodfellow dana@phoenixlaw.ca |
| (2) | The name and office address of the petitioner's lawyer is: | Dana J. Goodfellow Phoenix Law Corporation 203 – 1005 Broad Street Victoria, BC V8W 2A1 |

CLAIM OF THE PETITIONER, VILLAGE OF SAYWARD

Part 1: ORDERS SOUGHT

1. An order pursuant to sections 129(4) and 129(5) of the *Community Charter* that the quorum for Village of Sayward ("Village") Council be reduced from three Councillors to two Councillors, being Councillors Coates and Johnson, who may vote and discuss on whether to pass a resolution to:
 - (a) proceed with consideration of a motion of censure and related sanctions against Village Councillors Susan Poulsen and Scott Burchett (together, the "Two Councillors") for their respective possible contraventions of *Community Charter* section 117 and sections 2(b), 3, 4, 17, 19, 25 and 26 and possibly section 10 of the Village's *Code of Conduct Bylaw No. 442, 2018* ("*Code of Conduct*" or "*Bylaw 442*") and section 21(7) of the Village's *Council Procedure Bylaw No. 416, 2015* ("*Council Procedure Bylaw*"), and possibly also under the new *Code of Conduct Bylaw* adopted on January 21, 2025, and in relation to:
 - (i) the Two Councillors' possible unauthorized disclosure to third parties of information and documents received in confidence and information and documents discussed during closed Village Council meetings; and

- (ii) the Two Councillors' likely disrespectful behaviour towards Keir Gervais, (now former) Chief Administrative Officer of the Village; and
 - (b) possibly commence court proceedings against at least one of the Two Councillors and possibly Village staff for possible wilful misconduct and possibly against John France for possibly assisting in possible wilful misconduct; and
2. Costs in the event that this application is opposed.

Part 2: FACTUAL BASIS

The Village, Village Council and John France

1. The Village is a municipality incorporated and operating pursuant to the *Local Government Act*, SBC 2015, c. 1 and the *Community Charter*. Sayward is a small isolated community on Vancouver Island with a population of approximately 350 people that can only be accessed by way of a single lane small bridge.
2. Pursuant to section 118(c) of the *Community Charter* the Village Council consists of a Mayor and four Councillors.
3. Mayor Mark Baker and each of the Two Councillors became elected officials of the Village in September 2022.
4. Councillors Debbie Coates and Jason Johnson became elected officials of the Village on August 1, 2024 in a by-election after the resignation of Kohen Gilken on March 11, 2024 and Tom Tinsley on May 10, 2024 as Village Council members.
5. At all material times, and as of February 1, 2023, John France:
 - (a) was not employed by the Village;
 - (b) was not a Village Council member;
 - (c) was not a lawyer; and
 - (d) was not entitled to receive information and documents received in confidence and information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c.

165 (“*FIPPA*”), and documents discussed during closed Village Council without Village Council's authorization to do so and where applicable, except as authorized by *FIPPA*.

6. Between February 2017 and April 2018, September 2020 to November 2020 and August 2022 and January 2023 John France was the Acting Chief Administrative Officer of the Village.

Overview

7. In the fall of 2023 as noted in John France's posts on social media, Sayward Raves, also called Sayward Rant and Rave (and formerly called Rant and Rave), the Village sought to proceed with consideration of a motion of censure and related sanctions against the Two Councillors and in a closed Village Council meeting (“Closed Censure Consideration Meeting”).
8. A Closed Censure Consideration Meeting with one of the Two Councillors ended suddenly due to a hydro outage that affected all of Sayward and no decisions were made.
9. The Village sought to resume the Closed Censure Consideration Meeting for imposing censure and related sanctions against one of the Two Councillors.
10. Legal counsel for one of the Two Councillors asserted that the Councillor refused to participate further and on the basis that the Mayor of the Village was in a conflict or had a disqualifying bias and could not discuss or vote on whether to issue a motion of censure and related sanctions against that Councillor.
11. As a result of some recently restored emails of the Two Councillors and Village staff, some further postings on Sayward Raves, and receipt of communications from former Village Staff, the Village has further information about the Two Councillors' possible breaches of confidentiality and disrespectful behaviour towards the Village's now former Chief Administrative Officer who left the Village as a result of the disrespectful behaviour.

