

2.1.vi Policy

LEGAL ADVICE

Trust Council: June 11, 1994
(Amended: June 9, 1995)
(Amended: March 9, 1996)
(Amended: December 6, 1997)

A. PURPOSE

To ensure that legal advice obtained by the Islands Trust is handled in a sensitive and confidential manner with respect to its use and disposition and that it is given in the context of the legislated object of the Islands Trust.

B. REFERENCES

Access to legal services procedure and standards of conduct guidelines.

C. POLICY

1. Legal Counsel Relationship

- 1.1. All legal advice requested and obtained by the Islands Trust, whether in the form of a bylaw, legal opinion, land use document or other advice, must take into account the statutory object of the Trust.
- 1.2. Every legal services agreement between the Islands Trust and its legal counsel must contain provision stipulating the requirement set out in paragraph 1.1 of this Policy.
- 1.3. Any concerns regarding the provision of legal services must be forwarded to the Executive Director.
- 1.4. Requests to access alternate legal counsel other than the Islands Trust's designated legal counsel shall be given to the Executive Committee for approval.

2. Ownership

- 2.1. All legal advice obtained by the Islands Trust is the property of the Trust Council, as client, as it is the Trust Council that requests the legal advice pursuant to a legal services request form.

- 2.2. Except as otherwise provided in this policy, a local trust committee, the Executive Committee, a council committee, the Trust Fund Board, a trustee, or an employee may view legal advice received by the Islands Trust.
- 2.3. Legal advice includes all written and oral advice, and all originals, drafts, and photocopies provided by legal counsel pursuant to a legal request.
- 2.4. A copy of all legal advice must be provided to the Secretary (Executive Director) by its recipient within the Islands Trust, unless the legal advice has been directly copied to the Secretary by legal counsel.
- 2.5. A disposition of legal advice refers to providing the legal advice, in whole or in part, orally or in writing to persons or entities outside of the Islands Trust, or to persons or entities within the Islands Trust other than the person within the Islands Trust who has requested the legal advice.

3. Confidentiality

- 3.1. Except where otherwise determined by the Executive Committee, all written and oral communications made between the Islands Trust, and its legal counsel are confidential and subject to solicitor-client privilege and must not be disclosed except in accordance with this policy.
- 3.2. Unless otherwise advised by the Executive Committee, it is assumed that all legal advice received is covered by solicitor-client privilege, and should not be disclosed except in accordance with this policy.
- 3.3. Solicitor-client privilege may be expressly waived by the Islands Trust Council, in accordance with this policy.
- 3.4. The Executive Committee may, by resolution, decide to waive solicitor-client privilege over a particular document.
- 3.5. Trustees and employees must take precautions to ensure that there is no implied waiver of the solicitor-client privilege.
- 3.6. Because the client is the Islands Trust Council, all trustees and employees of a local trust committee, the Executive Committee, a council committee, or the Trust Fund Board may access the legal advice without any waiver of solicitor-client privilege. It is only external disclosures of legal advice which may waive solicitor-client privilege.
- 3.7. When legal advice is designated as "Restricted" by the Executive Committee, every page will be stamped "Restricted" by the Secretary or the Deputy Secretary.

4. Dispositions - Internal

- 4.1. A local trust committee, a council committee, the Trust Fund Board, a trustee or a staff person may have access to all legal advice obtained by the Islands Trust that is not designated "Restricted" in accordance with this policy.
- 4.2. "Restricted" legal advice is defined as legal advice where litigation has commenced and legal advice about matters of potential conflict of interest or personal liability.
- 4.3. A local trust committee, a council committee, the Trust Fund Board, a trustee or a staff person may request specific legal advice to be designated "Restricted" by the Executive Committee. A request for a restricted designation shall be made to the Secretary or Deputy Secretary.
- 4.4. Once a request is made to the Secretary or Deputy Secretary for a "Restricted" designation, interim restricted access will be immediately effective, limiting access to the Executive Committee, Secretary, Deputy Secretary, and the Islands Trust corporation, trustee or employee that requested the legal advice.
- 4.5. When the Secretary or Deputy Secretary receives a request or otherwise determines that specific legal advice should be designated as "Restricted" by the Executive Committee, the Secretary or Deputy Secretary shall refer the issue to the Executive Committee for consideration at its next regular meeting.
- 4.6. Any Islands Trust corporation, trustee or employee may appeal to the Executive Committee to reconsider a decision by the Executive Committee to designate specific legal advice as restricted, by advising the Secretary or Deputy Secretary that it wishes to appeal. The Secretary or Deputy Secretary shall refer the appeal to the Executive Committee for consideration at its next regular meeting.
- 4.7. Any legal opinions designated as "Restricted" by the Executive Committee will be kept separate and will not be entered into the legal opinion inventory.

5. Disposition - External

- 5.1. Legal advice provided to the Trust Council, Executive Committee, Trust Fund Board or a local trust committee may be made available to the public upon resolution of the relevant decision-making body and resolution of the Executive Committee on behalf of Trust Council.
- 5.2. If the decision-making body and/or Executive Committee resolves to not disclose legal advice to a person requesting access to the advice, applicants are advised of this decision, and further advised that they may submit a formal request under the *Freedom of Information and Protection of Privacy Act*.

- 5.3. Formal FOI requests concerning disclosure of legal advice must be forwarded to the head who will use discretion under Section 14 of the *Freedom of Information and Protection of Privacy Act* and the Freedom of Information Policy/Procedures manuals to determine if the legal advice/communication should or should not be disclosed.
 - 5.4. In using discretion to determine if legal advice should or should not be disclosed, the head may consult with the relevant decision making body for which the legal advice was requested.
- 6. Review**
- 6.1. In order to maintain confidentiality and privilege of legal advice, no reference should be made to the substance of any legal advice received by the Islands Trust in any document that may be available to the public.
 - 6.2. Where a trustee or an employee must refer to the substance of legal advice, the report containing the reference should remain internal and the matter should be addressed only at a special meeting from which the public has been excluded.