



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**

RESPONSE TO PETITION

Filed by: Sue Poulsen and Scott Burchett (the “Petition Respondents”)

THIS IS A RESPONSE TO the Petition filed October 14, 2025.

The Petition Respondents estimate that the application will take 1-day.

PART 1: ORDERS CONSENTED TO

The Petition Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the Petition: NIL

PART 2: ORDERS OPPOSED TO

The Petition Respondents oppose the granting of the orders set out in paragraphs 1–2 of Part 1 of the Petition.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondents take no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the Petition.

PART 4: FACTUAL BASIS

A. THE PARTIES

1. Scott Burchett (“**Councillor Burchett**”) is an elected member of council of the Village of Sayward (the “**Village**”), a local government under the *Community Charter*, SBC 2003, c. 26 (the “**Community Charter**” or the “**Act**”). Councillor Burchett was first elected to council in 2022.¹

2. Susan Poulsen (“**Councillor Poulsen**”) is an elected member of council of the Village. Councillor Poulsen was first elected to council in 2020.²

B. MAYOR BAKER 2023 APOLOGY

3. In February 2023, Councillor Burchett submitted a complaint to the Village against Mayor Baker under the Village’s Respectful Workplace Policy regarding his conduct towards his partner, Talia Clark (the “**2023 Burchett Complaint**”).

4. In February 2023, Talia Clark also submitted a complaint against Mayor Baker for his conduct towards her (the “**Clark Complaint**”).³

5. Talia Clark is not an elected member of Village council.⁴

6. On 07 May 2023, Mayor Baker provided a written apology to Talia Clark and Councillor Burchett for his conduct (the “**Baker Apology**”).⁵

7. The Baker Apology was also sent to other members of Council, including Councillor Poulsen.⁶

¹ Affidavit #1 of Scott Burchett (“**Burchett Affidavit**”), para. 2.

² Affidavit #1 of Susan Poulsen (“**Poulsen Affidavit**”), para. 9.

³ Affidavit #1 of Mark Baker (“**Baker Affidavit**”), para. 16, and Exhibit “N”.

⁴ Baker Affidavit, paras. 9 and 10.

⁵ Baker Affidavit, Exhibits, “A” and “N”.

⁶ Poulsen Affidavit, para. 6

C. CENSURE PROCEEDINGS AGAINST COUNCILLORS BURCHETT AND POULSEN

8. On 15 August 2023, the Village issued a summons to John France, the Village's previous CAO, under s. 134 of the *Community Charter* compelling him to attend before Council and be examined under oath regarding whether Councillors Burchett and Poulsen disclosed records held in confidence by the Village regarding the Burchett Complaint and Talia Complaints (collectively, the "**2023 Complaints**"). Mr. France has not been CAO of the Village since January 2023.⁷

9. On or about late 2023 Mayor Baker and Councillors Gilken and Tinsley attended a closed meeting to consider possible Censure and Related Sanctions against Councillors Burchett and Poulsen for possible breaches of confidentiality pertaining to the Burchett Complaint and Baker Apology (the "**Censure Motion**").⁸

D. THE CENSURE HEARING

10. Both before and at the Council meeting to consider the Censure Motion (the "**Censure Hearing**"), legal counsel for Councillor Burchett repeatedly raised concerns about the Mayor's potential bias and conflict of interest, including what appeared to be direct pecuniary interest. The Mayor did not declare a conflict of interest under s. 100 of the *Community Charter* or recuse himself due to bias because he did not believe he was in a conflict or biased.⁹

11. The Censure Motion hearing proceeded but ended suddenly due to a power outage before Council made a decision on the Censure Motion.¹⁰

E. COUNCILLORS GILKEN RESIGNS

12. On March 11, 2024, Kohen Gilken resigned as a Village Council member.¹¹

⁷ Baker Affidavit, para. 11, Exhibit "F".

⁸ Baker Affidavit, para. 36.

⁹ Baker Affidavit, para. 36-38.

¹⁰ Baker Affidavit, para. 37.

¹¹ Baker Affidavit, para. 50.