12. John France's postings on social media, Sayward Raves, also called Sayward Rant and Rave (and formerly called Rant and Rave) together with some recently restored and deleted emails, and forwarded communications between John France and former Village staff, likely supports that:

(a) the Two Councillors and John France were likely acting in concert; and

(b) discussing what oppressive steps should be taken against the Village.

13. The Village has already spent time and money in having to respond to and deal with the Two Councillors' actions. The Village does not want to risk Mayor Baker, Councillor Coates and Councillor Johnson proceeding with discussion of or voting on:

(a) the resumption of consideration of a motion of censure and related sanctions against the other Two Councillors for likely disrespectful behaviour towards the (now former) Chief Administrative Officer and possible breaches of *Community Charter* section 117 and sections 2(b), 3, 4, 17, 19, 25 and 26 and possibly section 10 of Bylaw 442 and section 21(7) of the *Council Procedure Bylaw* and possibly sections of the new *Code of Conduct*; or

(b) possibly commencing court proceedings against at least one of the Two Councillors and possibly Village staff for possibly wilful misconduct and possibly against John France for assisting in the possible wilful misconduct,

and then being subject to a judicial review application seeking to set aside resolutions (if passed) on the basis of Mayor Baker having a conflict of interest or disqualifying bias. Accordingly, the Village is seeking a reduction in quorum to proceed with discussion of and voting on each of the above possible actions.

Two Councillors' Disrespectful Behaviour Towards the Village Chief Administrative Officer

14. Keir Gervais became the Chief Administrative Officer of the Village on February 1, 2023.

15. The Two Councillors have likely breached several sections of the *Code of Conduct* in disrespectful behaviour towards Keir Gervais in Village Council meetings.

16. In late November 2023, at least one of the Two Councillors was also disrespectful towards the then Chief Administrative Officer while he was on bereavement leave and shared with John France that Councillor's communications with Mayor and Council. John France encouraged Councillor Poulsen to not only reject the Mayor's direction to not contact the Chief Administrative Officer while on bereavement leave but to also continue to send emails to the Chief Administrative Officer. In reply, Councillor Poulsen told John France "Please do not Facebook it yet. I am going to call the Ombudsman first".
17. In December 2023 Councillor Poulsen forwarded to John France the Councillor's complaints to Mayor and Council about the Village Chief Administrative Officer.
18. On February 28, 2024 Councillor Poulsen forwarded to John France the Councillor's complaints to Mayor and Council about the Village Chief Administrative Officer and a forwarded email from the Village Chief Administrative Officer with privileged legal advice which the Village continues to assert privilege over.
19. On April 3, 2024 Councillor Poulsen forwarded to John France Councillor Burchett's complaints sent to Mayor and Council about the Village Chief Administrative Officer.
20. On July 5, 2024 Councillor Burchett forwarded to John France his July 4, 2024 complaints to:
 - (a) a Chief Election Officer and Regional District staff and with allegations about the Chief Administrative Officer; and
 - (b) the Regional District staff's reply dismissing the allegations.

Two Councillors' and Possibly Village Staff's Breaches of Confidentiality and Wilful Misconduct

21. In early 2023 a Village Council member and a member of the public made allegations of inappropriate behaviour on the part of the Mayor towards the member of public (the "Allegations").

