

Origin: Diocesan Council
Status: Policy
Distribution: All Congregations
Subject: Legal Services

Introduction

The Synod of the Diocese of Kootenay (the “Diocese”) is the legal entity that holds and is responsible for all real property including church buildings, cemeteries and columbariums, rectories, and land. Decisions affecting significant changes in use or ownership of these are reviewed and approved by Diocesan Council on the recommendation of the Diocesan Administration & Finance Committee. The ultimate authority for approval in all such matters rests solely with the Bishop of the Diocese of Kootenay.

From time to time legal services are necessary for matters such as the sale and conveyance of diocesan property. Additionally the diocese may need to respond to congregations regarding questions around employment and labour law, insurance and liability, assessment and taxation, financial and sexual misconduct, registered and other leases for commercial rentals, and compliance with Municipal and Provincial Bylaws and Acts.

The Legal Officers of the diocese include the Chancellor, the Vice-Chancellor (if appointed) and the Registrar (if appointed). The Officers are members of the Administration & Finance Committee and are tasked with ensuring that any legal services directly or indirectly retained by any member of the Synod are consonant with the needs of the Diocese and comply with the Constitution, Rules of Order and Canons of the Diocese of Kootenay. They decide what services they provide *pro bono* in their appointed capacities, and what legal services they will provide for which they are entitled to remuneration.

This Policy governs when legal services are necessary, who may provide such services, and who pays for them.

Administration & Finance Committee

Any proposals for the change in use of diocesan property, expenditure of diocesan funds for legal services, and matters that generally impact the legal position of the diocese, properly fall to the Administration & Finance Committee (A & F) of which the Legal Officers are members. Simple maintenance matters affecting a church building generally are not required to come before the Administration & Finance Committee. In the event of uncertainty the Executive Officer, or the Bishop or a Commissary may advise Congregations on behalf of the A & F Committee. The Administration & Finance Committee acts on behalf of Diocesan Council and may seek approval from Council in matters considered to be

significant. The Bishop of the Diocese of Kootenay may act to refer any matter to the A & F Committee and/or Diocesan Council.

Congregational Legal Services

A Congregation is certainly able to obtain its own legal opinions. Indeed the expertise that may be required may be resident within the congregation's membership and such services may even be available *pro bono*.

Before seeking and/or paying for such services, congregations are well advised to consult with the Chancellor or another Legal Officer. The matter under consideration may not require additional legal opinion or services. In many cases, such as the sale of property and other straightforward matters, the congregation may choose to retain the services of one of the Legal Officers at competitive market rates.

If the Legal Officers believe the congregation and/or the diocese requires a further legal opinion or more complex services, the congregation will be advised as to the reasons.

If the congregation and the diocese agree, a cost-sharing arrangement will be negotiated before legal work is contracted. If the congregation and the diocese cannot agree and the congregation chooses to seek external legal services independently, any subsequent opinion or recommendations should still be reviewed by the Chancellor of the Diocese or his designate. Should the legal opinion received make recommendations whose consequences place the Synod of the Diocese of Kootenay at variance with the Constitution, Rules of Order and Canons of the Diocese, or place the diocese at financial or legal risk, the Administration & Finance Committee or Diocesan Council may require supplemental legal work undertaken at the congregation's expense. The congregation further risks that actions or decisions based on external legal opinions received in isolation, may not be approved by the Administration & Finance Committee.

Decision Tree for Obtaining Legal Services

The following is a process that may be helpful in assisting a congregation in its management decisions:

1. Congregational leadership determines that a management decision or action may require a legal opinion or requires a legal service.
2. A congregational representative contacts the Chancellor, Vice-Chancellor or Registrar (if named); failing such contact the Bishop is contacted and/or the Executive Officer. The issue giving rise to the enquiry is raised for adjudication as to its effect on the diocese as a whole.
3. If it is determined that the matter clearly impacts or affects the legal position of the diocese, the diocese will decide if it wishes to solely rely on the Chancellor for guidance or wishes to obtain an at-arm's-length, or specialized "external" opinion. If external services are to be sought (therefore at market rates), the sharing of estimated costs for the legal work will be settled between the congregation and the diocese BEFORE the services are contracted.

4. If the congregation prefers to contract its own legal work on the same question and proceeds to do so, then the received opinion from counsel should be shared or vetted by the Chancellor of the Diocese or his alternate. Notwithstanding, the congregation is expected to pay the entire costs for such services.

To avoid any misunderstanding it is preferable that the congregation discusses the issues with the Legal Officers and/or the Bishop prior to obtaining its own legal services.

5. If the Chancellor and/or Bishop determines that the legal work or opinions obtained by the congregation is(are) insufficient to protect the reputation and life of the diocese, or cause the diocese to be at odds with the Constitution, Rules of Order, and Canons of the Diocese of Kootenay, the Chancellor and/or his designate may require additional legal work to be done, either by counsel for the congregation or by separate counsel for the diocese. The payment for the additional legal services will be the sole responsibility of the congregation contracting the services as in clause 4 foregoing.

Policy approved at Diocesan Council May 25' 2013