F. MAYOR BAKER COMMENCES DEFAMATION ACTION

13. On 03 May 2024 Mayor Baker filed a notice of civil claim against John France (the “**Baker Claim**”). Councillor Burchett and Poulsen are not named as defendants but the Baker Claim:

- (a) Sets out the details of the 2023 Complaints;
- (b) Explains that on receiving the 2023 Complaints, the Village retained a consultant to investigate the allegations and the consultant made recommendations;
- (c) Sets out the details of the Baker Apology;
- (d) States that after the mediated resolution leading to the Baker Apology, Council Burchett demanded an investigation and sought unspecified measures against Mayor Baker.¹²

G. COUNCILLOR TINSLEY RESIGNS

14. On 10 May 2024, Councillor Tinsley resigned as a Village Council member.¹³

H. VILLAGE HOLDS BY-ELECTION

15. On or about 01 August 2024, Councillors Debbie Coates and Jason Johnson were sworn in as members of Council following a by-election.

I. COUNCILLOR BURCHETT SUBMIT COMPLAINT TO OIPC

16. In or about July 2024, Councillor Burchett submitted a complaint to the Office of the Information and Privacy Commissioner (the “**OIPC**”) regarding the release of confidential and *in camera* information by Mayor Baker in the Baker Claim.¹⁴

¹² Baker Affidavit, para. 52, Exhibit “N”.

¹³ Baker Affidavit, para. 55.

¹⁴ Baker Affidavit, Exhibit “P”.

17. On 25 April 2025 the OIPC upheld Councillor Burchett's complaint. Specifically, the OIPC determined that:

- (a) the public body disclosed Councillor Burchett's personal information to legal counsel for the Mayor;
- (b) the public body did not demonstrate that any section of the *Freedom of Information and Protection of Privacy Act* authorized the disclosure of his personal information.¹⁵

J. VILLAGE BRINGS APPLICATION UNDER SECTION 129 OF THE COMMUNITY CHARTER

18. Almost two-years after the Censure Hearing ended abruptly without a decision, Mayor Baker now wishes for Council to proceed with the Censure Motion and to consider whether to commence additional legal proceedings against (1) Councillor Burchett and/or Councillor Poulsen, (2) an unidentified member of staff, and/or (3) John France for "wilful misconduct" (the "**Proposed Action**"). However, Mayor Baker now questions whether he could remain impartial and keep an open mind on these two matters. He deposes that, in his opinion, it would be in the best interest of the Village if he was a witness and provided evidence "to support" Council's decision on whether to resume the Censure Proceedings and commence the Proposed Action *if* the requested order to reduce quorum is granted.¹⁶

19. Accordingly, the Village now seeks an order under s. 129 of the *Community Charter* to (i) reduce quorum in order to proceed with the Censure Hearing and (ii) to permit the Censure Motion to be considered by the two new councillors, Councillors Coates and Johnson.

20. The Village relies on two affidavits in support of its application:

¹⁵ Baker Affidavit, para. 10.

¹⁶ Baker Affidavit, paras. 14–15.

- (a) The Baker Affidavit; and
- (b) The affidavit #1 of John Thomas sworn 03 October 2025 (the “**Thomas Affidavit**”)

(collectively, the “**Village Affidavits**”).

K. VILLAGE PROVIDES NOTICE OF APPLICATION TO COUNCILLORS BURCHETT AND POULSEN

21. On or about 14 October 2025 the Village’s new Chief Administrative Officer, Andrew Young, provided Councillors Burchett and Poulsen with a copy of the within Petition and the Village Affidavits in support.¹⁷
22. On or about 17 October 2024 the Village put out public notice about the Village’s application to reduce to reduce quorum to consider whether to proceed with the Censure Motion and the Proposed Action.¹⁸
23. Prior to receiving to receiving this notice, Councillors Burchett and Poulsen were unaware that Council had voted to:
- (a) release the subject matter of the Censure Motion and Censure Hearing out of *in camera*;
 - (b) bring an application under s. 129 of the *Community Charter* to reduce quorum.¹⁹
24. Councillors Burchett and Poulsen were also unaware that Council had discussed commencing proceedings against them and others, including Mr. France, for “wilful misconduct”, as attested to in the Petitioner Affidavits.²⁰ They did not receive any

