



<b>Policy:</b>	2.1.6
<b>Approved By:</b>	Trust Council
<b>Approval Date:</b>	June 11, 1994
<b>Amendment Date(s):</b>	June 9, 1995; March 9, 1996; December 6, 1997; June 9, 2021
<b>Policy Holder:</b>	Chief Administrative Officer

## LEGAL ADVICE

### 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.

### A. Definitions

**“Restricted” legal advice** is defined as legal advice where litigation has commenced, as well as legal advice about matters of potential conflict of interest, personal liability or as determined under this policy.

### B. 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 Chief Administrative Officer (CAO) (or designate).
- 1.4 Requests to access alternate legal counsel other than the Islands Trust’s designated legal counsel shall be given to the CAO 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 Islands Trust Conservancy 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 Legislative Services Clerk by its recipient within the Islands Trust, unless the legal advice has been directly copied to the Legislative Services Clerk 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 or Islands Trust Council, all legal advice received and 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 section 3.2 of this policy.
- 3.2 Solicitor-client privilege over a particular document may be expressly waived by resolution of either the Islands Trust Council or the Executive Committee, after receipt of advice of legal counsel on waiving confidentiality.
- 3.3 Trustees and employees must take precautions to ensure that there is no implied waiver of the solicitor-client privilege.
- 3.4 Because the client is the Islands Trust Council, all trustees and employees may access the legal advice without any waiver of solicitor-client privilege, provided that it is not designated "Restricted".
- 3.5 When legal advice is designated as "Restricted" by the Executive Committee, every page will be stamped "Restricted" by the Corporate Secretary.

### **4. Dispositions – Internal "Restricted"**

- 4.1 A local trust committee, a council committee, the Islands Trust Conservancy 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 Corporate Secretary.
- 4.2 Once a request is made to the Corporate Secretary for a "Restricted" designation, interim restricted access will be immediately effective, limiting access to the Executive Committee, CAO, Corporate Secretary and the Islands Trust corporate body, trustee or employee that requested the legal advice.

- 4.3 When the Corporate Secretary receives a request that specific legal advice should be designated as "Restricted" by the Executive Committee, the Corporate Secretary shall refer the issue to the Executive Committee for consideration at its next in camera meeting.
- 4.4 Any Islands Trust corporate body, 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 Corporate Secretary that it wishes to appeal. The Corporate Secretary shall refer the appeal to the Executive Committee for consideration at its next regular in camera meeting.
- 4.5 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, Islands Trust Conservancy Board or a local trust committee may be made available, either in its original or a modified form as determined appropriate, to the public or other governmental body 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 resolve not to disclose legal advice to a person requesting access to the advice, applicants are advised of this decision.
- 5.3 Formal Freedom of Information (FOI) requests concerning disclosure of legal advice must be forwarded to the FOI head (Corporate Secretary) 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 FOI head may consult with the relevant decision making body for which the legal advice was requested and with the Executive Committee.

## **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.

**C. Legislated References**

Access to legal services procedure and standards of conduct guidelines

**D. Links to Supporting Forms, Documents, Websites, Related Policies and Procedures**

n/a