22. Village Council discussed and considered the Allegations in closed Village Council meetings.
23. The Councillor who made the Allegations did not seek:
 - (a) a reconsideration of Village Council's decision under section 26 of the Village's *Council Procedure Bylaw*;
 - (b) judicial review of Village Council's decision; or
 - (c) to obtain an order to set aside Village Council's decision under section 623 of the *Local Government Act*.
24. Village Council has not authorized release of the Allegations to the public or information to the public about Village Council's deliberations about the Allegations.
25. In April 2023 John France contacted Councillor Poulsen and stated "[i]f the accusations are true...he should not be rep for the RD".
26. On May 12, 2023 John France contacted the Mayor and noted the Two Councillors were not happy with the outcome of the investigation and that one of the Two Councillors would be moving forward with further actions against the Mayor and acknowledged that the matter was the subject of a closed meeting.
27. Within John France's June 29, 2023 posting on Rant and Rave, John France indicated that he was approached for advice in February 2023 on how to handle the Allegations. Within that posting, John France stated that he gave the appropriate advice.
28. John France continued to speak about the Allegations within his July 20, July 28, August 18, August 25, August 28, September 5, September 7, September 20, October 7, October 19, October 22 and October 28, 2023, January 15, 2024 and January 15, 2025 postings on social media, Sayward Raves, also called Sayward Rant and Rave (and formerly called Rant and Rave).

29. On July 24, 2023, and within less than a month of learning the cost of investigation of the Allegations, the Two Councillors and with John France's assistance wrote to the Village's auditors with an allegation pursuant to section 172 of the *Community Charter* that:
- (a) the Village Council has made substantial unauthorized expenditures to consultants, legal and others; and
 - (b) there has been a theft, misuse or other defalcation or irregularity in the funds, accounts, assets, liabilities and financial obligations of the Village.
30. On August 15, 2023 Councillor Poulsen distributed a letter to members of the public and before a Village Council meeting that repeated the allegations within the Two Councillors' July 24, 2023 letter to the Village's auditors.
31. John France's August 26 and September 3, 2023 posts on Rant and Rave and Sayward Raves reference Councillor Poulsen's August 15, 2023 letter.
32. On September 18 and 19, 2023 and after receiving the Village auditor's reply, the Two Councillors sought John France's assistance in reviewing a draft response to the Village auditors. Councillor Poulsen adjusted the response and noted "Here's to Round 2" to which John France replied "Excellent... will make another post shortly".
33. In the fall of 2023 the Village issued a summons under *Community Charter* section 134 to John France to attend before Council to answer questions related to the administration of the Village. John France refused to attend.
34. On October 3, 2023 Councillor Poulsen distributed by hand to approximately 12 to 15 members of the public at an open meeting a letter alleging that Mayor Baker was in a conflict of interest and should not be involved in "actions taken against [Councillor Poulsen] and Councillor Burchett".
35. October 11, 2023 emails among Councillor Poulsen, Village staff and John France indicate that Councillor Poulsen and Councillor Burchett were meeting with John France on October 11, 2023 and they were to bring documents to that meeting and they were planning to discuss "what [they] accomplished so far and where they were going from [there]".
36. On October 11, 2023 John France contacted Village staff and sought Village staff to "look for the Lacroix invoices" and to "[b]e very careful" and to "not use

village email .. Keir is watching". John France subsequently told the Village staff member "[d]on't look for the invoice" and "[t]here is a foi request in so it will be released soon".

37. On October 11 and 10, 2023 Two of the Councillors submitted FOI requests seeking the Village to provide detailed information of expenditures for consultants, legal and others since February 1, 2023.
38. John France referenced in his October 19, 2023 posting on Sayward Raves a short list of actions in the works:
- FOI request for financial information
 - Request for an audit to investigate improper approval of financial resources not contained in the financial plan.
 - (...)
 - Ombudsman complaint in process on incorrect council meeting processes and bias/incorrect processes under s.134 of the Community Charter
 - Human rights complaints on harassment.
39. On December 7 and 18, 2023 and March 19, 2024 Councillor Poulsen forwarded to John France her complaints to Sayward residents and to Mayor Baker.
40. On February 28, 2024 Councillor Poulsen replied to former Village staff's Councillor Poulsen's February 28, 2024 email to Mayor and Council about a payroll error. In Councillor Poulsen's reply email she alleged that there was a "huge error in misappropriation of Village of Sayward funds" and notwithstanding the error made was an accidental payroll processing error in relation to payment of the former Village staff member's salary and the resolution of the accidental payroll processing error was dealt with the same day.
41. On March 11, 2024 Kohen Gilken resigned as a Village Council member over "childish" and "dysfunctional colleagues".
42. On May 10, 2024 Tom Tinsley resigned as a Village Council member and commented to media that there have been "an excessive number of council meetings with limited productivity over the last 18 months".
43. Following the resignation of Kohen Gilken and Tom Tinsley, the Village had to call and incur the cost of a by-election.