¹⁷ Burchett Affidavit, para. 18; Poulsen Affidavit para. 14

¹⁸ Burchett Affidavit, para. 27

¹⁹ Burchett Affidavit, para. 23; Poulsen Affidavit para. 14

²⁰ Burchett Affidavit, para. 24. Poulsen Affidavit para. 14

meeting agendas or attend any council meetings, *in camera* or otherwise, where Council was scheduled to discuss and vote on any of the following matters:

- (a) Whether to continue with the Censure Hearing started in 2023;
- (b) Whether to commence the Proposed Action;
- (c) Whether to release the Censure Motion and Censure Hearing from *in camera*; and
- (d) Whether to bring an application for an order under section 129 of the *Community Charter*.²¹

25. Specifically, the CAO and Mayor repeatedly advised Councillors Burchett and Poulsen that they had to recuse themselves from portions of *in camera* meetings without advising them of the topic that was before Council.

26. Councillors Burchett and Poulsen also have not attended, and are unaware of, any Council meeting at which Mayor Baker has declared a conflict of interest under s. 100 in relation to the Censure Motion or the Proposed Action.²²

²¹ Burchett Affidavit, para. 23; Poulsen Affidavit, para. 15

²² Burchett Affidavit, para. 24.

PART 5: LEGAL BASIS

A. LEGISLATIVE SCHEME

27. Under s. 122 of the *Community Charter*, a council as defined under the Act may only exercise its powers by resolution or bylaw. Under s. 129(1), a quorum is a majority of the number of members of council provided for under s. 118, which delineates the size of council based on the size of its respective municipality.

28. Under s. 118, the council for a village must consist of a mayor and 4 councillors, such that quorum in the Village of Sayward is met by the attendance of three council members.

29. Section 129 of the *Community Charter* provides a framework for obtaining an exemption from the mandatory quorum requirements wherein (1) the number of council members is reduced to less than quorum or (2) the number of council members who may discuss and vote on a matter falls below the required number:

Quorum for conducting business

129 (1) Subject to an order under subsection (3), (4) or (7), the quorum is a majority of the number of members of the council provided for under section 118 [*size of council*].

(2) The acts done by a quorum of council are not invalid by reason only that the council is not at the time composed of the number of council members required under this Act.

(3) If the number of members of a council is reduced to less than a quorum, the minister may either

(a) order that the remaining members of the council constitute a quorum until persons are elected and take office to fill the vacancies, or

(b) appoint qualified persons to fill the vacancies until persons are elected and take office to fill them.

(4) The municipality may apply to the Supreme Court for an order under subsection (5) if, as a result of section 100 [*disclosure of conflict*], the number of council members who may discuss and vote on a matter falls below

(a) the quorum for the council, or

(b) the number of council members required to adopt the applicable bylaw or resolution.

(5) On an application under subsection (4), the court may

(a) order that all or specified council members may discuss and vote on the matter, despite sections 100 [disclosure of conflict] and 101 [restrictions on participation], and

(b) make the authority under paragraph (a) subject to any conditions and directions the court considers appropriate.

(6) An application under subsection (4) may be made without notice to any other person.

[Emphasis added.]

30. Section 100 of the *Community Charter* sets out the formal procedure to be followed by council members in instances where a member has (a) a direct or indirect pecuniary interest in the matter, or (b) another interest in the matter that constitutes a conflict of interest. The conflicted council member must make a declaration at the council meeting in question and henceforth adhere to the restrictions on participation set out in s. 101(2) of the Act.

31. Section 101 includes restrictions on participation and attendance at any meetings during which the matter is under consideration; voting on any question in respect of the matter; and attempts in any way to influence the voting on any question in respect of the matter.

32. Section 122 of the Act delimits the exercise of powers by bylaw or resolution of a council:

Exercise of powers by bylaw or resolution

122 (1) A council may only exercise its authority by resolution or bylaw.

(2) If an enactment provides that a council is required or empowered to exercise a power by bylaw, that power may only be exercised by bylaw.

(3) If a council may exercise a power by resolution, that power may also be exercised by bylaw.

(4) An act or proceeding of a council is not valid unless it is authorized or adopted by bylaw or resolution at a council meeting.

33. Section 123 states the general voting rules:

123 (1) Unless otherwise provided, a motion on a bylaw or resolution, or on any other question before council, is decided by a majority of the council members present at the meeting.

