

2.1.i Guidelines

STATUTORY RULES OF CONDUCT

Trust Council: June 11, 1994

Amended: March 9, 1996

Amended: September 19, 1997

Amended: December 5, 2003

PURPOSE:

To acknowledge and facilitate compliance with the ethical conduct rules in accordance with the *Community Charter* and *Islands Trust Act*. The applicable statutory provisions are attached as Appendix A.

DETAILS

Interpretation

1. In these guidelines

"**Executive Committee**" means the committee referred to in section 20(1) of the *Islands Trust Act*;

"**Local Trust Committee**" means the committee referred to in section 23(2) of the *Islands Trust Act*;

"**Meeting**" includes a meeting of the Trust Council, a Local Trust Committee, the Trust Fund Board, or a committee of any of them, or a resolution without meeting under sections 13 and 26 of the *Islands Trust Act*;

"**Trust Council**" means the Islands Trust Council referred to in section 5 of the *Islands Trust Act*;

"**Trust Fund Board**" means the board referred to in section 40(1) of the *Islands Trust Act*;

"**Trustee**" means under section 1 of the *Islands Trust Act* a local trustee, municipal trustee and a trustee of the Trust Fund, or any of them, as the context requires.

Conflict of Interest

2. a. Subject to Section 104 of the *Community Charter*, a trustee must not participate in the discussion of, or vote on, a resolution or bylaw in respect of which the trustee has a direct or indirect financial or monetary interest.
- b. In addition to the disqualification for the financial or monetary interest, having a direct or indirect financial or monetary interest in the decision could result in the trustee's vote

on the decision being invalid. In some cases, the decision itself will be invalid where the vote is invalid.

Declarations

3. a. If a trustee believes he or she is not entitled to participate in a decision, he or she must declare this under Section 100(2) of the *Community Charter*, subject to Sections 100(4) and (5).
- b. Having made such a declaration, if a trustee determines on the basis of legal advice that they in fact may participate and vote, the trustee may do so after making a further declaration stating in general terms the basis on which they have determined that they may participate and vote.

Recording Declaration

4. a. If a trustee makes a declaration under Section 100 of the *Community Charter*, the person recording the minutes of the meeting must record the member's declaration, the reasons given for it, and the times of the member's departure from the meeting room and, if applicable, of the member's return.
- b. In the case of a resolution without meeting vote, if a trustee makes a declaration under Section 100 of the *Community Charter*, the trustee, or the person recording a resolution without meeting vote must complete a Declaration Form (Appendix "B") to record the member's declaration, the reasons given for it, and the time of the member's declaration.
- c. A Declaration form must be completed for each resolution without meeting relating to a matter in which a trustee makes a declaration under Section 100 of the *Community Charter*.
- d. The completed Declaration Form must be filed with the Deputy Secretary, and a copy of the completed form must be affixed to the Resolution Without Meeting Call for the Vote and Conducting the Vote forms.

Insider Information

5. A trustee must not use information that is gained in the execution of his or her office, and is not available to the general public, to further or seek to further the trustee's financial, monetary, personal, or private interest.

Influence

6. Subject to Section 104 of the *Community Charter*, a trustee must not use his or her office to seek to influence a decision to be made by another person, to further the trustee's financial, monetary, personal or private interest.

Gifts

7. A trustee must not accept a gift or personal benefit, except compensation authorized by the *Islands Trust Act* and the Islands Trust Regulation 119/90, as amended, that is connected directly or indirectly with the performance of his or her duties of office.

Exceptions and Disclosure of Gifts

8.
 - a. As an exception, a trustee may accept a gift or personal benefit having a value of less than \$250.00 that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.
 - b. If the value of a gift accepted under this exception equals or exceeds \$250, or the value of such gifts from any single source exceeds that amount in any 12-month period, the trustee must file a disclosure statement in accordance with Section 106 of the *Community Charter*.

Contracts with the Islands Trust

9. A trustee, or person who was a trustee within the previous six months, must report to the Islands Trust Secretary any contract with the Islands Trust in which the trustee or former trustee has a direct or indirect financial or monetary interest, in accordance with Section 107 of the *Community Charter*.

