

REVIEW OF ADOPTION OF DISTRICT OF NORTH
VANCOUVER BYLAW 8402, 2019

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SUMMARY

This report reviews the events leading up to enactment of District of North Vancouver Bylaw 8402, 2019, which will, on coming into force on May 1, 2020, prohibit the keeping of pigeons in the District. It examines the training and support for District councillors on conflict of interest and freedom of information matters. It also discusses policies and processes related to how policy proposals are formulated, analysed and brought to the Council table for consideration.

Outline of Events

This is a convenient summary of events surrounding the bylaw's enactment:

- Councillor Forbes expressed concerns about the keeping of birds, and about her neighbour's pigeons, going back at least to 2017. This included making submissions to the Council of the day.
- She brought her concerns to the attention of District bylaw enforcement staff and communicated with them on many occasions through to the end of 2018.
- After her election as a councillor in October 2018, Councillor Forbes communicated and met with the District's General Manager, Planning, Properties and Permits, about her concerns regarding pigeons. On November 2, 2018, she asked him about amendments to the 1971 bylaw and was told that Council direction would be needed to initiate any changes.
- In early April 2019, Councillor Muri contacted Dan Milburn about Councillor Forbes's concerns and in an April 4, 2019 email he brought Councillor Muri up to speed on the background. On April 24, 2019 she emailed him about "repeal of the pigeon bylaw". On the same day, Councillor Muri forwarded Dan Milburn's email of that date to Councillor Forbes.
- Over the course of April and May 2019, Dan Milburn assisted Councillor Muri in writing a report to Council proposing that Council amend the 1971 bylaw. On May 17, 2019, Councillor Muri told Dan Milburn that she had concerns with the latest version of the report. On May 17, 2019, as well, Councillor Muri asked Councillor Forbes to call her. Neither can recall if a phone call took place in response to that request.
- On June 21, 2019, Councillor Muri forwarded to Councillor Forbes an email from District staff about the pigeon bylaw. Neither Councillor Muri nor Councillor Forbes indicated that a phone call took place in response to this email. They both noted that this was about nine months ago, and they speak to each other often about a range of municipal and community matters.
- On June 25, 2019, Councillor Forbes texted Councillor Muri and Councillor Curren about, among other things, processes for proposing matters to Council, with a question to Councillor Muri "(Lisa – pigeons?)".

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- On July 6, 2019, Councillor Forbes emailed the two councillors again, sending material about health hazards of birds and, among other things, saying “Please just pass an actual bylaw outlawing them, not rescinding our current bylaw.” Her email also clearly stated that she would be recusing herself from voting on the matter.
- On July 8, 2019, Council considered Councillor Muri’s report to Council and Councillor Forbes recused herself from the matter, stating, “I have a conflict with this so I’m going to step out.” She then left the meeting. Council then resolved to direct staff to prepare a bylaw prohibiting the keeping of pigeons in the District.
- On October 28, 2019, Council gave the prohibition bylaw three readings. When that item arose on the agenda Councillor Forbes said, “I’m declaring a conflict because I have been involved in a situation like this, so I’m stepping aside.” The Mayor responded by saying “personal conflict?” and Councillor Forbes agreed. She then left the meeting.
- On November 4, 2019, the bylaw was given final adoption. Councillor Forbes stated, “I voluntarily have recused myself on this item on the agenda, so I am recusing myself again tonight.” Councillor Forbes then left the meeting.
- At the November 18, 2019, Council meeting Councillor Forbes read a statement, which noted that she had followed staff advice and independent legal advice and had recused herself out of an abundance of caution from the Council discussions on the bylaw. She stated that if she made any error it was inadvertent and in good faith, with her understanding as a new councillor of the conflict of interest rules.

These facts emerge from the records and interviews that were considered in this review:

- Before her election in 2018, Betty Forbes expressed concern about the keeping of pigeons. She expressed concern about her neighbour’s pigeons, but she also expressed concern about the health risks of pigeons and other birds in urban settings generally.
- After the 2018 election, Councillor Forbes continued to express these concerns, including in dealings with District staff.
- In the spring of 2019, Councillor Forbes communicated her concerns to Council Muri and Councillor Curren. Councillor Muri also had own concerns about keeping pigeons in the District’s urban environment and Councillor Curren had concerns about using any animal for sport or entertainment.
- Councillor Forbes asked both Councillor Curren and Council Muri to support a bylaw prohibiting the keeping of pigeons. This request was explicitly stated in her July 6, 2019 email to them.
- In that email, Councillor Forbes told Councillor Muri and Councillor Curren that she would be recusing herself from the matter. She did so at the July 8, 2019 Council meeting, at which Council considered Council member’s report. Councillor Forbes again recused herself when Council gave three readings to the bylaw at the October 28, 2019 meeting, and again when Council gave the bylaw final adoption at its November 4, 2019 meeting.

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- At the November 18, 2019 Council meeting, Councillor Forbes read a statement, in which she stated that she had recused herself “out of an abundance of caution”, and that any error was inadvertent and in good faith, “with my understanding as a new councillor of the conflict of interest rules.”
- It is clear Councillor Forbes communicated with District staff about her concerns with pigeons, including her neighbour’s pigeons, after the 2018 election but before her July 8, 2019 recusal from the matter. It is also clear that, before her first recusal, she communicated with Councillor Muri and with Councillor Curren about this issue, including by asking them to support a prohibition on keeping pigeons.
- There is no evidence before me to suggest that, after her July 8, 2019 recusal, Councillor Forbes communicated with anyone—whether District staff or elected officials—about the bylaw’s subject.

Recommendations About District Policies and Practices

The following recommendations are made later in this report.

Enhancing the District’s Code of Ethics for councillors

Recommendation 1: The District should assess its Code of Ethics in the context of current case law and public expectations, to ensure that it addresses in enough detail the various aspects of the conflict of interest rules and other ethical principles.

Enhancing conflict of interest materials for councillors

Recommendation 2: The District should consider enhancing its conflict of interest materials for both Council members and election candidates. This could take the form of enhanced workshop presentation materials, with more detailed discussion points and scenarios (perhaps drawing on the facts of decided cases), to help illustrate the practical application of the rules. The District should also consider providing Council members with a guidance document on conflict of interest, which could include a tip sheet or frequently-asked-questions summary for easy reference.

Recommendation 3: The District should consider enhancing its conflict of interest support for Council members by periodically conducting scenario-based discussions of the conflict of interest rules in Council workshops or free-standing learning sessions. The District should also consider refreshing Council’s awareness through periodic email reminders attaching the written materials recommended above.

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Independent legal advice on conflict of interest

Recommendation 4: The District should consider amending its independent legal advice policy to require councillors to share the factual foundation for the advice in writing with the Chief Administrative Officer, and discuss it with the Chief Administrative Officer, before the advice is sought. (An alternative would be to strongly encourage councillors to share this information with the District, with Council being informed where a councillor declines to do so.)

Recommendation 5: The District should consider amending its independent legal advice policy to require councillors to share their independent legal advice about a conflict of interest matter with the Chief Administrative Officer and Municipal Solicitor, in confidence, who could inform Council about the lawyer's conclusion, where necessary and on a confidential basis. (An alternative would be to strongly encourage councillors to share the independent legal advice with the District, with Council being informed where a councillor declines to do so.)

Review of the ILA indemnity cap

Recommendation 6: Because the District's independent legal advice policy's cap on aggregate amount available to all councillors for independent legal advice has not changed since 2010, the District should consider amending that policy to increase the annual aggregate amount.

Recommendation 7: The District should consider amending its independent legal advice policy to remove the existing 75% District contribution level and replace it with a full indemnity clause.

Review of the District's indemnification policy

Recommendation 8: The District should consider reviewing its indemnification policy for litigation in which councillors are named as parties, to determine whether that policy fully accounts for the various legal risks, and therefore costs, that councillors might face in their work in good faith.

Enhancing freedom of information and privacy materials and support

Recommendation 9: The District should enhance its freedom of information and privacy training for both Council members and election candidates by creating a guide or tip sheet about key issues in these two areas. Workshop materials and discussion should also cover privacy and freedom of information matters.

Modified approach for reports to Council

Recommendation 10: The District should consider amending its procedure bylaw and relevant policies to enhance its processes for bringing matters to Council, as follows:

- (a) A councillor who wishes to propose a new bylaw, policy, program or activity (or an amendment), will discuss an outline of the proposal with the appropriate general manager, and the Chief Administrative Officer will be kept informed and may participate in that discussion,
- (b) If the proposal appears to be viable from a legal, technical and fiscal perspective, the councillor may place a report to Council on the agenda,
- (c) If Council supports the proposal, it will direct staff to study the proposal in more depth and bring forward options for action, in a fully considered staff report to Council,
- (d) Council will direct staff to pursue the option it considers desirable.¹

If the District implements this recommendation, it should ensure that the new policy is aligned with existing District policy on staff providing information to councillors, on staff reports to Council, and on provision of information to Council.

Councillor requests to staff for information and support

Recommendation 11: The District should consider amending its policy on councillors seeking information from staff, to clarify which information requests are routine and which are not. The District should also consider amending this policy to provide for centralized submission of councillor requests or, at the very least, centralized request tracking.

Councillor requests for internal legal advice

Recommendation 12: The District should review its policy on councillor requests for internal legal advice, to determine whether it should be clarified or amended.

¹ This step is already addressed in District policy 1-10530-10, Staff Reports to Council.

INTRODUCTION

Background to This Report

This report flows from my review of the circumstances leading adoption of District of North Vancouver *Pigeon Prohibition Bylaw 8402, 2019* (“bylaw”), which was given final adoption by the Mayor and Council of the District of North Vancouver (“District”) on November 4, 2019. When it comes into force on May 1, 2020 the bylaw will prohibit the keeping of pigeons in the District.

It is fair to say that, in the lead-up to final adoption, and afterward, there was a considerable amount of public controversy and media coverage about the bylaw. Some of the response was positive, but there has also been criticism. Some of the attention has focused on the role of individual councillors in the bylaw’s drafting and passage.

On November 25, 2019, a few weeks after the bylaw was adopted, Council resolved to direct the District’s Chief Administrative Officer, David Stuart, to secure an independent review of its adoption. I was retained to do that review, which I conducted under terms of reference finalized on December 5, 2019.²

In terms of steps taken, my work involved examination of records that the District had disclosed in response to several freedom-of-information requests and records provided by the District at my request.³ I reviewed video recordings of several Council meetings and workshops and interviewed every member of Council and five senior District staff.