(2) Each council member has one vote on any question.

(3) Each council member present at the time of a vote must vote on the matter.

(4) If a council member does not indicate how the member votes, the member is deemed to have voted in the affirmative.

(5) If the votes of the members present at a council meeting at the time of the vote are equal for and against a motion, the motion is defeated.

(6) A requirement under an enactment for an affirmative vote of a specified portion of all members of a council means an affirmative vote of that portion of the number of members of which the council consists under section 118 [*size of council*].

(7) The voting rules established by this section also apply to council committees.

34. The *Bylaw No. 416 Village of Sayward Council Procedure Bylaw, 2015 (Consolidated)* ("Council Procedure Bylaw") establishes the bylaws governing the proceedings and meetings of the Council, including motions and voting at meetings. Per s. 23 of the Council Procedure Bylaw:

(23.) (1) Council may debate and vote on a motion only if it is first made by one Council member and then seconded by another.

(2) A motion that deals with a matter that is not on the agenda of the Council meeting at which the motion is introduced may be introduced with Council's permission.

(3) A Council member may make only the following motions, when the Council is considering a question:

(a) to refer to committee;

(b) to amend;

- (c) to lay on the table;
- (d) to postpone indefinitely;
- (e) to postpone to a certain time;
- (f) to move the previous question;
- (g) to adjourn.

(4) A motion made under subsections (3) (c) to (g) is not amendable or debatable.

(5) Council must vote separately on each distinct part of a question that is under consideration at a Council meeting if requested by a Council member.

35. The agenda of each Council meeting must be made available to all Council members prior the meeting:

(15.) (1) Prior to each Council meeting, the Corporate Officer must prepare an Agenda setting out all the items for consideration at that meeting, noting in short form a summary for each item on the agenda.

(2) The deadline for submissions by the public to the CAO of items for inclusion on the Council meeting Agenda must be noon on the Wednesday prior to the meeting.

(3) Council must not consider any matters not listed on the Agenda unless a new matter for consideration is properly introduced as a late item pursuant to section 17.

B. MANDATORY PROCEDURE FOR OBTAINING ORDER UNDER S. 129(5) NOT FOLLOWED

36. The Village seeks that the Court grant an order pursuant to ss. 129(4) and 129(5) of the *Community Charter* that quorum be reduced to Councillors Coates and Johnson in order to discuss and vote on the Censure Motion and the Proposed Action against Councillors Burchett and/or Councillor Poulsen and others.

37. The sole circumstance in which a municipality may apply for an order under s. 129(4) is when the number of council members who may discuss and vote on a matter falls below quorum because of a disclosure of conflict pursuant to s. 100. Subsequently, the Court may order pursuant to s. 129(5) that all or specified council members discuss

and vote on the matter despite a disclosure of conflict under s. 100 and resultant restrictions on participation under s. 101.

38. The procedure requires that the council member attending a meeting declare their direct or indirect pecuniary interest or another interest in a specific matter before Council, and state in general terms their reasoning for the declaration. After making the declaration, the council member must (i) recuse themselves from discussion and voting on the matter in question and (ii) at all material times adhere to the restrictions in participation set out in s. 101(2), such as refraining from influencing decision-making of other council members in the matter.

39. If as a result of the disclosure of a conflict under section 100, the number of council members who may discuss and vote on a matter falls below quorum, only then may a municipality apply for an order under section 129(5).

40. While an application to reduce quorum pursuant to s. 129(4) may be made without notice to anyone, a declaration under s. 100 triggering the applicability of s. 129(4) must be made on attendance at a Council meeting.

41. In the present matter, the Petitioner has failed to meet the procedural requirements set out in s. 129(4). The Petitioner has provided no evidence of any Council meetings at which (i) the Censure Motion or the Proposed Action were before Council at a Council meeting and (ii) the Mayor then declared his conflict under section 100 of the Act.

42. While Mayor Baker has alluded to a possible “disqualifying bias” in the Baker Affidavit that could affect his ability to impartially discuss, participate in, and/or vote on the Censure Motion and potential related civil proceedings, he has not formally declared a conflict in accordance with s. 100(2)(a)(b). In the result, the Petition must be dismissed as premature.