44. After Andrew LaCroix, legal counsel for Mark Baker (and not the Village), commenced legal proceedings in defamation on behalf of Mark Baker against John France on May 3, 2024 for John France's postings on social media, one of the Two Councillors and a member of the public submitted a complaint to the Office of the Information and Privacy Commissioner alleging that the Village breached section 33 of *FIPPA*.
45. On July 24, 2024 the Councillor submitted the complaint about an alleged breach of section 33 of *FIPPA* notwithstanding:
- (a) John France's postings referenced the Allegations;
 - (b) John France contacted one of the Two Councillors about the Allegations in April 2023 and Mayor Baker on May 12, 2023 about the Two Councillors contacting John France about the Allegations;
 - (c) in September 2024 the member of the public who made the Allegations contacted the Mayor indicating the member of the public also provided the Allegations to a Regional District; and
 - (d) the member of the public did not inform the Regional District that the Allegations were provided in confidence.
46. In July 2024 the Chief Administrative Officer went on leave due to the behaviour of at least one of the Two Councillors and has subsequently left the Village and obtained employment elsewhere.
47. In or about September 2024 the Village retained an Acting Chief Administrative Officer.
48. John France's post on Sayward Rant and Rave on January 14, 2025 suggests that John France likely received information discussed during a closed Village Council meeting.
49. On March 24, 2025 Councillor Burchett forwarded to the Acting Chief Administrative Officer a former Village staff's post on social media indicating a current Village staff member shared Village closed Council meeting information.

50. In or about April 2025 the Village's Acting Chief Administrative Officer was able to obtain restored and deleted emails of the Two Councillors and Village staff.
51. In early May 2025 the Village received a FOI request from legal counsel of a law firm representing John France and Councillor Burchett noting the FOI request was not submitted on behalf of John France. The FOI request seeks, among other things:
- (a) "all documents, including but not limited to letters, emails, reports, records, notes and minutes- and including those produced in camera or containing in camera information – related to [the Allegations]";
 - (b) the "total amount of payments made by the Village of Sayward to legal counsel for services rendered in relation to [the Allegations] and discussed during closed Council meetings about [the Allegations] and Mayor Baker's defamation action against John France"; and
 - (c) "Audit reports, audit management reports, and management's responses to these reports for 2023 and 2024".
52. On June 4, 2025 members of the public commented within social media about Councillor Burchett's behaviour toward the former Chief Administrative Officer and also about Councillor Burchett's comments at the May 20, 2025 open Village Council meeting that the Councillor would not be participating in any further closed meetings.
53. If the sought order for quorum is granted, the Village may consider whether to possibly commence proceedings against the Two Councillors and possibly Village Staff for wilful misconduct, and possibly against John France in possibly assisting in possible wilful misconduct of the Two Councillors and possibly Village staff, and in an effort to deter others from repeating their behaviour and in an effort to recoup some of the expenditures the Village has incurred as a result of such behaviour and as part of damages for possible wilful misconduct.

Part 3: LEGAL BASIS

1. Section 118(1)(c) of the *Community Charter* explains that the size of Village Council is five Councillors: the Mayor and four Councillors.

2. Section 129 of the *Community Charter* allows the Village to apply to the Supreme Court where the number of Village Council members who may discuss and vote on a matter falls below quorum. The court may order that a Council member may participate or vote even though they have made a declaration under *Community Charter* section 100 or have a pecuniary interest under *Community Charter* section 101.
3. Pursuant to *Community Charter* section 129(4) an application to reduce quorum may be made without notice to anyone.

Port Clements (Village) (Re), 2015 BCSC 1675 (CanLII) at paragraph 38

4. The Village has a duty to disclose all facts that are relevant and material to the Village's application under *Community Charter* section 129(4).