Local Government in British Columbia

This is not the place for a treatise on the nature and workings of modern local governments, but a few observations help set the context for this report.

As the term ‘local government’ suggests, British Columbia’s municipalities and regional governments are very close to their communities. They provide vital local services, such as sewer, water and other infrastructure services, that are indispensable to the health and wellbeing of their communities. They provide other important services to support and foster the health of their communities and individual residents. Their closeness to their communities means they are perhaps uniquely able to identify, understand and respond effectively to a wide range of other community and individual concerns or needs.

² A copy of the terms of reference is found in Appendix 1. My retainer was finalized on November 27, 2019.

³ For clarity, these further records were outside the scope of the various freedom-of-information requests.

Elected local officials are responsible for acting in their communities' public interest. This is underscored in British Columbia's *Community Charter*, which articulates several "principles of municipal governance".⁴ These recognize "municipalities and their councils" as a "democratically elected, autonomous, responsible and accountable" order of government. The principles acknowledge that municipalities and their councils are "established and continued by the will of the residents of their communities". The *Community Charter* also affirms that, in performing their functions, councils need the "authority to determine the public interest of their communities", while seeking "balance and certainty in relation to the differing interests of their communities".

The obligation of elected municipal officials to act collectively in their communities' public interest is nicely underscored in this passage:

... the council is entrusted with responsibility for governing, not just in the interest of those who elected them, but in the interest of the community generally, that is, *in the public interest*. This is a fairly vague and controversial concept, however. It is a generalized judgment of what is best for individuals, *as a part of a community*. From the perspective of particular individuals and interest groups, the public interest may be conceived differently and, as amongst them, views of the public interest will inevitably conflict. A council making its decision on the public interest will identify and weigh a wide variety of competing considerations: the demands of various interested parties, the advice of its experts, data from its own research resources. And it will undoubtedly be influenced by the preferences expressed by the electorate. The decision is ultimately a matter of choice and what a council decides is necessarily its own collective perception of the public interest. [original italics]⁵

The District's Code of Ethics for Council members, and individuals appointed to District committees or advisory bodies, also reflects the obligation to act in the public interest. It requires Council members to "conduct their business with integrity, in a fair, honest and open manner"⁶ and to "base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations."⁷

Of course, each elected official brings unique skills, experiences and policy positions to the council table. In the absence of a party-political system in most British Columbia communities, their varied perspectives on what is in the public interest offer a richness of perspective that enhances the quality of policy and legislation established by a council when, considering these perspectives, it acts collectively in the public interest.

⁴ These are expressed in section 1 of the *Community Charter*, from which the above quotations are taken.

⁵ A. McDonald, "In the Public Interest: Judicial Review of Local Government" (1983), 9 Queen's L.J. 62, page 100. MacLachlan J. cited this passage with approval, in dissent, in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 SCR 231, at page 246.

⁶ Paragraph 1.

⁷ Paragraph 6.

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It is almost always the case, however, that a council must rely on the expert advice and support of the municipality's staff to be able to grapple successfully with increasingly complex and sensitive local issues and to navigate the murky waters of the public interest. This calls for a respectful and responsive dialogue between elected officials and public servants, to ensure that the public interest is best served. This dialogue requires establishment and faithful adherence to clear and efficient processes to support a council's vision of what is in the public interest. The need for a solid framework for this vital dialogue is a key theme of several of the recommendations set out later.

Scope of Findings

The December 5, 2019 terms of reference include reviewing "the actions of Council as a whole, and of individual councillors, in relation to the proposing and adoption of [the] bylaw". The specified outcome is stated to be a report to the District's Chief Administrative Officer, setting out "findings of fact and recommendations". The terms of reference contemplate that the recommendations may include, for example, "any recommended enhancements in relation to the manner in which bylaws are proposed for council's consideration and adopted or in relation to ethics, conflict of interest and freedom of information and privacy matters." The terms of reference do not contemplate legal findings, i.e., findings about the legal nature or consequences of anyone's conduct.

Two legal proceedings have been initiated in the Supreme Court of British Columbia. One seeks to invalidate the bylaw. The other seeks a declaration that Councillor Betty Forbes and Councillor Lisa Muri are disqualified from holding office and that their offices are vacant. The District is named as a respondent in both proceedings. The legal validity of the bylaw is now before the Court, as is the legal nature and consequences of the two councillors' actions. It is for the Court to address those legal issues.

The terms of reference are in any case forward-looking. They focus on important policy issues such as procedures for bringing matters to Council, the role of staff in supporting councillors' policy initiatives, conflict of interest training and advice for councillors, freedom of information training, and more. This report addresses all those issues and makes specific recommendations for review and enhancement of related policies and procedures.

Acknowledgement

In closing, I should underscore that everyone with whom I dealt in conducting this review has been fully cooperative. This includes all members of Council, individual Council members and all District staff.

The findings and recommendations in this report are mine alone, as are any errors or omissions.

*David Loukidelis QC*⁸

February 18, 2020

⁸ Deputy Attorney General of British Columbia 2010-2012, Chair of the Alberta Law Enforcement Review Board 2012-2018, Information and Privacy Commissioner for British Columbia 1999-2010. Called to the British Columbia Bar 1985.

OUTLINE OF EVENTS

This section outlines events related to adoption of the bylaw.⁹ Other information relevant to the specific issues that are discussed after this chronology is discussed later.

Betty Forbes was elected as a member of the District's Council in the October 2018 local government election, which also saw others elected to Council for the first time. On May 15, 2017, before she was being elected, Betty Forbes sent a document to the Mayor and Council of the day, giving reasons for her opposition to a bylaw being proposed to permit the keeping of chickens. The May 15, 2017 document referred to her concern that the keeping of chickens would decrease property values, saying, "according to some real estate professionals I have talked with a coop in a neighbour's property **will impact buyers offer**. Why am I going to pay financially for the choice my neighbours make? Ask yourself if people really pay the extremely high housing prices in the DNV to live next to farm animals" (bold in original).¹⁰ The document also mentioned that her neighbour kept pigeons and referred to what she saw as the District's failure to enforce the existing bylaw, the *Keeping of Pigeons Bylaw, Bylaw 4078* ("1971 bylaw"). On May 16, 2017, Betty Forbes spoke at the Council meeting at which the keeping of chickens was discussed. She expressed concerns about health issues raised by the keeping of chickens and pigeons and asked that Council review the 1971 bylaw.

On February 13, 2018, Betty Forbes emailed the then Mayor, Richard Walton. Her email stated that she had been trying to get action from the District about her neighbour's pigeons since "spring 2017", specifically, about his alleged failure to comply with the 1971 bylaw's requirements. Her email stated that her neighbour had failed to obtain a permit under the 1971 bylaw. She provided details of alleged violations of the 1971 bylaw and asked that the bylaw be amended—consistent with the proposed bylaw on keeping hens—so that only one

⁹ The chronology is based on records and recordings provided by the District and interviews. A list of individuals interviewed is found at Appendix 2. Some of the facts set out below are based on what individuals told me in their interviews and these sources are footnoted only where in my view that is truly necessary. It is convenient to note here that an individual resident, who described himself as an unsuccessful council candidate, contacted me by email on several occasions, offering information and commentary that, he apparently believed, I should address in my work. I have considered that material and it clearly addresses matters outside the terms of reference (including, for example, events related to the last local government election and activities of a specific community association). Since it is not relevant, this material is not mentioned again.

¹⁰ Twelve separate freedom of information requests were made in 2019 under the *Freedom of Information and Protection of Privacy Act* for records related to this matter. The District disclosed this email to more than one requester under that legislation. This document's contents are therefore in the public domain and, it is important to underscore, were quoted in the media last November. For example, a November 4, 2019 online CBC News story describes Betty Forbes' May 2017 submission to Council and attributes these quotes to her: "'A new neighbour moved in,' said Forbes. The coop was 'ramshackle' and 'an eyesore.' And, she warned, it would harm the value of her property. 'I know it sounds pretty cold,' she told council, 'but there is an impact to having coops in backyards to properties next door to that. I've spoken with a couple of real estate agents, and they've told me it will definitely have an effect.'" J. McElroy, "Pigeon feud: North Vancouver approves ban targeting councillor's neighbour", CBC News (online), November 4, 2019. Article accessed February 11, 2020: <https://www.cbc.ca/news/canada/british-columbia/pigeons-north-vancouver-prohibition-1.5347419>.

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pigeon coop could be located on a property. On February 14, 2018, Mayor Walton forwarded Betty Forbes' email to Carol Walker—the District's Chief Bylaw Officer—and Cristina Rucci, also a District employee, stating that she "seems to have reasonable concerns" and adding, "What am I missing?"

On July 26, 2018, Betty Forbes emailed Dan Milburn, the District's General Manager, Planning, Properties and Permits, referring to a conversation between them on that date. Her email provided details of incidents involving her neighbour's pigeons allegedly flying around her property, roosting on structures located on her property and flying into glass on her property. She stated that nothing had been done about the problem and asked to be told "what the outcome of this will be". She also asked that the 1971 bylaw be "updated in line with the new chicken bylaw." Shortly after this email, Betty Forbes again emailed Dan Milburn, attaching photographs of pigeons.

Dan Milburn responded on July 27, 2018, acknowledging the additional information and indicating that a District bylaw enforcement officer would visit the property. He stated that the bylaw enforcement officer would work "to obtain bylaw compliance with respect to the Keeping of Pigeons Bylaw." Betty Forbes responded the same day, asking, "[w]hat are the steps to get this bylaw updated?", and Dan Milburn responded that day saying, "As I mentioned, it is not currently in our work plan to update the" 1971 bylaw. He stated that "Council would need to direct staff to prepare amendments to the Bylaw. However, it is not on our list of priority issues at this time."

On August 8, 2018, Betty Forbes emailed Dan Milburn asking for an update on whether a bylaw enforcement officer had spoken to the owner of the pigeons about her concerns. Dan Milburn's staff responded in his absence. On August 28, 2018, District bylaw enforcement staff visited Betty Forbes' neighbour. Among other things, they advised him that he needed a permit for his pigeons under the 1971 bylaw.

