

**ISLANDS TRUST COUNCIL
BYLAW NO. 145**

**A BYLAW TO INDEMNIFY TRUST OFFICIALS AGAINST ACTIONS AND PROSECUTIONS BROUGHT
AGAINST THEM IN CONNECTION WITH THE PERFORMANCE OF THEIR DUTIES**

WHEREAS section 287.2(7) of the *Local Government Act* provides that Trust Council may, by bylaw, indemnify a Trust Official in accordance with a bylaw.

NOW THEREFORE the Trust Council, in open meeting assembled, enacts as follows:

Definitions

1. In this Bylaw, unless the context otherwise requires:

“**a body of the Islands Trust**” means the Trust Council, the executive committee, a local trust committee and the trust fund board as defined in section 1 of the *Islands Trust Act*.

“**action**” means pursuit of a right in court without regard to the form of the procedure, including civil proceedings, judicial review proceedings, and other court proceedings.

“**Trust Official**” means a person who is or was any of the following:

- a. a trustee of a body of the Islands Trust under the *Islands Trust Act*
- b. an officer or employee of the Trust Council under the *Islands Trust Act*
- c. a member of an advisory planning commission under section 898 of the *Local Government Act*
- d. a member of a board of variance under section 899 of the *Local Government Act*
- e. an election official under section 167 of the *Local Government Act*
- f. a volunteer who participates in the delivery of services by a body of the Islands Trust under the *Islands Trust Act*, under the supervision of an officer or employee of the Trust Council
- g. a member of a select or standing committee of a body of the Islands Trust under the *Islands Trust Act* who is not also a member of a body of the Islands Trust.

“**Trust Council**” has the meaning given in section 5 of the *Islands Trust Act*.

Indemnification

2. Subject to the provisions of this Bylaw, the Trust Council will indemnify a Trust Official for payment of amounts required or incurred:

- a. to defend an action or prosecution brought against a Trust Official in connection with the exercise or intended exercise of the Trust Official’s powers or the performance or intended performance of the Trust Official’s duties or functions on behalf of a body of the Islands Trust;
- b. to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in section 2(a); or
- c. in relation to an inquiry under the *Public Inquiry Act*, or to another proceeding, that involves the administration of the Islands Trust or the conduct of the business of a body of the Islands Trust.

Limitation of Indemnification

3. Notwithstanding section 2 of this Bylaw, a Trust Official shall not be indemnified pursuant to this Bylaw in relation to an action or prosecution brought by a body of the Islands Trust against a Trust Official, including, without limitation, a counterclaim, third party claim, or petition for disqualification or divulgence.
4. As a limit on indemnification under section 2 of this Bylaw:
 - a. the Trust Council must not pay a fine that is imposed as a result of a Trust Official's conviction for an offence that is not a strict or absolute liability offence;
 - b. the Trust Council must not satisfy a judgment, award or penalty, or a portion thereof, where a court has determined that the judgement, award or penalty arises out of conduct of the Trust Official that was not in connection with the exercise of the Trust Official's powers or the performance of the Trust Official's duties or functions, or was a result of gross negligence, malicious or wilful misconduct, criminal conduct, or conduct that resulted in disqualification from office of the Trust Official; and
 - c. where the Trust Council has already paid amounts under section 2 of this Bylaw, and a court finds that the conduct of the Trust Official in respect of the matter for which the Trust Official was indemnified was not in connection with the exercise of the Trust Official's powers or the performance of the Trust Official's duties or functions, or was a result of gross negligence, malicious or wilful misconduct, criminal conduct, or conduct that resulted in disqualification from office of the Trust Official, then the Trust Official must repay the amounts paid by the Trust Council to the Trust Official.

