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<b>Name:</b>	<b>LEGAL RESOURCES – RETENTION OF EXTERNAL COUNSEL</b>
<b>Policy Number:</b>	<b>12-002</b>
<b>Origin:</b>	<b>EXECUTIVE MANAGEMENT GROUP</b>
<b>Approved:</b>	January 25, 2021
<b>Issuing Authority:</b>	<b>PRESIDENT</b>
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## **1. Purpose**

1.1. The purpose of this Policy is to ensure that the retention of external legal counsel by the University is done in a manner consistent with the University's best interests, and to ensure that the cost and quality of such services is properly monitored. This Policy sets out the criteria, authority, and process for the retention of external legal counsel.

## **2. Scope of Legal Services**

2.1 The University Secretary and Senior Director Legal Services is responsible for managing the legal affairs of the University and for the provision of all legal services, advice and representation for matters involving the University, subject to sections 4.2 and 4.3.

2.2 The University Secretary and Senior Director Legal Services provides and/or manages, for or on behalf of the University, legal services required in relation to the following general areas:

- Administrative and operational matters;
- Capital or major projects;
- Employment and labour relations, including pensions;
- Legislative interpretation;
- Preparation and/or review of policies for legal compliance;
- Preparation and/or review of contractual matters for legal compliance;
- Litigation management;
- Strategic governance initiatives with respect to legal implications; and
- Compliance with legal requirements.

## **3. Requests for Legal Services**

3.1 Subject to sections 3.2, 4.2 and 4.3, requests for legal services on University-related matters must be made by a Senior Administrator directly to the Senior Director Legal Services. For the

purposes of this Policy, a Senior Administrator is one of the President, a Vice President, an Associate Vice-President, or a Dean.

3.2 Without limiting the scope of legal services, Senior Administrators shall engage the Senior Director Legal Services when:

- a. Entering into a contract on behalf of the University of substantial value and/or risk;
- b. Preparing a contract intended to be used by the University as a precedent or template for recurring purposes;
- c. In receipt of court related documents respecting the University or its Board of Governors, employees, students, or volunteers;
- d. On receipt of communications from a lawyer (external to the University) regarding the University; or
- e. Legal action or similar proceedings are threatened or anticipated against the University or its Board of Governors, employees, students, or volunteers arising out of their actions on behalf of the University.

#### **4. Retention of external legal counsel**

4.1 Subject to sections 4.2 and 4.3, the University Secretary and Senior Director Legal Services has the sole authority to authorize the retention of external legal counsel on behalf of the University (including any of its academic departments, administrative units or programs) where appropriate to protect the University's legal interests.

4.2 The following may retain outside legal counsel on behalf of the University from time to time as they deem necessary:

- Chair of the Board of Governors
- President and Vice-Chancellor
- A Vice-President
- Senior Director Legal Services

4.3 In the event of an emergency, or where it is impossible or impracticable to contact the Senior Director Legal Services prior to retaining external legal counsel, any Vice-President may retain external legal counsel without first submitting a request through the Senior Director Legal Services, and may do so on behalf on any Senior Administrator in such circumstances. In such a case, the Senior Director Legal Services will be notified of the request that has been made to external legal counsel as soon as possible.

4.4 Normally, external counsel shall be engaged only for those matters which:

- set a significant precedent in policy or procedure within the University;
- have a high external profile;
- may result in substantial liability for the University; and/or
- are too complex or specialized to be handled internally.

## **5. Management of external legal counsel**

5.1 The University Secretary and Senior Director Legal Services is responsible for managing external legal counsel and associated costs on behalf of the University.

5.2 The University Secretary and Senior Director Legal Services is responsible for:

- a. Selection and evaluation of external legal counsel, in consultation with the appropriate Senior Administrator;
- b. Management of legal matters in progress; and
- c. Maintenance and review of external legal counsel billing practices and related guidelines.