On October 25, 2018, after she was elected but before she was sworn in, Betty Forbes emailed Dan Milburn, with a copy to the then Mayor, asking that her long-standing concerns be addressed. On October 26, 2018, Dan Milburn responded, addressing her as "Councillor-Elect Forbes". His response indicated that she had spoken with one of his colleagues, who had apparently conveyed that she would like to have her neighbour's pigeons removed. His email indicated that bylaw enforcement staff had visited the neighbour's property in the middle of August 2018 and conducted a "thorough site inspection". He noted that it was open to her to provide further evidence to support her concerns.

On October 29, 2018, Dan Milburn and Carol Walker met with Councillor Forbes and reviewed the District's bylaw enforcement activities and her most recent emails.¹¹ Dan Milburn sent a follow-up email to her the same day, and on November 2, 2018 he again emailed her, asking for any evidence to confirm her complaints about pigeons. Among other things, he asked her to "confirm whether pigeons have been observed 'perching, roosting or nesting' on your property or on public lands...since this summer" (original underlining). He said this was because "to proceed with progressive enforcement actions we will need to confirm evidence of such a recent breach of the bylaw", noting that the neighbour had contended that removal of six pigeons in August has eliminated the problem." He also acknowledged that Councillor Forbes found "this whole matter very frustrating."¹²

Dan Milburn's email closed with the following paragraph:

As for making amendments to the Keeping of Pigeons Bylaw, staff would need direction from Council. After you're sworn-in as a Council member you may propose a resolution at a Regular Meeting of Council, in accordance with the Council Procedures Bylaw, commending the repeal or amendment to the Keeping of Pigeons Bylaw. The Clerk can provide you with further advice on the procedures, and I would be happy to draft a brief report and resolution for your consideration, should you choose to pursue this matter further.¹³

On April 4, 2019, Dan Milburn forwarded his July 27, 2018 email to Councillor Forbes to Councillor Lisa Muri. This was in response to a voicemail Councillor Muri had left for him. His email to Councillor Muri noted that he had spoken to Councillor Forbes after receiving her July 27, 2018 email, then stated, "Essentially, we were hoping to receive any evidence that the pigeons were still a problem. (Our bylaw staff have gone by the site but seen no evidence.)" He referred to the need for evidence that "the pigeons [are] still flying over, and perching, roosting or nesting on public lands or private property in contravention of the Bylaw", noting that evidence is needed "to pursue enforcement action, because the Keeping of Pigeons Bylaw permits this use." The email concluded by noting that Dan Milburn personally "would have no concerns if Council were to decide to repeal this bylaw", as the keeping of pigeons "is a very uncommon type of use in the community." Councillor Muri responded on April 4 stating, "Let's start the process of repeal".

¹¹ That system's records indicate very extensive number of contacts by telephone and email from Betty Forbes about concerns with her neighbour's pigeons. The records also indicated that District bylaw enforcement staff met and otherwise communicated with the neighbour on several occasions about the concerns. There were, for example, two visits to the neighbour's property in May 2019. The District's records also indicate that District enforcement staff concluded that the neighbour apparently had, as of May 2019, brought the situation into compliance with the 1971 bylaw.

¹² A November 29, 2018, District bylaw enforcement system note indicates that, as of that date, no response had been received.

¹³ Dan Milburn did not provide Councillor Forbes any advice on conflict of interest at any time. Dan Milburn interview.

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On April 24, 2019, Councillor Muri again emailed Dan Milburn. The email subject line was “Repeal of the pigeon bylaw”, with the text being limited to “Will this make the May 6th agenda as requested?” Dan Milburn emailed Councillor Muri a short while later, stating “I had not anticipated you expected this on May 6th Regular Agenda” and telling her by phone that same day that the report would not be ready for the May 6 meeting. He added that he would provide Councillor Muri “with draft reports for all the issues we have discussed this week (including the repeal of the Keeping of Pigeons Bylaw).” Councillor Muri responded by email, saying “Ok thanks”.

About 30 minutes later Councillor Muri forwarded Dan Milburn’s email to Councillor Forbes, without comment. Councillor Forbes answered on April 24, 2019, with the email’s sole content being this symbol: “:(“. Councillor Lisa Muri responded almost immediately to Councillor Forbes, stating, “It will be fine, we can waive the hearing if we need one.”

On April 26, 2019, Dan Milburn emailed Councillor Muri, attaching five draft reports, including a draft of the report recommending repeal of the 1971 bylaw, as requested in her April 4, 2019 email. On May 6 and 10, 2019, Dan Milburn emailed Councillor Muri, offering to assist with any changes or edits that she wished to make to the various reports. (He had assisted Councillor Muri with drafting her report in the first place.)¹⁴

On or about May 17, 2019, Dan Milburn spoke with Councillor Muri by phone about the pigeon matter, and he emailed her on May 17, 2019 to confirm his takeaway from their conversation. He attached to his follow-up email a revised version of the draft report to Council about keeping pigeons; that version would have resulted in a bylaw amendment to “require kept pigeons to be enclosed within a coop or cage at all times”. His emailed included these passages:

You indicated that the proposed bylaw repeal would not address Councillor Forbes’ concerns, because if the bylaw were repealed, her neighbour would still be allowed to keep his pigeons as a nonconforming use.

You mentioned that you instead what the bylaw amended to prohibit the release of the pigeons because they can’t be controlled.

Please have a look at the attached draft report and let me know if I got it right this time, or if any further changes are needed.

Councillor Muri responded on May 17, 2019, saying, among other things, that the new draft report version did not address the situation adequately, saying, “Like chicken bylaw, numbers of pigeons, size of aviary, pest control, permitting etc should be a part of the report, which it

¹⁴ Dan Milburn interview.

is not. I would rather get it right the 1st time.” Dan Milburn responded that day with another version of the draft report, this one referring also to amendments regulating “number of pigeons, enclosure standards, pest control and permitting etc.”

That same day, Councillor Muri emailed Councillor Forbes, stating, “Please call me.”¹⁵ The email did not indicate why Councillor Muri was asking Councillor Forbes to call. When asked about this, Councillor Muri noted the number and variety of communications councillors have with each other, with District staff and with the public, and stated that she could not recall whether Councillor Forbes had called her in response to her email. Councillor Forbes also could not recall whether she had phoned Councillor Muri. She noted that the email was sent almost a year ago and that she and Councillor Muri speak frequently about a wide range of matters, and she could not recall speaking with her in response to that email.

On June 21, 2019, Councillor Muri again emailed Councillor Forbes, forwarding to her a June 20, 2019 email from Deirdre Rogers, a District employee. Deirdre Rogers had emailed Councillor Muri a document from a member of District staff.¹⁶ Her email to Councillor Muri had the subject line “Keeping of Pigeons Bylaw”. Councillor Forbes responded to Councillor Muri the next day, asking “Is this new, it is dated April?” Councillor Muri responded minutes later, saying only, “Call me if you have a voice”. Again, neither Councillor Muri nor Councillor Forbes indicated that a phone call took place between them in response to this email.

On June 25, 2019, Councillor Forbes sent a text message to Councillor Muri and Councillor Curren. This is the only possibly relevant passage from that message: “I would like to discuss new procedure for bylaw to bring topics/reports to council (Lisa – pigeons?)”. Councillor Curren did not reply and Councillor Muri’s response did not deal at all with the request just quoted.

On July 6, 2019, Councillor Forbes sent three emails to Councillor Muri and Councillor Curren.¹⁷ Her email expressed the view that the 1971 bylaw “is totally outdated and I would request pigeons be specifically not allowed by bylaw in the District of North Vancouver”:

I am sending this to you to let you know my priority request is to pass a new bylaw, outlawing pigeons in the District of North Vancouver. This has been done by other municipalities (I can send examples). Pigeons are not a protected bird species. They can carry over 60 diseases as this article outlines. Who would want this next to

¹⁵ This email, like others between the two councillors, was sent using what appears to be a personal, not District, email account. These emails were produced as part of the District’s responses to freedom of information requests under the *Freedom of Information and Protection of Privacy Act*.

¹⁶ In my view, the contents of this staff record are not relevant here.

¹⁷ There were three emails because Councillor Forbes was forwarding the existing pigeon-related bylaw an article about health concerns related to birds, and this apparently required a series of emails due to the sizes of the attachments. The substantive content of her emails, as it relates to any action by Council, is accurately condensed above.

them or flying over their property or public property and putting children & others health in jeopardy?

I have a pool that pigeons fly over and poop as well as flying and roosting on the rest of my property. This is a health hazard to anyone using my pool etc. I also have droppings on my property (tiles, cement, deck, roof, shed, fence etc.), feathers, and they fly into my glass railings and sometimes my glass sliding doors. They also roost on my roof, shed, fence, and trees that hang over my yard. Please note in this article all the other diseases that can be spread by other animals in contact first with pigeons and then with humans or pets after. Central nervous systems can be affected, breathing etc. Diseases are also carried by the vermin that are attracted by the pigeons and their coup food.

...

Please just pass an actual bylaw outlawing them, not rescinding our current bylaw.

Please consider the above issues.

Her third email also said this:

I will be recusing myself from discussion and voting if you feel that is best (I believe it would be) but if you would like further information such as details of pigeon bylaw from 1970's, details of my actions over the past 2 plus years and lack of enforcement from the DNV bylaw department please let me know.¹⁸

Councillor Forbes also forwarded her three emails to Mayor Little on July 6. He called her shortly after and asked her to stop sending him anything about pigeons and Councillor Forbes complied.¹⁹

On July 8, 2019, Council considered an April 26, 2019 report to Council from Councillor Muri. That report recommended that District staff “be directed to prepare a bylaw for Council’s consideration to amend the Keeping of Pigeons Bylaw (No. 4078) as described in this report.” The report acknowledged that the keeping of pigeons “is an uncommon activity in the District”, but added that there had “been documented cases of domestic pigeons perching, roosting, feeding and straying onto private property and public lands disturbing the peaceful enjoyment of homeowners and residents.” Councillor Muri’s report said this about the problems being encountered in the District:

¹⁸ For clarity, the July 6, 2019 emails were sent before Councillor Forbes recused herself at the July 8, 2019 Council meeting (as she did again on two later occasions).

¹⁹ Councillor Forbes interview. No further communications between Councillor Forbes and the Mayor were evident.

Specific problems include:

- pigeons flying over private property and public lands,
- pigeons roosting and defecating on private property and public lands, and
- pigeon food attracting rats and vermin.