Confidentiality

10. A trustee must keep in confidence any record held in confidence by the Trust Council, Trust Fund Board or a local trust committee, until the record is released to the public, and must keep in confidence any information considered in any part of a Trust Council, Trust Fund Board, Executive Committee or Local Trust Committee meeting that was lawfully closed to the public, until the information is discussed at a meeting that is open to the public or released to the public.

Review Process

11. Trustees and staff may, at the cost of the Trust Council, communicate directly with the Trust's Legal Counsel to discuss matters pertaining to statutory standards of conduct.

Disqualification

12. Trustees violating statutory rules of conduct in relation to conflict of interest, use of insider information, inside or outside influence, receipt of gifts, disclosure of gifts, and disclosure of contracts are subject to disqualification from office under s.110 of the *Community Charter*.

APPENDIX "A"**Section 100 Community Charter**

Disclosure of conflict

100 (1) This section applies to council members in relation to

- (a) council meetings,
- (b) council committee meetings, and
- (c) meetings of any other body referred to in section 93 [*application of open meeting rules to other bodies*].

(2) If a council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the member has

- (a) a direct or indirect pecuniary interest in the matter, or
- (b) another interest in the matter that constitutes a conflict of interest,

the member must declare this and state in general terms the reason why the member considers this to be the case.

(3) After making a declaration under subsection (2), the council member must not do anything referred to in section 101 (2) [*restrictions on participation*].

(4) As an exception to subsection (3), if a council member has made a declaration under subsection (2) and, after receiving legal advice on the issue, determines that he or she was wrong respecting his or her entitlement to participate in respect of the matter, the member may

- (a) return to the meeting or attend another meeting of the same body,
- (b) withdraw the declaration by stating in general terms the basis on which the member has determined that he or she is entitled to participate, and
- (c) after this, participate and vote in relation to the matter.

(5) For certainty, a council member who makes a statement under subsection (4) remains subject to section 101 [*restrictions on participation if in conflict*].

(6) When a declaration under subsection (2) or a statement under subsection (4) is made,

- (a) the person recording the minutes of the meeting must record
 - (i) the member's declaration or statement,
 - (ii) the reasons given for it, and
 - (iii) the time of the member's departure from the meeting room and, if applicable, of the member's return, and

(b) unless a statement is made under subsection (4), the person presiding at that meeting or any following meeting in respect of the matter must ensure that the member is not present at any part of the meeting during which the matter is under consideration.

Restrictions on participation if in conflict

101 (1) This section applies if a council member has a direct or indirect pecuniary interest in a matter, whether or not the member has made a declaration under section 100.

(2) The council member must not

(a) remain or attend at any part of a meeting referred to in section 100 (1) during which the matter is under consideration,

(b) participate in any discussion of the matter at such a meeting,

(c) vote on a question in respect of the matter at such a meeting, or

(d) attempt in any way, whether before, during or after such a meeting, to influence the voting on any question in respect of the matter.

(3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on inside influence

102 (1) A council member must not use his or her office to attempt to influence in any way a decision, recommendation or other action to be made or taken

(a) at a meeting referred to in section 100 (1) [*disclosure of conflict*],

(b) by an officer or an employee of the municipality, or

(c) by a delegate under section 154 [*delegation of council authority*],

if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

(2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on outside influence

103 (1) In addition to the restriction under section 102, a council member must not use his or her office to attempt to influence in any way a decision, recommendation or action to be made or taken by any other person or body, if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

(2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Exceptions from conflict restrictions

104 (1) Sections 100 to 103 do not apply if one or more of the following circumstances applies:

- (a) the pecuniary interest of the council member is a pecuniary interest in common with electors of the municipality generally;
- (b) in the case of a matter that relates to a local service, the pecuniary interest of the council member is in common with other persons who are or would be liable for the local service tax;
- (c) the matter relates to remuneration, expenses or benefits payable to one or more council members in relation to their duties as council members;
- (d) the pecuniary interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in relation to the matter;
- (e) the pecuniary interest is of a nature prescribed by regulation.

(2) Despite sections 100 to 103, if a council member

- (a) has a legal right to be heard in respect of a matter or to make representations to council, and
- (b) is restricted by one or more of those sections from exercising that right in relation to the matter,

the council member may appoint another person as a representative to exercise the member's right on his or her behalf.