C. IN THE ALTERNATIVE, NO EVIDENCE OF VALID RESOLUTION AUTHORIZING APPLICATION

43. In the alternative, if the Court finds that the Mayor was not required to make a declaration under s. 100 as a precondition to the Village bringing an application under section 129(5), or that this requirement was otherwise satisfied, the Petition must be dismissed because the Village has provided no evidence that Council passed a valid resolution authorizing the Village to bring this application.

D. IN THE FURTHER ALTERNATIVE, MAYOR BAKER VOTED DESPITE ACKNOWLEDGED BIAS

44. In the alternative, if it is presumed that Council passed a resolution to bring an application under section 129(4), the resolution must be set aside and the Petition dismissed.

45. A duty of fairness applies to all administrative bodies. This duty requires decision makers not to be biased. The test to ensure fairness is whether a reasonably informed bystander would perceive bias on the part of a decision maker.

Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities), 1992 CanLII 84 (SCC), [1992] 1 SCR 623 at 636.

46. In the municipal context, a member of council will not be disqualified for being pre-disposed toward a particular result on a certain issue. The councillor must, however, be willing to listen to the submissions and, as long as the councillor is not impervious to submissions such that any arguments would be futile, he or she will not be disqualified on grounds of bias.

McLaren v. Castlegar (City), 2011 BCCA 134 at para. 34, citing *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170, 75 D.L.R. (4th) 385; *Save Richmond Farmland Society v. Richmond (Township)*, 1990 CanLII 1132 (SCC), [1990] 3 S.C.R. 1213, 75 D.L.R. (4th) 425.

47. In the Baker Affidavit at para. 14, Mayor Baker deposes that:

- (a) As of 07 October 2025, he questions whether he could remain impartial and opened minded to discuss and vote on the Censure Motion and Proposed Action; and
- (b) If the order for reduction of quorum is granted, he believes it would be in the best interest of the Village if he provided evidence to support Council's decision on whether to resume the Censure Proceedings and commence the Proposed Action.

48. If a resolution was passed authorizing the Village to bring this application, Mayor Baker must have voted to bring the application. Councillors Burchett and Poulsen, however, were not only excluded from discussing and voting on whether to bring the within Petition, they didn't even know about it. This conduct is not only procedurally unfair, but further evidence of the Mayor's bias in seeking to procedure with the Censure Motion, to commence new proceedings against the Petition Respondents, and seeking the order in the within Petition. If the Mayor had a right discuss and vote on whether to bring an application under s.129(4) despite his acknowledged bias, Councillors Burchett and Poulsen ought to have been permitted to participate and vote too.

Environmental Appeal Board v. District Director, Metro Vancouver, 2025 BCCA 303 at para. 73.

R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission), 2021 BCCA 67 at paras. 58–61.

49. In determining whether the administrative decisionmaker has acted fairly, the Court does not owe deference to the decisionmaker in determining whether the process adopted confirmed with procedural fairness requirements.

Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia, 2022 BCCA 247 at para. 71.

50. Assuming the Court finds that Mayor Baker has sufficiently declared a conflict of interest under s. 100 to trigger s. 129(4), procedural fairness requires that (i) the initial

decision to bring a s. 129 application be quashed and that (ii) the matter be remitted to the Council for consideration with directions from the Court.

51. The Petition Respondents seek leave to speak to costs.

PART 6: MATERIAL TO BE RELIED ON

1. The pleadings and proceedings herein;
2. Affidavit #1 of Mark Baker filed 14 October 2025;
3. Affidavit #1 of John Thomas filed 14 October 2025;
4. Affidavit #1 of Scott Burchett made 05 December 2025;
5. Affidavit #1 of Susan Poulsen to be filed;
6. Such further and other material as counsel may advise and this Honourable Court accept.



Date: 08 December 2025

Nathalie Baker
EYFORD PARTNERS LLP
Solicitor for the respondents

Petition respondents' address for service:

Eyford Partners LLP
1744-1055 Dunsmuir Street
PO Box 49254
Vancouver, BC V7X 1L2

Fax number address for service:

n/a

Email address for service:

service@eyfordpartners.com
nbaker@eyfordpartners.com