The video recording of the Council meeting disclosed that Councillor Muri stated that her information about these problems with pigeons came from Councillor Forbes. Councillor Muri told me that she also had her own concerns about keeping pigeons in an urban environment, as opposed to in a less developed community, which was the case when the 1971 bylaw was enacted.²⁰

Some councillors spoke to the motion. Councillor Curren indicated she supported the motion because she had concerns about using any animal for sport or entertainment. Councillor Hanson indicated that he would like to have more information before moving forward, including because he did not know how many pigeon owners would be affected and noting that Council had not heard from them.²¹

The report that Councillor Muri tabled before Council recommended that the existing bylaw “be amended to require kept pigeons to be enclosed within a coop or cage at all times”, and not be allowed to “stray, perch, roost, nest, fly or feed outside of a suitable and fully enclosed coop or cage while in the District.” It also recommended that the existing bylaw be amended to include regulations similar to those applicable to the keeping of domestic hens, including the number of pigeons, enclosure standards, pest control and permitting. However, as the video of the Council meeting indicates, and the meeting minutes confirm, at the meeting Councillor Muri clarified that the direction to staff should be to prepare a bylaw prohibiting pigeons altogether, and this was the motion that Council approved.

When Councillor Muri’s motion on the matter was called at the July 8, 2019 Council meeting Councillor Forbes raised her hand and the Mayor recognized her to speak.²² Councillor Forbes is heard on the video recording of that meeting to state “I have a conflict with this so I’m going to step out.” The Mayor told her it is necessary to be more specific about the nature of a conflict, saying: “Councillor Forbes you have to describe your conflict”, adding “I think it is that your immediate neighbour is a keeper of them and so you’re excusing yourself. Is that correct”. Councillor Forbes replied “yes” and the video shows that she then left the Council chamber.

²⁰ Interview with Councillor Muri.

²¹ District staff clarified that there would be an opportunity for input at a later stage.

²² Item 9.5 on the agenda.

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Councillor Muri told me that, after the July 8, 2019 Council resolution approving her motion to direct District staff to prepare a bylaw prohibiting the keeping of pigeons, she had no telephone or other communications with either Councillor Curren, Councillor Forbes or District staff about the bylaw's subject.²³

On October 24, 2019, Carol Walker, the District's Chief Bylaw Officer, wrote to the neighbour, advising that Council had directed staff to prepare a bylaw to prohibit the keeping of pigeons. She enclosed a copy of her October 16, 2019 report to Council, described further below, which had the pigeon prohibition bylaw attached to it. The letter also stated, "As the District is aware that you keep pigeons, you are invited to comment on the proposed action, by contacting the undersigned and/or attending the council meeting."²⁴

On October 28, 2019, Dan Milburn emailed all Council members with a history of bylaw complaints involving pigeon keeping, dating back to 1995.²⁵ At its meeting later that day Council considered Carol Walker's October 16, 2019 report. The report described the existing bylaw and its history. It then described, in very general and brief terms, the proposed bylaw and set out two options. The first was to give three readings to the prohibition bylaw and the second was to "[d]irect staff to take other action".

Council gave the bylaw three readings at that meeting. When Mayor Little called the agenda item, he stated, "Councillor Forbes is declaring a conflict", adding "You have to say the nature of the conflict." Councillor Forbes then said, "I'm declaring a conflict because I have been involved in a situation like this, so I'm stepping aside." The Mayor responded by saying "personal conflict?", to which Councillor Forbes responded "Yup". The Mayor then thanked Councillor Forbes and she was seen to leave the Council chamber.

Council gave the bylaw what is known as final adoption at its November 4, 2019 meeting. When the Mayor called that agenda item for consideration, he stated "We have had a councillor who has recused herself in the past". He then invited Councillor Forbes to speak. She stated, "I voluntarily have recused myself on this item on the agenda, so I am recusing myself again tonight." The Mayor thanked her, and she was seen to leave the Council chamber.

²³ Interview with Councillor Muri.

²⁴ Carol Walker interview; Charlene Grant interview. This was consistent with District practice in such cases. The neighbour responded the next day stating, in essence, that his pigeons were not a problem.

²⁵ This complaint history was requested by Councillor Matthew Bond, and also by Councillor Megan Curren, the former of whom also asked to know how many pigeon permits had been issued (Dan Milburn reported that no permits had been issued).

At the November 18, 2019, Council meeting, Councillor Forbes read this statement aloud:

There has recently been both media and community interest with respect to any role that I may have played with respect to the 1971 bylaw banning the keeping of pigeons in the district. Tonight is the first opportunity I have had to make a public statement to both council and the community. It has always been my intention to act with integrity in the best interest of the District, both as a private citizen and more recently as a councillor. I have followed the advice given to me by staff and by independent legal advice on this matter. Out of an abundance of caution, I recused myself from the council discussions on the bylaw. If I have erred in any way, I assure council and the community that it was done inadvertently and in good faith with my understanding as a new councillor of the conflict of interest rules. I hope with this public statement we can turn the page on this issue and focus on providing the citizens of the district with the good governance that they deserve. Let us all get back to doing what we were elected to do, and I sincerely hope that we can move forward from this and work collaboratively and collegially to do the business the people of the district need us to do.²⁶

Councillor Forbes then asked the Chief Administrative Officer for “additional training” for both newly elected and returning councillors on conflict of interest and freedom of information matters. He responded by noting that training had been provided for candidates before the election, and for Council after the election. He noted that such training can only be general in nature and acknowledged that it might be helpful for all of Council to understand in more detail how the various pieces of legislation work.

This is a convenient summary of events surrounding the bylaw’s enactment:

- Councillor Forbes expressed concerns about the keeping of birds, and about her neighbour’s pigeons, going back at least to 2017. This included making submissions to the Council of the day.
- She brought her concerns to the attention of District bylaw enforcement staff and communicated with them on many occasions through to the end of 2018.
- After her election as a councillor in October 2018, Councillor Forbes communicated and met with the District’s General Manager, Planning, Properties and Permits, about her concerns regarding pigeons. On November 2, 2018, she asked him about amendments to the 1971 bylaw and was told that Council direction would be needed to initiate any changes.
- In early April 2019, Councillor Muri contacted Dan Milburn about Councillor Forbes’s concerns and in an April 4, 2019 email he brought Councillor Muri up to speed on the background. On April 24, 2019 she emailed him about “repeal of the pigeon bylaw”.

²⁶ Each of the quotes from the District’s video recordings of Council meetings are my own transcription.

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On the same day, Councillor Muri forwarded Dan Milburn's email of that date to Councillor Forbes.

- Over the course of April and May 2019, Dan Milburn assisted Councillor Muri in writing a report to Council proposing that Council amend the 1971 bylaw. On May 17, 2019, Councillor Muri told Dan Milburn that she had concerns with the latest version of the report. On May 17, 2019, as well, Councillor Muri asked Councillor Forbes to call her. Neither can recall if a phone call took place in response to that request.
- On June 21, 2019, Councillor Muri forwarded to Councillor Forbes an email from District staff about the pigeon bylaw. Neither Councillor Muri nor Councillor Forbes indicated that a phone call took place in response to this email. They both noted that this was about nine months ago, and they speak to each other often about a range of municipal and community matters.
- On June 25, 2019, Councillor Forbes texted Councillor Muri and Councillor Curren about, among other things, processes for proposing matters to Council, with a question to Councillor Muri "(Lisa – pigeons?)".
- On July 6, 2019, Councillor Forbes emailed the two councillors again, sending material about health hazards of birds and, among other things, saying "Please just pass an actual bylaw outlawing them, not rescinding our current bylaw." Her email also clearly stated that she would be recusing herself from voting on the matter.
- On July 8, 2019, Council considered Councillor Muri's report to Council and Councillor Forbes recused herself from the matter, stating, "I have a conflict with this so I'm going to step out." She then left the meeting. Council then resolved to direct staff to prepare a bylaw prohibiting the keeping of pigeons in the District.
- On October 28, 2019, Council gave the prohibition bylaw three readings. When that item arose on the agenda Councillor Forbes said, "I'm declaring a conflict because I have been involved in a situation like this, so I'm stepping aside." The Mayor responded by saying "personal conflict?" and Councillor Forbes agreed. She then left the meeting.
- On November 4, 2019, the bylaw was given final adoption. Councillor Forbes stated, "I voluntarily have recused myself on this item on the agenda, so I am recusing myself again tonight." Councillor Forbes then left the meeting.
- At the November 18, 2019, Council meeting Councillor Forbes read a statement, which noted that she had followed staff advice and independent legal advice and had recused herself out of an abundance of caution from the Council discussions on the bylaw. She stated that if she made any error it was inadvertent and in good faith, with her understanding as a new councillor of the conflict of interest rules.

These facts emerge from this review:

- Before her election in 2018, Betty Forbes expressed concern about the keeping of pigeons. She expressed concern about her neighbour's pigeons, but she also expressed concern about the health risks of pigeons and other birds in urban settings generally.

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- After the 2018 election, Councillor Forbes continued to express these concerns, including in dealings with District staff.
- In the spring of 2019, Councillor Forbes communicated her concerns to Councillor Muri and Councillor Curren. Councillor Muri also had own concerns about keeping pigeons in the District’s urban environment and Councillor Curren had concerns about using any animal for sport or entertainment.
- Councillor Forbes asked both Councillor Curren and Councillor Muri to support a bylaw prohibiting the keeping of pigeons. This request was explicitly stated in her July 6, 2019 email to them.
- In that email, Councillor Forbes told Councillor Muri and Councillor Curren that she would be recusing herself from the matter. She did so at the July 8, 2019 Council meeting, at which Council considered Council member’s report. Councillor Forbes again recused herself when Council gave three readings to the bylaw at the October 28, 2019 meeting, and again when Council gave the bylaw final adoption at its November 4, 2019 meeting.
- At the November 18, 2019 Council meeting, Councillor Forbes read a statement, in which she stated that she had recused herself “out of an abundance of caution”, and that any error was inadvertent and in good faith, “with my understanding as a new councillor of the conflict of interest rules.”
- It is clear Councillor Forbes communicated with District staff about her concerns with pigeons, including her neighbour’s pigeons, after the 2018 election but before her July 8, 2019 recusal from the matter. It is also clear that, before her first recusal, she communicated with Councillor Muri and with Councillor Curren about this issue, including by asking them to support a prohibition on keeping pigeons.
- There is no evidence before me to suggest that, after her July 8, 2019 recusal, Councillor Forbes communicated with District staff or Council members about the bylaw.