Restrictions on accepting gifts

105 (1) A council member must not, directly or indirectly, accept a fee, gift or personal benefit that is connected with the member's performance of the duties of office.

(2) Subsection (1) does not apply to

- (a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office,
- (b) compensation authorized by law, or
- (c) a lawful contribution made to a member who is a candidate for election to a local government.

(3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of gifts

106 (1) This section applies if

- (a) a member receives a gift or personal benefit referred to in section 105 (2) (a) that exceeds \$250 in value, or
- (b) the total value of such gifts and benefits, received directly or indirectly from one source in any 12 month period, exceeds \$250.

(2) In the circumstances described in subsection (1), the council member must file with the corporate officer, as soon as reasonably practicable, a disclosure statement indicating

- (a) the nature of the gift or benefit,
- (b) its source, including, if it is from a corporation, the full names and addresses of at least 2 individuals who are directors of the corporation,
- (c) when it was received, and
- (d) the circumstances under which it was given and accepted.

(3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of contracts with council members and former council members

107 (1) If a municipality enters into a contract in which

- (a) a council member, or
- (b) a person who was a council member at any time during the previous 6 months,

has a direct or indirect pecuniary interest, this must be reported as soon as reasonably practicable at a council meeting that is open to the public.

(2) In addition to the obligation under section 100 [*disclosure of conflict*], a council member or former council member must advise the corporate officer, as soon as reasonably practicable, of any contracts that must be reported under subsection (1) in relation to that person.

(3) A person who contravenes subsection (2) is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on use of insider information

108 (1) A council member or former council member must not use information or a record that

- (a) was obtained in the performance of the member's office, and
- (b) is not available to the general public,

for the purpose of gaining or furthering a direct or indirect pecuniary interest of the council member or former council member.

(2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Court order for person to give up financial gain

109 (1) If a council member or former council member has

- (a) contravened this Division, and
- (b) realized financial gain in relation to that contravention,

the municipality or an elector may apply to the Supreme Court for an order under this section.

(2) Within 7 days after the petition commencing an application under this section is filed, it must be served on

- (a) the council member or former council member, and
- (b) in the case of an application brought by an elector, the municipality.

(3) On an application under this section, the Supreme Court may order the council member or former council member to pay to the municipality an amount equal to all or part of the person's financial gain as specified by the court.

(4) In the case of an application made by an elector, if the court makes an order under subsection (3), the municipality must promptly pay the elector's costs within the meaning of the Rules of Court.

(5) The court may order that costs to be paid under subsection (4) may be recovered by the municipality from any other person as directed by the court in the same manner as a judgment of the Supreme Court.

(6) Except as provided in subsection (4), the costs of an application are in the discretion of the court.

Division 7 -- Disqualification

Circumstances in which a person is disqualified from office on council

110 (1) A person elected or appointed to office on a council is disqualified from holding that office if any of the following applies:

- (a) the person does not make the required oath or affirmation of office within the time established by section 120 (1) [*oath or affirmation of office*];
- (b) the person is absent from council meetings for a period of 60 consecutive days or 4 consecutive regularly scheduled council meetings, whichever is the longer time period, unless the absence is because of illness or injury or is with the leave of the council;

(c) the person is disqualified under any of the following:

section 101 [*restrictions on participation if in conflict*];

section 102 [*restrictions on inside influence*];

section 103 [*restrictions on outside influence*];

section 105 [*restrictions on accepting gifts*];

section 106 [*disclosure of gifts*];

section 107 [*disclosure of contracts*];

section 108 [*restrictions on use of insider information*];

(d) the person is disqualified under section 191 [*liabilities for use of money contrary to Act*];

(e) the person is disqualified under section 66 (2) [*who may hold elected office*] of the *Local Government Act* or section 38 (2) [*who may hold elected office*] of the *Vancouver Charter*.

(2) A person disqualified under subsection (1) is disqualified from holding office on a local government, including office on the council of the City of Vancouver, as follows:

<i>Applicable provision</i>	<i>Period of disqualification</i>
(1) (a) [<i>failure to take oath</i>]	until the next general local election;
(1) (b) [<i>unexcused absence</i>]	until the next general local election;
(1) (c) [<i>conflict</i>]	until the next general local election;
(1) (d) [<i>unauthorized use of money</i>]	for 3 years from the date of the vote to which the disqualification relates;
(1) (e) [<i>election disqualifications</i>]	in accordance with Part 3 [<i>Electors and Elections</i>] of the <i>Local Government Act</i> .

