

Policy 18

INDEMNIFICATION BYLAW

Bylaw No. 5

A bylaw to provide that the Board shall indemnify a trustee, an officer or an employee of the Board against a claim for damages arising out of the performance of his/her duties; and for an inquiry or proceeding involving the administration and conduct of the business of the District; and will pay legal costs incurred in a court proceeding arising out of the claim or the legal costs arising from such inquiries or proceedings.

WHEREAS the School Act, Section 95 provides that the Board may by bylaw provide that the Board will indemnify a trustee, an officer or an employee of the Board against a claim for damages against a trustee, officer or employee of the Board arising out of performance of his or her duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim;

AND WHEREAS the School Act, Section 95 also provides that the Board may, by bylaw, indemnify a trustee, an officer or an employee of the Board where an inquiry under Part 2 of the Inquiry Act or other proceedings involves the administration and conduct of the business of the District, and also pay legal costs incurred in such inquiries or proceedings;

NOW THEREFORE The Board of Education of School District No. 79 (Cowichan Valley Board) in open meeting assembled enacts as follows:

Interpretation

1. In this bylaw:

- 1.1 "Board" means The Board of Education of School District No. 79 (Cowichan Valley Board);
- 1.2 "Trustee" means a member of The Board of Education of School District No. 79 (Cowichan Valley Board);
- 1.3 "Officer" means a Superintendent, Assistant Superintendent, Director, Secretary-Treasurer, or administrative officer of the Board;
- 1.4 "Employee" means all Board teaching and non-teaching personnel other than officers;
- 1.5 Wherever the singular or masculine or neuter is used in this bylaw, the same shall be construed as meaning the plural, the feminine or the body corporate whenever the context so requires.

2. Indemnification

- 2.1 The Board shall indemnify a trustee, an officer or an employee of the Board against a claim for damages against the trustee, officer or employee arising out of the performance of his/her duties, and, in addition, pay the reasonable costs incurred by the

- trustee, officer or employee in a court proceeding arising out of the claim except as otherwise provided for in this bylaw.
- 2.2 The Board shall indemnify a trustee, an officer or an employee where an inquiry under the Inquiry Act or other proceedings involving the administration and conduct of the business of the District, and also pay reasonable legal costs incurred in such inquiries or proceedings, except as otherwise provided in this bylaw.
- 2.3 Sections 2.1 and 2.2 apply in respect of a person who was formerly a trustee, an officer or an employee of the Board at the time he performed the duties out of which the claim inquiry or other proceeding arise, whether or not he is a trustee, an officer or an employee at the time the claim for damages, inquiry or other proceeding arises, or any legal action arising out of the claim inquiry or other proceeding is commenced or concluded except as otherwise provided in this bylaw.
- 2.4 This bylaw applies to:
- 2.4.1 The performance of duties by current or former trustees, officers or employees; and
 - 2.4.2 Inquiries or proceedings arising out of the administration and conduct of the business of the District.

3. Administration of Medication

Without limiting the generality of Section 2, the Board's indemnification of officers and employees against claims for damages as set out in Section 2.1 hereof, shall include, but is not limited to, claims arising from Board authorized administration of medication to students, supervision of self-administration of medication by students, and performance of physical procedures relating to the medical needs of students.

4. Contracts

This bylaw refers to officer and employee employment contracts, including collective agreements, now in force or in force in the future.

5. Exclusions

In the event that insurance coverage is available with respect to the liability of the trustee, officer or employee, the Board shall not indemnify the trustee, officer or employee as the case may be.

6. The Board shall not indemnify a trustee, officer or employee against:

- 6.1 Legal fees and/or liability resulting from an action or any other proceeding taken by the Board against the trustee, officer or employee, or as a result of an action or proceeding taken by the trustee, officer or employee against the Board;
- 6.2 A fine, penalty or order imposed as a result of a conviction for an offence;
- 6.3 Legal fees incurred as a result of prosecution where the trustee, officer or employee is convicted of an offence or obtains a conditional or absolute discharge;
- 6.4 Liability and/or legal fees resulting from proceedings initiated pursuant to the Teaching Profession Act unless the Board agrees to the contrary, by an affirmative vote of a majority of its members;

- 6.5 Legal fees incurred in an appeal of any conviction, sentence, judgment or order unless the Board agrees to the contrary, by an affirmative vote of a majority of its members;
- 6.6 Liability and/or legal fees incurred by a trustee where there has been a determination by a Court that the trustee knowingly contravened Section 58 of the School Act;
- 6.7 Liability and/or legal fees incurred by a trustee, officer or employee where there is a determination by a Court that the trustee, officer or employee knowingly permitted and/or authorized an expenditure not otherwise authorized by an enactment;
- 6.8 Liability incurred by a trustee resulting from any restitution ordered pursuant to Section 63(1)(b) of the School Act;
- 6.9 Those matters for which the Board, pursuant to its authority under Section 95(3) of the School Act, may seek indemnity from an employee.

7. Legal Counsel

For those matters provided in Sections 2 and 3 of this bylaw, and not excluded by Section 5 and 6, the trustee, officer or employee may either:

- 7.1 Retain legal counsel appointed by the Board, in which case legal counsel shall be paid for and directed by the Board;
- 7.2 Retain legal counsel chosen by the trustee, officer or employee, in which case the Board shall have the right to:
 - 7.2.1 Approve, in advance, any agreement for legal fees and disbursements;
 - 7.2.2 Pay all or part of the legal fees and disbursements and to set a maximum for legal fees and disbursements;
 - 7.2.3 Direct the defense and to settle or compromise the claim or action;
 - 7.2.4 Review the account of the legal counsel pursuant to the Legal Profession Act and the trustee, officer or employee shall include such a term in an agreement with his/her legal counsel; and
 - 7.2.5 Determine whether or not the trustee, officer or employee will be reimbursed by the Board for legal fees or any portion of the legal fees that have been paid by the trustee, officer or employee prior to the approval of the Board.

8. Amounts Payable

Any amount that may be payable by the Board shall be reduced by any court costs awarded to the trustee, officer or employee.

9. Advancing Legal Costs

The Board may give consideration to advancing legal costs to the trustee, officer or employee prior to the final resolution of a claim or action in order to prevent undue hardship. When the Board advances such costs to a trustee, officer or employee, the trustee, officer or employee shall provide written authorization for the Board to deduct an amount equivalent to the costs advanced from future funds payable to the trustee, officer or employee by the Board. The authorization shall only be used by the Board if it is determined at a later date that the trustee, officer or employee is not entitled to be indemnified pursuant to the terms of this bylaw.

10. Severability

If any section or lesser portion of this bylaw is held invalid, the invalidity shall not affect the validity of the remaining portions of this bylaw.

11. Citation

This bylaw may be cited for all purposes as the "Indemnification Bylaw".

READ A FIRST TIME this 3rd day of April, 2018.

READ FOR A SECOND TIME this 3rd day of April, 2018.

READ FOR A THIRD TIME, passed, and adopted this 3rd day of April, 2018.

Original signed by Candace Spilsbury
Chairperson of the Board

Original signed by Jason Sandquist
Secretary-Treasurer

I HEREBY CERTIFY this to be a true and original of School District No. 79 (Cowichan Valley) Indemnification Bylaw adopted by the Board the 3rd day of April, 2018.

Original signed by Jason Sandquist
Secretary-Treasurer

Legal Reference: Sections 58, 63, 65, 85, 95 School Act
Inquiry Act
Legal Profession Act
Teaching Profession Act

Adopted: September 2018