CONFLICT OF INTEREST OVERVIEW

Legal & Policy Context

British Columbia's *Community Charter* contains a range of provisions that address conflicts of interest on the part of elected local government officials.²⁷ It provides that a conflict of interest can take the form of a direct or indirect pecuniary interest in a matter, or another interest in the matter that constitutes a conflict of interest.²⁸ Council members who consider that they are in a conflict of interest on a matter must declare their conflict.²⁹

A council member who has "a direct or indirect pecuniary interest in a matter" is prohibited from attending, or participating in, any meeting that considers or discusses the matter, voting on any question related to that matter, and attempting in any way—whether before, during or after a meeting—to influence the voting on any question relating to the matter.³⁰ These restrictions only apply where there is "a direct or indirect pecuniary interest" in the matter—they do *not* apply where a council member has "another interest in the matter that constitutes a conflict of interest".

The penalty for contravening any of the restrictions is disqualification from holding office "unless the contravention was done inadvertently or because of an error in judgement made in good faith."³¹

The District's Corporate Policy Manual contains a Code of Ethics for council members.³² It refers to the goal of "effective, responsible and responsive government" and states the following as its goals in guiding Council members:

- public business is conducted with integrity, in a fair, honest and open manner,
- members respect one another, the public and staff, and recognize the unique role and contribution each person has in making the District a better place to work and live,
- their conduct in the performance of their duties and responsibilities with District be above reproach, and
- the decision-making processes are accessible, participatory, understandable, timely and just, in addition to the requirements of applicable enactments.³³

²⁷ These are found in Division 6, Part 4, of the *Community Charter*.

²⁸ Section 100(2).

²⁹ Section 100(2).

³⁰ Section 101(2). Section 101(1) states that these restrictions apply even if the council member has not declared the conflict as required, but only where the member has a direct or indirect pecuniary interest.

³¹ The disqualification under section 108.1 becomes effective if the Supreme Court of British Columbia declares the council member disqualified, upon application by 10 or more electors or the municipality.

³² The code also applies to anyone Council appoints to a board, committee, commission, panel or task force. The code is section 1-0530-11 of the Corporate Policy Manual. (was adopted in 2000 and was last amended in 2015.)

³³ Code, page 1.

The Code of Ethics imposes the following specific duties on Council members:

- All “members will conduct their business with integrity, in a fair, honest and open manner”,
- Members must “comply with all applicable federal, provincial, and local laws in the performance of their public duties”, including the *Community Charter*,
- The “conduct of members in the performance of their duties and responsibilities with the District must be fair, open and honest”,
- All members must “perform their duties in accordance with the policies and procedures and rules of order established” by council,
- Council members must “base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations”,
- Members must “publicly share substantial new information that is relevant to a matter under consideration by the Council or a committee, which they may have received from sources outside of the public decision-making process”,
- In relation to conflicts of interest, council members must be “aware of and act in accordance with Division 6 [of Part 4] of the *Community Charter*, and shall fulfil part (c) of their Oath of Office”,
- Last, members of Council are required to “respect and adhere to the council-Chief Administrative Officer structure of government”, under which “Council determines the policies of the District with the advice, information and analysis provided by the public, committees, and District staff”.³⁴

The Code of Ethics states that it is to be provided to candidates for election and that Council members are requested to sign the statement appended to it, “affirming they have read and understood” the Code of Ethics.

The Code of Ethics is stated to be “self-enforcing”, with councillors being responsible for being “thoroughly familiar” with its terms and having the “primary responsibility to assure that these ethical standards are understood and met”.³⁵ The Code of Ethics is not, however, entirely “self-enforcing”, as it explicitly states that “Council may impose sanctions on members whose conduct does not comply with the District’s ethical standards, such as a motion of censure.”³⁶

As noted earlier, the oath of office sworn by Council members addresses conflicts of interest. Each swears that the member “will faithfully perform the duties of my office and will not allow any private interest to influence my conduct in public matters”. Each member also swears

³⁴ Code, pages 2 and 3.

³⁵ The Code of Ethics also provides for annual review by Council, with updating as considered necessary.

³⁶ In the case of committee members who are not members of Council, the Council may also rescind the member’s appointment.

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that, “as required by the *Community Charter*, I will disclose any direct or indirect pecuniary interest I have in a matter and will not participate in the discussion of the matter and will not vote in respect of the matter.”

It is useful to underscore at this point that the District’s Code of Ethics clearly states that each Council member has the “primary responsibility” to understand and comply with its standards of ethical conduct, which incorporate the conflict of interest provisions in the *Community Charter* and the oath of office sworn by council members. Again, members of Council are, like all citizens, presumed to know the law, including the *Community Charter* rules on conflict of interest.

Council’s Awareness of the Rules on Conflicts of Interest

The following discussion outlines the conflict of interest training made available to election candidates and to Council member. This is necessary because, as discussed below, some Council members felt that more information and training about conflicts of interest would be desirable (although some believed that enough information had been made available).

In advance of the 2018 election, District staff held a workshop for council candidates. This workshop included conflict of interest matters. Soon after the 2018 election a series of workshops was held for Council.³⁷ On November 6, 2018, the District’s Municipal Solicitor, Richard Parr, presented a series of slides about conflict of interest issues. Councillor Forbes and all other Council members except Councillor Muri attended this session.

The legal section of the November 6, 2018 workshop slides covered the following topics: having an “open mind” (“being amenable to persuasion”), avoiding the “perception that one is motivated or influenced by an interest other than public interest” and “statutory conduct rules” that “provide a procedural framework for avoiding such perceptions”. The discussion also covered “what is a conflict”, the “procedure for recusing oneself”, “consequences of participating when in conflict”, and “statutory exceptions”. Last, the discussion covered: “disclosure requirements”, “gifts”, “inside/outside influence”, “use of insider information”, and “disqualification”.

Review of the video recording of the workshop discloses that the discussion of the conflict of interest rules consumed about 20 minutes, with the Municipal Solicitor leading Council through the topics just mentioned. Points about conflict of interest matters were also made by the Mayor, the Chief Administrative Officer, the General Manager of Corporate Services, Charlene Grant, and the Clerk, James Gordon. The following summarizes, in general terms, the main points made to Council as part of the presentation and related discussion:

³⁷ There were seven workshops in total, covering a broad range of governance matters for the information of Council members.

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- A common definition of the term conflict of interest was provided,
- The *Community Charter* provisions around pecuniary and non-pecuniary conflicts of interest were summarized,
- Examples of situations in which a Council member might be in a direct pecuniary conflict of interest, an indirect pecuniary conflict of interest, or non-pecuniary conflict of interest were given, and there was discussion of the examples,
- The consequences of participating in a matter, or influencing or attempting to influence it, when in a pecuniary (as opposed to non-pecuniary conflict of interest) were discussed,
- Exceptions to the *Community Charter* rules were outlined,
- The Chief Administrative Officer told Council members that, as a rule of thumb, if they ever think that they might have a conflict, they should contact him or the General Manager of Corporate Services (the General Manager of Corporate Services emphasized this comment),
- The Chief Administrative Officer also told Council that if a councillor clearly was in a conflict of interest, staff would recommend that the councillor declare the conflict,
- In saying this, the Chief Administrative Officer noted again that councillors can obtain independent legal advice if there is any question in their mind about the matter,
- Mayor Little reiterated the comment that independent legal advice would be made available to Council members,
- The Chief Administrative Officer underscored for Council members that it is their responsibility to decide what to do, while suggesting that often the public perception favours recusal (the Municipal Solicitor echoed this comment and again noted that independent legal advice is available),
- Mayor Little commented that once a Council member has recused himself or herself, the member may not participate in the matter, including by having discussions with other counsellors outside a meeting,
- The Municipal Solicitor summarized the consequences of participating, influencing or attempting to influence a matter when in a pecuniary conflict, subject to the defence of error in good faith, noting that if a Council member has relied on a lawyer's opinion that there is no conflict, this may—clearly, depending on the circumstances—be of assistance in a disqualification proceeding,
- As already noted, during the discussion, the Mayor, Chief Administrative Officer and others offered examples of circumstances in which a Council member might or might not have a conflict of interest. (One example involved the distinction between a Council member who is a realtor and votes on a matter directly affecting her or his pecuniary interest, and a Council member whose spouse is a realtor, with the Council member voting on a matter that affects his or her spouse's pecuniary interest. Another example involved a Council member is a member of a private club whose interests are engaged in a matter before Council.)

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In addition to the information and discussion at the Council orientation session, Council members were given a copy of the District's Code of Ethics and asked to sign it.³⁸ They also each swore the oath of office.

On January 14, 2019, an outside lawyer for the District attended the Council meeting and gave a general overview of legal issues for councillors' benefit. Some of those present recalled that conflict of interest rules had been discussed, although the focus was on other legal issues.³⁹

In addition to the in-person training described above, as the following discussion discloses, the Chief Administrative Officer, and other senior staff, are available to informally advise members of Council in this area. They also facilitate the provision of independent legal advice, as provided in District policy, where a member of Council wishes to obtain advice. These support services are valuable resources for Council.

Conflict of Interest Support for Councillor Forbes

Although I make no legal findings about Councillor Forbes's actions, it is useful to offer an outline of the information and support available to her conflict of interest in relation to the bylaw. This helps inform assessment of the broader question, addressed below, about the information and support for all councillors in conflict of interest matters.

Before the July 8, 2019, meeting, Councillor Forbes spoke to District staff about her possibly being in a conflict of interest. She spoke to the Chief Administrative Officer, Clerk and Mayor.⁴⁰ Councillor Forbes told me that she found what she was told about whether she was in a legal conflict of interest to be "confusing".⁴¹ Despite this, she decided to go with her "gut feeling" and step away, owing to her personal experience with the issue.⁴²

The Chief Administrative Officer spoke with Councillor Forbes more than once in the summer and autumn of 2019 about whether she was in a conflict of interest. This was consistent with his long-standing practice of supporting Council members by providing informal, non-legal, advice. He told Councillor Forbes that he is not a lawyer. He expressed the view that, while

³⁸ Councillor Forbes told me that she remembered signing a piece of paper but could not definitively say whether it was the Code of Ethics. She also told me, however, that she is sure that she would have received it.