Port Clements (Village) (Re) at paragraph 47 and 49

The Village's and Village Council's Authority and Responsibilities

5. Councillors are expected to adhere to the statutory requirements within the *Community Charter*, *Local Government Act* as well as the *Council Procedure Bylaw*, *Code of Conduct* and other internal local government policies.
6. Section 7 of the *Community Charter* explains that the purposes of the Village include:
 - (a) providing for good government of the Sayward community;
 - (b) providing for services, laws and other matters for Sayward community benefit;
 - (c) providing for stewardship of the public assets of the Sayward community, and
 - (d) fostering the economic, social and environmental well-being of the Sayward community.
7. Section 116 of the *Community Charter* prescribes the powers, duties and functions of the Village's Mayor as follows:
 - (a) to provide leadership to Village Council, including recommending bylaws, resolutions and other measures that, in the Mayor's opinion, may assist the peace, order and good government of the Village;

- (b) to communicate information to Village Council;
 - (c) to preside at Village Council meetings when in attendance;
 - (d) to provide, on behalf of Village Council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the Village Council;
 - (e) to establish standing committees;
 - (f) suspend municipal officers and employees;
 - (g) to reflect the will of Village Council and to carry out other duties on behalf of Village Council; and
 - (h) to carry out other duties assigned under the *Community Charter* or any other Act.
8. The core responsibilities of members of Village Council are set out in section 115 of the *Community Charter*:
- (a) to consider the well-being and interests of the Village and Sayward community;
 - (b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities;
 - (c) to participate in Village Council meetings, committee meetings and meetings of other bodies to which the Council member is appointed;
 - (d) to carry out other duties assigned by Village Council; and
 - (e) to carry out other duties assigned under the *Community Charter* or any other Act.
9. Section 117(1) of the *Community Charter* explains that a Village Council member must, unless otherwise authorized by Village Council:
- (a) keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and
 - (b) keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

10. Under *Community Charter* section 117(2) if the Village suffers loss or damage because of a Village Council member's wrongful disclosure of confidential information or information or documents considered in a closed meeting the Village may recover the amount of that loss from the Village Council member.
11. The purpose of section 117 of the *Community Charter* is to establish a protected sphere of confidentiality to enable municipal governments to function effectively. The prospect that a local government's elected officials might disclose confidential Council information to the public without authorization would obviously interfere with a local government's ability to function openly, optimally and productively.

Anderson v. Strathcona (Regional District), 2024 BCCA 23 (CanLII) at paragraph 92

12. Section 4 of the *Community Charter* explains that the powers conferred on the Village and Village Council under the *Community Charter* or the *Local Government Act* must be interpreted broadly in accordance with the purpose of those Acts and in accordance with municipal purposes.
13. Sections 2(b) and 3 of the *Code of Conduct* requires Village Council members to respect one another, the public and Village staff and requires Village Council member's conduct in the performance of their duties and responsibilities for the Village to be above reproach.
14. Section 4 of the *Code of Conduct* requires Village Council members to refrain from abusive conduct, intimidating or demeaning behaviour or verbal attacks upon the character, professionalism or motives of others.
15. Section 5 of the *Code of Conduct* requires Village Council members to comply with all federal, provincial and local laws in the performance of their public duties.
16. Section 17 of the *Code of Conduct* prohibits Village Council members from making disparaging comments about other members of Council or a Council decision itself.
17. Section 19 of the *Code of Conduct* prohibits Village Council members from making public statements attacking or reflecting negatively on Village staff.

18. Sections 25 and 26 of the *Code of Conduct* require Village Council members to maintain confidentiality over information discussed or disclosed at closed Village Council meetings, information circulated to Village Council and marked as confidential and information that is given verbally in confidence in preparation for or following a closed session of Village Council.
19. Section 10 of the *Code of Conduct* requires Village Council members to act in accordance with the *Council Procedure Bylaw*.
20. Section 21(7) of the *Council Procedure Bylaw* requires Village Council members to use respectful language when speaking at a Village Council meeting.
21. Sections 26(1) and 26(5)(c) of the *Council Procedure Bylaw* allows a Village Council member to reconsider a matter on which a vote has been taken and a matter that has not been acted on by an officer, employee or agent of the Village.
22. One member of Council is not entitled to waive privilege over legal advice provided to the Village. Only Council of the Village as a whole can waive privilege.