Obligations of Trust Official

5. Where this Bylaw authorizes the Trust Council to indemnify a Trust Official, the Trust Council or its insurer, if applicable, shall have sole discretion to appoint legal counsel to defend the Trust Official.
6. Where this Bylaw authorizes the Trust Council to indemnify a Trust Official, the Trust Official must:
 - a. immediately, upon receipt, forward to the Chief Administrative Officer, every statement of claim, petition, notice, warrant, information, letter, document or advice relating to an actual or potential claim or prosecution against such Trust Official in respect of which indemnity is or may be claimed under this Bylaw, as well as any available additional information requested by the Chief Administrative Officer;
 - b. co-operate with the Trust Council and its legal counsel in the defence of any action or proceedings or in the pursuit of any appeal taken by the Trust Council on behalf of the Trust Official;
 - c. assist in securing information and evidence and the attendance of witnesses; and
 - d. where required by the Trust Council or its legal counsel, give evidence or statements in writing or orally.

7. Where this Bylaw authorizes the Trust Council to indemnify a Trust Official, the Trust Official must not:
 - a. voluntarily assume any liability, admit any facts, settle any claim, or enter any plea except with the permission of the Trust Council; or
 - b. interfere with the Trust Council in any negotiation or settlement in any legal proceedings with respect to such claim or prosecution.
8. Where a Trust Official breaches any requirement in sections 5, 6 or 7, or chooses to conduct his or her own defence or appoint his or her own legal counsel to conduct the defence, the Trust Official will cease to be qualified for indemnification under this Bylaw.
9. Nothing in this Bylaw precludes a Trust Official from seeking independent legal advice at his or her own expense, and, for clarity, the seeking of such legal advice will not result in a loss of qualification for indemnification pursuant to section 8 of this Bylaw.

Authority of Chief Administrative Officer

10. The Chief Administrative Officer may request additional information from the Trust Official in relation to any application for indemnification, including information that would tend to indicate whether the Trust Official was acting in connection with his or her powers or duties on behalf of a body of the Islands Trust with respect to the matters raised in the action or prosecution.
11. Upon receipt of all information provided under sections 6 and 10, the Chief Administrative Officer shall make a determination as to whether the Trust Official is entitled to indemnification pursuant to this Bylaw.
12. Notwithstanding section 11, where a Trust Official seeks indemnification with respect to an action involving a petition for disqualification from office or an allegation of defamation, the Chief Administrative Officer shall refer that application for indemnification, and all the information provided in that respect, to the Islands Trust Executive Committee for determination under this Bylaw.
13. If the Chief Administrative Officer determines that the Trust Official is entitled to indemnity pursuant to this Bylaw, the Chief Administrative Officer shall so advise the Trust Official and report such indemnity to the Islands Trust Executive Committee and the Trust Council at their next regular meetings.
14. If the Chief Administrative Officer determines that a Trust Official is not entitled to indemnity pursuant to this Bylaw, the Chief Administrative Officer shall provide the Trust Official, the Islands Trust Executive Committee and the Trust Council with written reasons for such determination.
15. If the Chief Administrative Officer determines that a Trust Official is not entitled to indemnity pursuant to this Bylaw, the Trust Official may appeal that decision to the Trust Council.

Authority of the Executive Committee

16. Where a Trust Official seeks indemnification with respect to an action involving a petition for disqualification from office or an allegation of defamation, the Islands Trust Executive Committee shall make a determination as to whether the Trust Official is entitled to indemnification pursuant to this Bylaw.

17. If the Executive Committee determines that a Trust Official is not entitled to indemnity pursuant to this Bylaw, the Executive Committee shall provide the Trust Official and the Trust Council with written reasons for such determination.
18. If the Islands Trust Executive Committee determines that a Trust Official is not entitled to indemnity pursuant to this Bylaw, the Trust Official may appeal that decision to the Trust Council.

Repeal

19. Islands Trust Council Bylaw No. 96, cited as "Islands Trust Council Indemnification Bylaw, 2003" is repealed.

Citation

20. This Bylaw may be cited as the "Islands Trust Council Trust Officials Indemnification Bylaw, 2012".

READ A FIRST TIME THIS 13TH DAY OF JUNE , 2012

READ A SECOND TIME THIS 13TH DAY OF JUNE , 2012

READ A THIRD TIME THIS 13TH DAY OF JUNE , 2012

ADOPTED THIS 6TH DAY OF JULY , 2012

SECRETARY

CHAIR