³⁹ Councillor Muri interview. Councillor Forbes interview.

⁴⁰ Interviews of Councillor Forbes, David Stuart and Jim Gordon. Jim Gordon, the Clerk, stated that he had given Councillor Forbes information about how to obtain legal advice, referring her to Charlene Grant, the General Manager of Corporate Services.

⁴¹ Councillor Forbes interview. She also told me that before either the October 28, 2019 or November 4, 2019 Council meeting, a member of staff approached her and told her that she was not in a conflict of interest and did not need to recuse herself. She told me that she nonetheless did so, because it was the right thing to do.

⁴² Councillor Forbes interview. As discussed below, Councillor Forbes asked District staff how to obtain independent legal advice on the issue and she did ultimately obtain that advice.

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there might be reasons for her not being a conflict, the optics of her being involved would not be good. He told her that she could get independent legal advice under the District's policy.⁴³

Richard Parr, the Municipal Solicitor, received a call on July 9 or 10, 2019 from Councillor Muri about conflict of interest. He then spoke to Charlene Grant, the General Manager of Corporate Services, about obtaining legal advice for Councillor Forbes.⁴⁴ On July 10, 2019, he emailed Councillor Forbes, giving her the name and phone number for a lawyer who could advise her “on the conflict issue.” Early that afternoon, Charlene Grant emailed both Richard Parr and Councillor Forbes, alluding to the latter’s conversations with staff about possible conflict of interest: “Possibly, you no longer feel the need for outside counsel, but I wanted to reiterate that we can provide this if you do. Please don’t hesitate to call if you have further questions I can assist with.”

Councillor Forbes responded two weeks later, on July 24, 2019, stating that she required “some further clarification on this”, adding that she had not yet called the lawyer. She said, “Please let me know if I should call him or arrange to meet with you and/or Jim to discuss some details of recusing myself.” Charlene Grant responded that day, confirming that Councillor Forbes was “entitled to be reimbursed for independent legal advice regarding potential conflict of interest per our Corporate Policy 6-2400-2” and suggesting that Councillor Forbes familiarize herself with the policy before contacting the lawyer. Her email closed by saying, “Of course, you can choose to recuse yourself independently of this.”

Councillor Forbes eventually obtained legal advice from the law firm that District staff had emailed her about on July 10, 2019. She received that advice in a September 6, 2019 letter from a lawyer at that firm.⁴⁵ Councillor Forbes told me that this advice also confused her, so she called the lawyer who wrote the letter (she did not say when that call was made). The lawyer was, however, on parental leave, so Councillor Forbes did not discuss it with a lawyer.⁴⁶

Support for Councillors on Conflict of Interest Matters

Each elected official is, again, responsible for knowing the legal rules on conflict of interest. Application of those rules to real-world situations can be complex, but compliance in every case remains the duty of elected officials, not municipal staff or lawyers.

Although there can be no getting around this duty, municipalities have every incentive to support elected officials in understanding the rules. This is so for reasons of good governance,

⁴³ David Stuart interview.

⁴⁴ Richard Parr interview.

⁴⁵ I have not seen or asked to see that letter, as this was not necessary for my review.

⁴⁶ Councillor Forbes interview.

but also because it can protect a municipality from having its actions invalidated because an elected official voted on, or participated in, a matter while in an undeclared conflict of interest. It thus helps avoid litigation costs and reduces the risk of unnecessary public controversy over failure to comply with the rules.

These considerations, and my discussions with various Council members and District staff, lead me to make recommendations below to further enhance conflict of interest training and support for Council members.

Adoption of the recommendations will involve additional work for Council and staff alike—and there are many pressing issues for both—but the adage about an ounce of prevention should be kept in mind when considering whether to follow them.

Enhancing the District's Code of Ethics for councillors

In my view, the District's Code of Ethics could set clearer and more specific rules on conflict of interest matters. Although the Code of Ethics has valuable things to say about ethics, discussions with Council members and staff revealed a desire for these to be reviewed against case law and public expectations.⁴⁷

The Code of Ethics' guidance is undoubtedly high-level. On conflict of interest, it merely states that Council members must "be aware of and act in accordance with Division 6 of the *Community Charter* and shall fulfil part (c) of their *Oath of Office*."⁴⁸ As another example, it deals with accepting benefits from anyone who has, or wishes to have, "dealings with the District", but does not offer more guidance for councillors.⁴⁹ It prohibits councillors from accepting "gifts or favours"—including "money, property, position or favour of any kind—while permitting them to accept "appropriate refreshments or meals", but without clarifying what this means.

It is neither necessary nor appropriate to offer specific amendments to the Code of Ethics. Rather, the District should assess whether the Code of Ethics offers sufficiently clear and comprehensive—and reasonable and practical—rules for councillors to follow in meeting

⁴⁷ The Code of Ethics was last revised in 2015 and the relevant part of the Corporate Policy Manual was last amended in

⁴⁸ Paragraph 8.

⁴⁹ Paragraph 9: "Members shall not accept any money, property, position or favour of any kind whether to be received at the present or in the future, from a person having, or seeking to have dealings with the District, save for appropriate refreshments or meals, except where such a gift or favour is authorized by law, or where such gifts or favours are received as an incident of the protocol, social obligation or common business hospitality that accompany the duties and responsibilities of the member. A member may participate in District programs open to the public and may purchase District property or goods offered for public sale."

public expectations. A survey of comparable documents established by other British Columbia municipalities could be of assistance in doing this.⁵⁰

It is convenient to note here that the District should consider including in the Code of Ethics—or the District’s Corporate Policy Manual—a duty for Council members who have concluded that they are in a conflict of interest to notify the Chief Administrative Officer and Mayor of this fact, certainly before any Council consideration of the matter in question.⁵¹

Recommendation 1: The District should assess its Code of Ethics in the context of current case law and public expectations, to ensure that it addresses in sufficient detail the various aspects of conflict of interest rules and other ethical principles.

Enhancing conflict of interest materials for councillors

In public administration it is always possible to learn from experience and find ways to improve how things are done. This is such a case, so I make recommendations below for enhancing the information and training made available to members of Council on conflict of interest matters. This is not to suggest that the existing approach, exemplified in the training and support described above, is unambiguously lacking. In fact, while some Council members felt that more should be done, others—including some who were elected for the first time in 2018—felt that the support and information they were given was good. Some District staff also believed that support on conflict of interest was reasonable, while acknowledging expressing openness to suggestions for enhancements in this area.

In my view, the November 6, 2018 workshop materials on conflict of interest reflect the generality inherent in any discussion of legal rules in the absence of specific facts. At the same time, the associated discussion of those rules helpfully offered more specific guidance through discussion of hypothetical scenarios verbally offered by the Mayor and the Chief Administrative Officer. While this scenario-based discussion was helpful, in my view the conflict of interest training for Council members could be enriched by greater detail in the written materials and greater use of case studies or scenarios. Two related recommendations are therefore made.

The first relates to written materials for Council members. The District should consider expanding its slide presentation for workshops by including points made in court decisions on conflict of interest. The presentation should also, in my view, include scenarios—some of

⁵⁰ For example, the City of Vancouver’s Code of Conduct for council members usefully elaborates on specific components of the conflict of interest rules. The District could consider this approach, while always making it clear that the law prevails over the Code of Ethics. The City of Vancouver Code of Conduct also contains clear rules on gifts and similar benefits, setting monetary limits, rules for valuation, and so on.

⁵¹ As noted below, the District should consider requiring a councillor who believes she or he may be in a conflict of interest to consult with the Chief Administrative Officer.

Review of Adoption of District of North Vancouver Bylaw 8402, 2019

which could be based on decided cases—for discussion. These could address all types of conflict, direct and indirect pecuniary and other conflicts.

The District should also consider creating a reasonably fulsome guide for councillors on conflict of interest, which could include principles derived from cases, and scenarios discussing situations of conflict that, experience shows, are most likely to arise. This guide could include a tip sheet or frequently-asked-questions summary for easy reference.

It is clear Council members know that senior District staff are always available to provide general, non-legal, advice where they believe that they might be in a conflict of interest.⁵² It is equally clear that Council members know that independent legal advice can be made available to them under District policy. Information about these support services should, however, be included in the recommended enhanced written materials, to ensure councillors are aware of this valuable resource. The District's materials should, however, should underscore that councillors are responsible for complying with the law, that the materials do not override the law, and that councillors should get advice where there is doubt (while also noting the availability of staff and legal advice).

Recommendation 2: The District should consider enhancing its conflict of interest materials for both Council members and election candidates. This could take the form of enhanced workshop presentation materials, with more detailed discussion points and scenarios (perhaps drawing on the facts of decided cases), to help illustrate the practical application of the rules. The District should also consider providing Council members with a guidance document on conflict of interest, which could include a tip sheet or frequently-asked-questions summary for easy reference.

Ongoing education about conflict of interest matters

Councillors acknowledged that staff are always available to advise on specific conflict of interest matters. It is also apparent that individual councillors sometimes discuss specific conflict of interest issues with their peers, and sometimes the rules are discussed in general terms at Council workshops. Nonetheless, some councillors felt that it would be useful to have a more formalized program, involving discussion at periodic Council workshops or in free-standing sessions on conflict of interest.

⁵² The availability of staff to advise councillors is affirmed in, for example, the District's Corporate Policy Manual, policy 6-2400-2, which deals with reimbursement of the costs of independent legal advice (which is discussed below). Paragraph 1 notes that "As an optional preliminary step, a member of council considering a potential conflict of interest may wish to discuss the circumstances with either the Chief Administrative Officer or the Municipal Clerk for an initial opinion on the matter." (Again, see below for discussion of whether a councillor should be required to reach out to the Chief Administrative Officer.)

This is also my view: ongoing education is undoubtedly desirable in this area, to help secure and maintain public trust in the propriety of their elected representatives' actions and thus public institutions. A key recommendation is to build on the scenario-based orientation approach recommended above. This could take the form of discussion of scenarios and recent legal developments at Council workshops, or at free-standing learning sessions, possibly supplemented by periodic email reminders about key conflict of interest considerations. The District should consider refreshing Council's awareness in this area at least mid-term for each Council, and preferably annually.

Recommendation 3: The District should consider enhancing its conflict of interest support for Council members by periodically conducting scenario-based discussions of the conflict of interest rules in Council workshops or free-standing learning sessions. The District should also consider refreshing Council's awareness through periodic email reminders attaching the written materials recommended above.