Anderson v. Strathcona (Regional District), 2021 BCSC 1800 (CanLII) at paragraphs 70, 71 and 78

Powell River (City) (Re), 2021 BCIPC 30 (CanLII) at paragraph 43

23. An elected official does not breach confidence by disclosing confidential local government information to the elected official's lawyer to obtain legal advice on matters that affect an elected official personally.

Anderson v. Strathcona (Regional District), 2024 BCCA 23 (CanLII) at paragraphs 89 to 95

Village's Authority to Censure

24. The Village and its Council have broad authority to control their own processes, including the power to censure in order to express disapproval of a Village Council member's conduct.

Dupont v. Port Coquitlam (City), 2021 BCSC 728 at paragraphs 23 to 26

Skakun v. Prince George (City), 2011 BCSC 1796 at paragraph 43

Barnett v. Cariboo Regional District, 2009 BCSC 471 at paragraphs 21, 26, 27 and 28

Anderson v. Strathcona (Regional District), 2024 BCCA 23 (CanLII) at paragraphs 38 and 92

25. Village Council is entitled to deference with respect to:
- (a) its interpretation of sections 90 and 117 of the *Community Charter* including how those sections relate to information that may be considered in closed Village Council meetings pursuant to *Community Charter* section 90; and
 - (b) whether a particular disclosure constitutes a breach of the duty of confidentiality pursuant to section 117 of the *Community Charter*.

Dupont v. Port Coquitlam (City), 2021 BCSC 728 at paragraph 20

Conflict of Interest

26. Section 100(2) of the *Community Charter* requires a Village Council member to declare a conflict if a Village Council member considers that they are not entitled to participate in the discussion of or vote on a question in a meeting in respect of a matter because of a direct or indirect pecuniary interest in the matter or another interest in the matter that constitutes a conflict of interest.
27. Section 101 of the *Community Charter* explains that a Village Council member who has a direct or indirect pecuniary interest in a matter must not remain or attend any part of the meeting, participate in any discussion or vote on a question in respect of the matter or attempt to influence the voting on any question in respect of the matter before, during or after the meeting and regardless of whether the Village Council member has made a declaration under *Community Charter* section 100.
28. There is a two stage approach for assessing alleged violations of conflict of interest restrictions of Village Councillors under section 101 of the *Community Charter*:
- (1) A person alleging a conflict of interest must demonstrate that a Village Councillor has a conflict of interest arising from a *direct or indirect* pecuniary interest and that, despite the conflict, the Village Councillor improperly participated in Village Council or committee proceedings; and
 - (2) The burden then shifts to the Village Councillor to prove either that the Village Councillor acted inadvertently or made an error of judgment in good faith; or the pecuniary interest is excused by one of the exceptions listed in *Community Charter* section 104.

Redmond v Wiebe, 2022 BCCA 244 (CanLII) at paragraph 45

29. The focus of the Village possibly proceeding with the resumption of a consideration of a motion of censure and related sanctions against the Two Councillors is about their possible breaches of *Community Charter* section 117 and breaches of sections 2(b), 3, 4, 17, 19, 25 and 26 and section 10 of the *Code of Conduct* and section 21(7) of the *Council Procedure Bylaw* in possible breaches of confidentiality and likely disrespectful behaviour towards the (now former) Village Chief Administrative Officer.
30. The Two Councillor's misconduct in possibly breaching section 117 of the *Community Charter* and sections 2(b), 3, 4, 17, 19, 25 and 26 and possibly section 10 of the *Code of Conduct* and section 22(17) of the *Council Procedure Bylaw* are separate and distinct issues from the issue of the Allegations of one of the Two Councillors and a member of the public.