## **6. Cost for External Legal Services**

6.1 Subject to section 6.2, costs for external legal services will be paid from an allocated budget held by the Office of the University Secretary and Senior Director Legal Services, and not back-charged to an academic department, administrative unit, or program, except:

- a. Capital projects for which legal services are an anticipated requirement or other significant projects, where a budget for legal costs is to be included in the budget for the project;
- b. Patent and trade-mark matters for which legal services are an anticipated requirement;
- c. Where otherwise agreed to by the appropriate Senior Administrator; and
- d. As otherwise required by University accounting practices.

6.2 Only invoices arising from retainers authorized in accordance with section 4 will be paid out of the allocated budget of the University Secretary and Senior Director Legal Services. Invoices for matters not so approved will be paid out of the budget of the department, unit or program responsible for the retainer.

## **7. Management of External Legal Counsel Procedure**

7.1. The University Secretary and Senior Director Legal Services will maintain a procedure in relation to the retention and management of external legal counsel and approval of legal accounts rendered by external legal counsel in accordance with section 6.

## **8. Major Decisions**

8.1 In consultation with the University Secretary and Senior Director Legal Services, the appropriate Senior Administrator and the President shall approve all major strategic and precedent-setting decisions in legal matters, including the commencement of any legal action on behalf of the University and settlement of all legal actions and disputes impacting the University prior to any settlement arrangements being finalized.

8.2 Prior to the commencement of any litigation by the University, the University Secretary and Senior Director Legal Services will conduct or obtain an assessment of the likelihood that the University's claim will succeed and estimated financial exposure and/or risk. The President in consultation with the University Secretary and Senior Director Legal Services will make the determination of whether the University will commence any litigation.

**9. Related Policies and Procedures**

- Management of External Legal Counsel Procedures (Attached)

## **Legal Resources Policy Procedures: Management of external legal counsel**

### **1. Retention of external legal counsel**

1.1 External legal counsel shall be retained in the manner described in the Legal Resources Policy and this Procedure.

1.2 Upon receipt of a request for legal services, the University Secretary and Senior Director Legal Services will consult with the Senior Administrator making the request to determine the following:

- a. Whether external legal counsel should be retained, having regard to the nature of the matter, the risk involved, the availability of required resources within the budget and the cost; and
- b. Which external legal counsel should be retained and the terms of the retainer.

1.3 Once a determination is made to retain external legal counsel, the University Secretary and Senior Director Legal Services will, subject to those limited exceptions provided for in the Legal Resources Policy, directly retain external legal counsel.

### **2. Matter Management**

2.1 In overseeing external legal counsel's representation, the University Secretary and Senior Director Legal Services will ensure that external legal counsel:

- a. Is accountable for the cost-effective management of the assigned legal matter;
- b. Devotes the time and skill level appropriate to the tasks at hand;
- c. Complies with applicable rules of professional conduct and the highest ethical standards;
- d. Charges fees, costs, and disbursements which are reasonable and submitted for payment in writing;
- e. Submits any legal documents, draft agreements or opinions sufficiently in advance to allow for meaningful review prior to filing, negotiations or other use (as the case may be);
- f. Provides the University Secretary and Senior Director Legal Services with all significant documents, court rulings and opinions related to assigned legal matters;
- g. Notifies the University Secretary and Senior Director Legal Services of all settlement demands, settlement offers and other settlement-related communications; and
- h. Resolves litigation matters as effectively and expeditiously as possible.

### **3. Review and Approval of external legal counsel Accounts**

3.1 The University Secretary and Senior Director Legal Services will be responsible for processing external legal counsel billing accounts for payment, as per section 6 of the Legal Resources Policy.

3.2 All billing accounts for services rendered by external legal counsel will be sent directly to the University Secretary and Senior Director Legal Services, who will provide copies of accounts to the Senior Administrator who requested the legal services for review and feedback. The Senior Administrator will either approve the account or raise any questions or concerns about the account with the University Secretary and Senior Director Legal Services. The University Secretary and Senior Director Legal Services will conduct the final review of accounts, will resolve any issues respecting any account with external legal counsel and, when appropriate, will approve accounts in accordance with billing guidelines provided to external legal counsel.