Independent legal advice on conflict of interest

Several individuals, both Council members and District staff, commented on the District's policy on obtaining independent legal advice for Council members about potential conflicts of interest.

This policy ("ILA policy")⁵³ permits a Council member to engage a lawyer to provide independent legal advice about a potential conflict of interest.⁵⁴ The policy states that advice obtained by a Council member is the member's "property", but it also says that, if the advice would assist the District in defending any legal action, it is "expected the council member will make every effort to provide the District's solicitor with the independent legal advice and any supporting information."⁵⁵

Those who expressed a view on this issue recognized the importance of ensuring that councillors have independent legal advice and can obtain it readily. However, some thought that the District's interests are sufficiently engaged in such cases that the District should have access to a member's legal advice even where there is no litigation against it (and especially when there is). Some also felt that the District should be able to ensure that the information made available to advising lawyers is accurate and complete, since facts are all-important in giving legal advice.

⁵³ This is District policy 6-2400-2, found in the Corporate Policy Manual.

⁵⁴ The member is entitled to reimbursement of 75% of the cost of obtaining that advice, and the annual aggregate amount available for all Council members is \$5,000.00 (with the aggregate being subject to increase by Council).

⁵⁵ ILA policy, paragraph 5 of the procedure section.

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The competing interests are obvious here. On the one hand, councillors have an interest in obtaining legal advice independent of the District and in preserving the privilege they hold over that advice. On the other hand, if the District knows what advice has been given, and on what factual basis, *before* Council proceeds with a matter in which a councillor has a potentially fatal conflict, this helps ensure that Council collectively acts on a proper footing, protects the interests of the District and avoids unnecessary litigation costs and public controversy.

The District should consider amending amend its ILA policy to require councillors to disclose the factual foundation for legal advice to the Chief Administrative Officer, and discuss it with the Chief Administrative Officer, before the advice sought. That information would be provided to the Chief Administrative Officer on a confidential basis.

The District also should consider requiring councillors to provide the Chief Administrative Officer, and the Municipal Solicitor, with a copy of the legal advice they obtain, again on a confidential basis. The Chief Administrative Officer or Municipal Solicitor could be authorized to inform Council about the lawyer's conclusion, where necessary and on a confidential basis.

Some might find this objectionable, since the advice would be privileged to the councillor's benefit and Canadian law gives strong protection to privilege.⁵⁶ On the other hand, the District's interests are undoubtedly at stake in many if not all cases where a conflict of interest might invalidate its actions. The following recommendations therefore attempt to strike an appropriate balance between the interests of councillors and the District. As an alternative, the District could amend the policy to strongly encourage councillors to take both of the two steps just described.

Recommendation 4: The District should consider amending its independent legal advice policy to require councillors to share the factual foundation for the advice in writing with the Chief Administrative Officer, and discuss it with the Chief Administrative Officer, before the advice is sought. (An alternative would be to strongly encourage councillors to share this information with the District, with Council being informed where a councillor declines to do so.)

⁵⁶ One concern might be whether disclosure to the District would be a waiver of the privilege for all purposes. There could be practical workarounds to this, which is one reason for the recommendation that the Municipal Solicitor be consulted on these suggestions.

Recommendation 5: The District should consider amending its independent legal advice policy to require councillors to share their independent legal advice about a conflict of interest matter with the Chief Administrative Officer and Municipal Solicitor, in confidence, who could inform Council about the lawyer's conclusion, where necessary and on a confidential basis. (An alternative would be to strongly encourage councillors to share the independent legal advice with the District, with Council being informed where a councillor declines to do so.)

Review of the ILA indemnity cap

The District's ILA policy was last amended a decade ago, setting the limit for outside legal advice at \$5,000.00 annually for all councillors in the aggregate. It is reasonable to expect—certainly, to hope—that outside legal advice is not needed often. This amount should nonetheless be reviewed, to account for inflation over the past ten years and to ensure that Council as a whole is not at risk because legal advice is not obtained when it should be.

Recommendation 6: Because the District's independent legal advice policy's cap on aggregate amount available to all councillors for independent legal advice has not changed since 2010, the District should consider amending that policy to increase the annual aggregate amount.

The present ILA policy caps the District's contribution to advice at 75% of the total cost (presumably the GST and PST, which are both paid on legal fees). The District should consider whether this partial indemnity might discourage a councillor from obtaining legal advice due to the 25% share they must pay. Because the District's own interests are, realistically, engaged where there may be a conflict, it should consider providing full indemnity where staff advice cannot resolve uncertainty and a councillor needs legal advice.

Recommendation 7: The District should consider amending its independent legal advice policy to remove the existing 75% District contribution level and replace it with a full indemnity clause.

Review of the District's indemnification policy

A related issue that came to light during the review is the District's indemnification policy for councillors who are caught up in litigation connected with their work as councillors. At present, District policy only indemnifies councillors where the litigation is for damages. Many legal proceedings do not involve damage claims. The District should consider reviewing this policy, with a view to possibly broadening its application, so as to better protect councillors who have acted in good faith and the District's own interests.

Recommendation 8: The District should consider reviewing its indemnification policy for litigation in which councillors are named as parties, to determine whether that policy fully accounts for the various legal risks, and therefore costs, that councillors might face in their work in good faith.

Enhancing freedom of information and privacy materials and support

Although it is not related to conflict of interest, it is appropriate to address freedom of information compliance here, since it is related to other issues discussed in this report.

Some of the records that the District disclosed in response to freedom of information requests it received under the *Freedom of Information and Protection of Privacy Act* were emails sent and received by councillors who had used personal email accounts. These records had been produced to the District in response to its internal request for responsive records. Some Council members told me they had been surprised that emails or text messages using their personal email accounts or personal mobile phones might be amendable to freedom of information requests, on the basis that they are the District's custody or control for the request purposes.⁵⁷ Some District staff thought, for this reason alone, that Council might benefit from further training and support on freedom of information and privacy matters under the legislation.

My conclusion is that the District could enhance its support for Council members—notably newly elected councillors who have no experience in these matters—by creating brief guidance materials on key freedom of information and privacy concepts. A tip sheet that could be given to Council members would, for example, help them understand their (and the District's) duties under the *Freedom of Information and Protection of Privacy Act*. A prominent example of desirable guidance is that councillors should not use personal email for District business and, if they do, those emails will be within the District's control for freedom of information purposes, as this situation illustrates.

The District also should consider enhancing its election candidate and Council workshop presentations in the area of freedom of information and privacy materials.

Recommendation 9: The District should enhance its freedom of information and privacy training for both Council members and election candidates by creating a guide or tip sheet about key issues in these two areas. Workshop materials and discussion should also cover privacy and freedom of information matters.

⁵⁷ The *Freedom of Information and Protection of Privacy Act* provides that a request may be made for access to any record "in the custody or under the control" of a public body such as the District. If the threshold of custody or control is passed, the record must be disclosed in response to the request, subject to application of the access exemptions contained in the legislation.

ROLES OF COUNCIL, COUNCILLORS & STAFF

This part of the report considers how proposals for Council action originate and are brought to Council's attention for consideration.

Present Approach for Reports to Council

The bylaw that prompted this review was brought forward for adoption by one councillor, Councillor Muri. Her report to council, and the draft bylaw, were both prepared with the input and drafting support of District staff.⁵⁸ This was undoubtedly permitted under the District's *Council Procedure Bylaw, Bylaw 7414* ("procedure bylaw"). This was also consistent with District practice over roughly the last decade.

Section 16 of the procedure bylaw provides that a councillor may submit to the Clerk a report to council, which must be in the Council report format, regarding "an item to be included on a future Council meeting agenda". The Clerk is then *required* to place such reports on the next Council agenda. Section 16 requires such reports to "contain relevant explanatory information and background" and to "make a clear recommendation for Council action."⁵⁹

In addition, District policy provides as follows:

Upon request, staff will provide information to Council members or information and reports for Council or Executive Committee meetings when preparation does not require substantial staff time or costs. However, if it requires substantial staff time or costs, an authorizing Council resolution is required.⁶⁰

This approach gives councillors considerable freedom to develop their own policy proposals, which will reflect their own skills, experience and policy positions. As noted earlier, councillors' different perspectives can enrich Council's decisions about what is in the public interest, thus improving its policy and legislative actions. At the same time, Council has many demands on its time and energy and a system that gives individual councillors broad leeway to bring forward reports, and seek Council's attention, could clutter a Council's agenda and impede its ability to effectively pursue a coherent policy agenda.

The present approach also creates the risk that Council will consider proposals that would have benefitted from the expert input of staff which could have identified legal, technical or

⁵⁸ This is not unheard of by any means, but it has resource and policy implications, as discussed below.

⁵⁹ This provision obviously does not stop Council from resolving *not* to proceed with a councillor's recommendation. It might do so because the report contains insufficient explanation or background, or because Council decides for policy or technical reasons not to support the recommendation.

⁶⁰ Policy 1-0530-4, Provision of Information to Council.

fiscal challenges with, or barriers to, a councillor's proposal.⁶¹ Any municipal council requires the advice and support of its expert staff to make good policy and legislative choices. A process that risks Council making a decision without the considered advice of staff, or without a sound evidentiary foundation and well-considered policy and legal analysis, is therefore not optimal.

The District's present approach could be modified to support councillors in advancing their policy proposals while protecting the community's interest in Council pursuing a coherent policy vision, and proceeding with proposals that benefit from fulsome evidentiary, policy analysis and legal analysis by District staff. This balance can be struck through amendments along the lines of the approach outlined below, noting that a good many of those interviewed, both Council members and senior staff, supported sensible changes in this area.⁶² It should also be noted that the proposed changes would be consistent with the District's Code of Ethics, which provides as follows:

13. Policy Role of Members

Members shall respect and adhere to the council-Chief Administrative Officer structure of government as practiced in the District of North Vancouver. In this structure, the Council determines the policies of the District with the advice, information and analysis provided by the public, committees, and District staff.