Application to court for declaration of disqualification

111 (1) If it appears that a person is disqualified under section 110 and is continuing to act in office,

(a) 10 or more electors of the municipality, or

(b) the municipality,

may apply to the Supreme Court for an order under this section.

(2) As a restriction, a municipality may only make an application under subsection (1) if this is approved by a resolution that

(a) is adopted by a vote at least 2/3 of all council members, and

(b) identifies the grounds for disqualification under section 110 which the council considers apply.

- (3) Sections 100 [*disclosure of conflict*] and 101 [*restrictions on participation if in conflict*] do not apply to the council member who is subject to a resolution referred to in subsection (2) of this section in relation to that resolution.
- (4) An application under this section may only be made within 45 days after the alleged basis of the disqualification comes to the attention of
- (a) any of the electors bringing the application, in the case of an application under subsection (1) (a), or
 - (b) any member of council other than the person alleged to be disqualified, in the case of an application under subsection (1) (b).
- (5) Within 7 days after the petition commencing an application under this section is filed, it must be served on
- (a) the person whose right to hold office is being challenged, and
 - (b) in the case of an application under subsection (1) (a), the municipality.
- (6) On the hearing of the application, the court may declare
- (a) that the person is qualified to hold office,
 - (b) that the person is disqualified from holding office, or
 - (c) that the person is disqualified from holding office and that the office is vacant.

Status of person subject to an application

- 112** (1) A person who is subject to an application under section 111 and who considers that he or she is qualified to hold office may continue to act in office pending the determination of the Supreme Court respecting the application.
- (2) If a person who is declared disqualified from holding office by the Supreme Court appeals the decision, the appeal does not operate as a stay of the declaration and the person is disqualified pending the final determination of the appeal.
- (3) If a declaration of disqualification referred to in subsection (2) is overturned on final appeal and the term of office for which the person was elected has not ended,
- (a) the person is entitled to take office for the remainder of the term if otherwise qualified, and
 - (b) for this purpose, any other person elected or appointed to the office since the declaration of disqualification ceases to hold office at the time the person declared qualified takes office.

Costs of an application

- 113** (1) In the case of an application under section 111 made by a group of electors, if the court declares that the person challenged is not qualified to hold office, the municipality must promptly pay the electors' costs within the meaning of the Rules of Court.

(2) The court may order that costs to be paid under subsection (1) may be recovered by the municipality from the person who was declared disqualified or any other person as directed by the court in the same manner as a judgment of the Supreme Court.

(3) Except as provided in subsection (1), the costs of an application are in the discretion of the court.

Duty to respect confidentiality

117 (1) A council member or former council member must, unless specifically authorized otherwise by council,

(a) keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and

(b) keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

(2) If the municipality suffers loss or damage because a person contravenes subsection (1) and the contravention was not inadvertent, the municipality may recover damages from the person for the loss or damage.

APPENDIX "B"

ISLANDS TRUST

Declaration Form

This form must be completed when a trustee declares that he or she is not entitled to vote on a matter being considered by Resolution Without Meeting, or having made such a declaration subsequently determines on the basis of legal advice that they may in fact vote. This form complies with the requirements of Section 100 of the *Community Charter*, and applies to Local Trust Committee, Trust Fund Board, Trust Council, and Executive Committee Resolutions Without Meeting.

Under Section 100(2) of the *Community Charter*, I declare that I will not participate or make decisions in the matter contained in the draft resolution as shown in the attached Resolution Without Meeting form for the following reason(s):

Under Section 100(4) of the *Community Charter*, I declare that I have obtained legal advice and have determined that I am entitled to participate and make decisions in the matter that was the subject of my declaration of conflict of interest dated _____ for the following reason(s):

Corporate Entity

Trustee's/Trust Fund Board Member's Name

Trustee's/Trust Fund Board Member's Signature
OR Telephone Declaration

Date and Time of Declaration

Name of Recorder (if applicable)

(Staff to complete)

Received by the Islands Trust Secretary this _____ day of _____, ____.

SECRETARY'S or DESIGNATE'S Signature

Resolution Without Meeting No. _____