



# Revelstoke Board of Education

## Policy Manual

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### 2.16 Indemnification Bylaw

*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 BUSINESS OF THE SCHOOL 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 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 her or his duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim;*

*AND WHEREAS the School Act 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 school district, and also pay legal costs incurred in such inquiries or proceedings;*

*NOW, THEREFORE the Revelstoke Board of Education enacts as follows:*

#### Interpretation

1. In this Bylaw, which may be cited as the “Indemnification Bylaw”.
  - (a) “Board” means the Revelstoke Board of Education;
  - (b) “trustee” means a member of the Revelstoke Board of Education;
  - (c) “officer” means a Superintendent, Assistant Superintendent, Secretary-Treasurer, Director, or administrator of the Board;

- (d) “employee” means all Board teaching and non-teaching personnel other than officers;
- (e) 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.

### **Indemnification**

- 2. (a) 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 or her duties and where there is an inquiry under the *Inquiry Act* or other proceedings involving the administration or conduct of the business of the Board and the Board shall pay reasonable legal costs incurred in such claims, inquiries or other proceedings, to the extent permitted by and in the manner provided in this Bylaw;
- (b) The Board may, by an affirmative vote of not less than 2/3 of all of its members, pay any sum required to indemnify a trustee, an officer or an employee of the Board where a prosecution arises out of the performance of his or her duties and also pay reasonable costs necessarily incurred, to the extent permitted by and in the manner provided in this Bylaw;
- (c) Sections 2(a) and 2(b) apply in respect of a person who was formerly a trustee, an officer, or an employee of the Board at the time he/she performed the duties out of which the claim, inquiry or other proceeding arise, whether or not he/she is a trustee, an officer, or an employee at the time the claim for damages, inquiry, prosecution, 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;
- (d) This Bylaw applies to:
  - i) the performance of duties by current or former trustees, officers, or employees; and
  - ii) inquiries or proceedings arising out of the administration and conduct of the business of the Board.

### **Administration of Medication**

- 3. Without limiting the generality of Section 2, the Board’s indemnification of trustees, officers, or employees against claims for damages as set out in Section 2(a) 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.

### **Harassment**

4. Where a person makes a complaint of harassment in violation of a collective agreement, Board policy or statute against a trustee, officer or employee arising out of the proper and reasonable performance of his or her duties, the Board may, by an affirmation vote of not less than 2/3 of all of its members, provide legal representation for the trustee, officer or employee, on the terms and conditions in section 6 through 8 of this Bylaw.

### **Contracts**

5. This Bylaw shall not apply to officers and employees who are parties to contracts of employment or collective agreements with the Board that contain indemnification provisions that do not incorporate this Bylaw by reference. It does not supersede those contracts or collective agreements.

### **Exclusions**

6. In the event that insurance coverage is available to the trustee, officer, or employee 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.
7. The Board shall not indemnify a trustee, officer, or employee against:
  - (a) 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;
  - (b) a fine, penalty, or order imposed as a result of a conviction for an offence;
  - (c) 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;
  - (d) 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;
  - (e) liability and/or legal fees incurred by a trustee where there has been a determination by a Court that the trustee knowingly contravened, in accordance with Section 58 of the *School Act*;
  - (f) 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;
  - (g) liability incurred by a trustee resulting from any restitution ordered pursuant to Section 63 of the *School Act*;

- (h) those matters for which the Board, pursuant to its authority under the *School Act* may seek indemnity from an employee.

### **Legal Counsel**

- 8. For those matters provided in Sections 2 and 3 of this bylaw, and not excluded by Sections 5 and 6, the trustee, officer, or employee may either:
  - (a) retain legal counsel appointed by the Board, in which case legal counsel shall be paid for and directed by the Board; or
  - (b) retain legal counsel chosen by the trustee, officer, or employee, in which case the Board shall have the right to:
    - i) approve, in advance, any agreement for legal fees and disbursements;
    - ii) pay all or part of the legal fees and disbursements and to set a maximum for legal fees and disbursements;
    - iii) direct the defense and to settle or compromise the claim or action;
    - iv) review the account of the legal counsel pursuant to the *Legal Professional Act* and the trustee, officer, or employee shall include such a term in an agreement with his/her legal counsel; and
    - v) 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, or employee prior to the approval of the Board.

### **Obligation of Trustees, Officer and Employees**

- 9. A Trustee, an Officer and Employees:
  - (a) shall promptly notify the Board of any incident or course of events that may lead to any claim, inquiry, proceeding or prosecution for which indemnification may be sought pursuant to this Bylaw and provide the Board with full particulars thereof.
  - (b) shall provide information requested by the Board, its counsel or agents and otherwise cooperate and assist in the defense of any claims, inquiries or proceedings for which indemnification is sought pursuant to this Bylaw and shall not assume liability or agree to a settlement without the Board's prior consent.

The Board may, by an affirmative vote of the majority of its members, decide not to indemnify or pay costs to a trustee, officer or employee who fails without reasonable excuse to comply with the above.

### **Accounts Payable**

10. Any amount that may be payable by the Board shall be reduced by any other source of indemnification or contribution available to the trustee, officer, or employee.

**Advancing Legal Costs**

11. The Board may advance 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 of 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.

**Severability**

12. In 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.

**Citation**

13. This bylaw may be cited for all purposes as the "Revelstoke Board of Education Indemnification Bylaw".

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