Modified Approach for Reports to Council

The first step in a new process would be to enable staff input early in the process. If a councillor wished to propose a new or amended bylaw, policy, program or activity,⁶³ the councillor would prepare a brief proposal outline and discuss it with the appropriate District general manager.⁶⁴ The general manager would inform the Chief Administrative Officer, who could discuss it with the councillor where desirable. These discussions would support councillors—and Council—by assessing at an early stage whether proposals are within the District's legal authority and whether they are feasible given the District's fiscal and

⁶¹ This case offers an example of this challenge. At Council's October 28, 2019 consideration of the bylaw, Councillor Curren asked staff about the approach other local governments have taken to the keeping of pigeons. The General Manager, Planning, Properties and Permits, responded that staff had not done a "full scan", though he was able to offer general observations about how other local governments approach animal-related issues. Councillor Curren indicated that she would have preferred to have more information about the issue.

⁶² If the procedure bylaw is amended to adopt this recommendation, changes to District policy 1-0530-10, Staff Reports to Council, would likely also be necessary.

⁶³ One councillor thought that if a councillor's proposal was within the existing framework of bylaws, policies, and operations, the councillor should be able to initiate a proposal without following a process such as that proposed above.

⁶⁴ The District should consider whether this step should be mandatory for councillors—there is a very strong argument that it should be—or whether they are merely encouraged to follow it. A requirement that councillors take this first step would not (as noted below) stop them from seeking to add items to the Council agenda and it would considerably tighten up processes.

operational resources. These discussions would, in other words, lead to early identification of proposals that are not viable from legal, technical or fiscal perspectives. It would be up to the councillor to decide whether to place the proposal on the Council agenda despite doubts about its viability.⁶⁵

If a proposal appears viable, the sponsoring councillor could place a brief yet sufficiently informative report on the Council agenda.⁶⁶ If Council supports the proposal it would direct staff to research it and bring forward a Council report, analyzing the policy and technical issues and offering options to Council. Council would direct staff to implement the option Council favours (e.g., directing staff to prepare a bylaw or bylaw amendment).

Staff would not write reports to Council for individual councillors. They would prepare reports only where Council has so directed. One benefit of this would be to minimize the risk of a perception among councillors, or the public, that staff are, by assisting individual councillors with their policy proposals, aligned with the councillors' policy views. This would, in other words, buttress the principle of public service neutrality.⁶⁷

In closing, it should be emphasized that such a process would not preclude councillors from seeking to add items to a Council meeting agenda, noting the process for agenda items under section 18 of the procedure bylaw.

Recommendation 10: The District should consider amending its procedure bylaw and relevant policies to enhance its processes for bringing matters to Council, as follows:

- (e) A councillor who wishes to propose a new bylaw, policy, program or activity (or an amendment), will discuss an outline of the proposal with the appropriate general manager, and the Chief Administrative Officer will be kept informed and may participate in that discussion,***
- (f) If the proposal appears to be viable from a legal, technical and fiscal perspective, the councillor may place a report to Council on the agenda,***
- (g) If Council supports the proposal, it will direct staff to study the proposal in more depth and bring forward options for action, in a fully considered staff report to Council,***

⁶⁵ Of course, Council would almost certainly ask staff for their advice in these cases. A variation on this approach might be to formalize staff advice where a councillor chooses to proceed despite staff, with Council receiving the staff advice, to inform it of the legal, operational or fiscal considerations.

⁶⁶ These reports could have staff input on a case-by-case basis, but the District will want to consider carefully how this might be controlled, as it clearly could have implications for staff resources. This aspect of a new approach could be tied into the recommendations below about clarifying the policy on councillor requests to staff for information.

⁶⁷ For clarity, this review disclosed no basis for believing that District staff are anything other than appropriately neutral in their work. The issue is solely one of possible perceptions to the contrary: the approach proposed here would help counter any such perceptions.

*(h) Council will direct staff to pursue the option it considers desirable.⁶⁸
If the District implements this recommendation, it should ensure that the new policy is aligned with existing District policy on staff providing information to councillors, on staff reports to Council, and on provision of information to Council.*

Councillor Requests to Staff for Information and Support

The District should also consider clarifying its policy on councillors seeking information from staff.⁶⁹

At present, councillors may ask staff at any level in the organization for “routine information, facts and/or documents which are readily available, and the staff member is authorized to release” them. If the request is for information that is “sensitive”, “not readily available” or “requires interpretation of District policies or procedures”, it should be directed to “senior staff”.⁷⁰ Where senior staff are of the opinion that “preparation of the information requires substantial staff time or cost, the requesting Council member will be advised that a Council resolution directing that the requested information be provided is required.”

This policy implicitly requires less senior staff to alert more senior staff about an information request from a councillor, to enable senior staff to decide whether senior staff should respond or whether, because it would require substantial staff time or cost, requires Council direction is needed. This policy also relies on individual judgement about what qualifies as “routine” information or documents that are “readily available”, with no guidance on what these terms mean. Although it could admittedly be challenging to offer greater clarity, better guidance about which requests for information are “routine” and which are not, and about the classes of information and documents that are “readily available”, is desirable.

Either way, the District should consider establishing a coordinating function for such requests. The District has recently enhanced the support services available to councillors, building on the functions of what was known as the confidential clerk to councillors. That position could be tasked with tracking councillors’ requests for information, and informing relevant managers, who could step in where necessary. The District might also consider requiring all councillor requests to be made through this position, as opposed to that position having only a tracking function. Regardless of whether the tracking or centralized request version is adopted, this proposal would help senior staff identify requests that do or do not require their involvement or Council’s direction.

⁶⁸ This step is already addressed in District policy 1-10530-10, Staff Reports to Council.

⁶⁹ This is District policy 1-10530-8, Staff Handling of Individual Council Member Requests for Information.

⁷⁰ This term is elaborated as “Assistant Manager, Departmental Manager, Director or Municipal Manager depending on the nature of the request and the Council member’s preference”.

Recommendation 11: The District should consider amending its policy on councillors seeking information from staff, to clarify which information requests are routine and which are not. The District should also consider amending this policy to provide for centralized submission of councillor requests or, at the very least, centralized request tracking.

Councillor Requests for Internal Legal Advice

Another policy consideration that came to light arises from the District's current policy on councillors seeking legal advice from the Municipal Solicitor:

In all cases where an individual member of Council seeks a legal opinion from the Municipal Solicitor on matters concerning the operations of the District and that member's duties and responsibilities pertaining thereto, the Council member must first inform the Municipal Manager.⁷¹ The Solicitor's opinion will be circulated to all members of Council and the Manager for information.⁷²

The policy also provides that, to ensure the Chief Administrative Officer and Council are kept informed, copies of any written replies from the Municipal Solicitor are to be circulated to other Council members and the Chief Administrative Officer.

This obviously addresses cases where the Municipal Solicitor's advice is given in writing. It appears that councillors sometimes seek, and obtain, advice verbally. This makes it difficult to fulfil the letter and spirit of the policy on councillors seeking legal advice. On the other hand, enforcing the process that requires all councillor requests for legal advice to be submitted through the Chief Administrative Officer, or creating a policy that requires *all* advice to councillors to be written and then circulated, could have resource and efficiency implications. Accordingly, the only recommendation is that the District should consider whether the existing policy could be clarified (or amended substantively).

Recommendation 12: The District should review its policy on councillor requests for internal legal advice, to determine whether it should be clarified or amended.

⁷¹ The policy later states that the councillor must "orally...describe the main purpose of that enquiry".

⁷² Policy 6-2400-1, Consultation with Municipal Solicitor by Individual Council Members.

CONCLUSION

As contemplated by the terms of reference, this report has set out the circumstances leading up to adoption of the bylaw. In addition, although the review revealed no material concerns about how the District deals with matters addressed in this report, this report's main message is that, as always, the inevitable clarity of hindsight offers opportunities for the District to learn from experience and enhance how things are done. My recommendations are offered in that spirit.

APPENDIX 1
Terms of Reference

DISTRICT OF NORTH VANCOUVER
BYLAW PROCESS REVIEW
TERMS OF REFERENCE
December 5, 2019

BACKGROUND

On November 4, 2019, the mayor and council of the District of North Vancouver (District) adopted Bylaw 8402. When it comes into force on May 1, 2020, Bylaw 8402 will ban the keeping of pigeons in the District.

Concerns have been expressed by members of the public and council members about how Bylaw 8402 was proposed and adopted. Questions have been raised about the role of some councillors in their consideration of and voting for Bylaw 8402. Questions have also been raised about the ethics and conflict of interest training and resources available to mayor and council.

At its November 25, 2019 meeting, council directed the chief administrative officer to secure an independent review of matters surrounding the adoption of Bylaw 8402.

This document sets out the objectives of the independent review and outlines key steps of the review.

OBJECTIVES

In light of this background, the independent reviewer is to review the following:

1. In relation to Bylaw 8402 specifically, the actions of Council as a whole, and of individual councillors, in relation to the proposing and adoption of that bylaw;
2. In relation to bylaws generally, the policies and processes in place for how members of Council may propose bylaws or amendments;
3. Awareness on the part of council, and individual council members, about their respective conflict of interest and ethical obligations, and the training and supports available to understand these obligations, in relation to the proposing and adoption of Bylaw 8402 and generally;
4. District policies, bylaws and other materials that the reviewer considers appropriate in relation to the above matters, including the District's Code of Ethics.

PROCESS STEPS

The reviewer will review all materials that he considers appropriate and the District will promptly make all requested materials available to the reviewer. These include all bylaws, policy and procedure materials, communications of any kind related to the above matters and media reports.

The reviewer will also conduct in-person and telephone interviews with council members and District employees as the reviewer considers appropriate and the District will use best efforts to make all such individuals available for interview.

OUTCOMES

The reviewer will prepare a report to the District's chief administrative officer setting out the reviewer's findings of fact and recommendations about matters described above. The recommendations may include, for example, any recommended enhancements in relation to the manner in which bylaws are proposed for council's consideration and adopted or in relation to ethics, conflict of interest and freedom of information and privacy matters.

The reviewer will deliver the final report to the District's chief administrative officer before February 15, 2020.

APPENDIX 2

List of Individuals Interviewed

These individuals were interviewed:

Elected Officials

Mike Little, Mayor
Mathew Bond, Councillor
Jordan Back, Councillor
Megan Curren, Councillor
Betty Forbes, Councillor
James Hanson, Councillor
Lisa Muri, Councillor

District Staff

David Stuart, Chief Administrative Officer
Charlene Grant, General Manager, Corporate Services
Dan Milburn, General Manager, Planning, Properties & Permits
Jim Gordon, Manager, Administrative Services/Municipal Clerk
Richard Parr, Municipal Solicitor
Carol Walker, Chief Bylaw Officer