Gisborne v. qathet (Regional District), 2022 BCSC 1555 (CanLII) at paragraphs 89, 85, 10, 11, 77 and 78

31. The test for bias is whether an elected official has prejudged the matter for consideration so completely as to be no longer capable of persuasion. It is only where a Village Council member has completely closed their mind so that it is incapable of change that disqualifying bias will be found. In other words, a Village Council member must have a degree of open-mindedness and a capacity to be influenced by persuasion.

Old St. Boniface Residents Assn. Inc. v. Winnipeg (City), 1990 CanLII 31 at paragraphs at pages 1193, 1196 and 1197

Save Richmond Farm Land Society v Richmond, 1989 CanLII 2718 (BCCA) at paragraph 29; *Save Richmond Farm Land Society v. Richmond*, 1990 CanLII 1132 (SCC) at pages 1224 and 1225

32. Legal counsel for one of the Two Councillors has asserted that:
- (a) it is not appropriate for a Village Council member to be relying on their own evidence to support one of the Two Councillor's breaches of confidentiality and for the purpose of considering a motion of censure and related sanctions against that Councillor; and
 - (b) there is a high bar to meet in an effort to refute having a reasonable apprehension of bias when adjudicating on whether to proceed with a motion of censure and related sanctions against the Councillor,

and in reliance of on the following cases: *Sandhu v. British Columbia (Police Complaint Commissioner)*, 2021 BCSC 2424; *C.D. Lee Trucking Ltd. v. Industrial Wood and Allied Workers of Canada et al.*, 1998 CanLII 6678 (BCSC); *Newfoundland Telephone Co. v. The Board of Commissioners of Public Utilities*, 1992 CanLII 84 (SCC); and *Haight-Smith v. Kamloops School District No. 34*, 1988 CanLII 2900 (BCCA).

33. Legal counsel for one of the Two Councillors has also vociferously asserted that:
- (a) the Mayor has a disqualifying bias with respect to considering whether one of the Two Councillors breached *Community Charter* section 117 since the breach of confidentiality relates to the Allegations of that Councillor;
 - (b) the Mayor appears to have a direct pecuniary interest in the matter; and
 - (c) the Councillor would seek judicial review of any decision should the Mayor preside during discussion and voting of passing a resolution of motion of censure and related sanctions against the Councillor.

Possible Civil Proceedings

34. Sections 738(1) and 738(2) of the *Local Government Act* explain that no action for damages may be commenced against current or former Village Councillor or Village staff for anything said or done or any alleged neglect or default by such persons in the performance or intended performance of their duty or the exercise of their power.
35. Section 738(3) of the *Local Government Act* explains that immunity under section 738(2) does not apply if:
- (a) current or former Village Councillors or Village staff are guilty of dishonesty, gross negligence or malicious or willful misconduct, or
 - (b) the cause of action is libel or slander.
36. Gross negligence and wilful misconduct imply conduct in which, if there is not conscious wrongdoing, there is a very marked departure from the standards by which responsible and competent Village Council members and Village staff govern themselves.

Young v. Mackenzie District, 1996 CanLII 3117 at paragraph 22 and in reliance on *Goulais v. Restoule et. al.*, 1974 CanLII 10 (SCC) at page 369

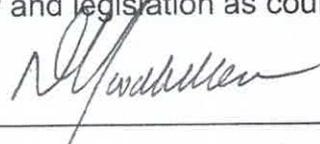
37. While individual Village Council members or individual Village officers and employees may sue or be sued in defamation, the Village itself does not have a right of action defamation.

Dixon v. Powell River (City), 2009 BCSC 406 (CanLII) at paragraph 46

Part 4: MATERIAL TO BE RELIED ON:

1. Affidavit of Mark Baker, sworn October 7, 2025
2. Affidavit of John Thomas, sworn October 3, 2025
3. Such further Affidavits and case law and legislation as counsel may provide.

Date: October 14, 2025



Dana J. Goodfellow, Counsel for the
Petitioner, Village of Sayward

| | |
|---|--|
| To be completed by the court only: Order made <input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this petition <input type="checkbox"/> with the following variations and additional terms: <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> | |
| Date _____ | <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Associate Judge |