

School District #62 (Sooke)

TRUSTEE INDEMNIFICATION BY-LAW	No.: 2-20
	Effective: Jan. 26/21 Revised: Reviewed:

Preamble:

The British Columbia *School Act* provides that the Board of Education may, by by-law, provide that the Board will indemnify a trustee, of the Board. It is in the interest of a responsive and efficient school district that trustees, be protected against a claim of damages arising out of the performance of their duties.

Policy References:

- By-law #1-20: Board Governance
- Policy A-355: Complaints Against Individual Trustees
- Policy A-105: Trustee Code of Conduct

Statutory References:

- British Columbia School Act:* Section 58 "Duty of trustee"
- Section 63 "Remedy"
- Division 4 "Limitation of Actions and Indemnification"

BY-LAW:

1. Indemnification

- 1.1. The Board will indemnify a trustee of the Board
 - 1.1.1. against a claim for damages against the trustee arising out of the performance of their duties, or
 - 1.1.2. if an inquiry under the *Public Inquiry Act* or other proceeding involves the administration and conduct of the business of the School District. In addition, the Board may pay legal costs incurred in proceedings arising out of the claim, inquiry or other proceeding.
- 1.2. The Board, may, by affirmative vote of a majority of not less than 2/3 of all its members, pay
 - 1.2.1. any sum required to indemnify a Trustee, of the Board if a prosecution arises out of the performance of their board duties; and
 - 1.2.2. costs necessarily incurred; but the Board must not pay a fine imposed on a Trustee of the Board as a result of their conviction.
- 1.3. The Board must not seek indemnity against a Trustee of the Board in respect of any action of the Trustee that results in a claim for damages against the Board, but the Board may seek indemnity
 - 1.3.1. against a trustee if the claim for damages arises out of the gross negligence of the Trustee.

2. Interpretation:

2.1. The Board's obligation to indemnify a Trustee of the Board in respect of matters occurring during their term of office shall continue, notwithstanding that the term of office has ended.

3. Exclusions

3.1. The Board shall not indemnify a trustee against:

- 3.1.1. liability and/or legal fees incurred as a result of an action or other proceeding taken by the Board against the trustee, or as a result of an action or proceeding taken by the trustee against the Board;
- 3.1.2. liability to pay a fine, penalty, or order imposed as a result of a conviction for an offence;
- 3.1.3. legal fees incurred as a result of a prosecution where the trustee is convicted of an offense or obtains a conditional discharge;
- 3.1.4. liability and/or legal fees incurred by a trustee where the Court determines that the trustee knowingly contravened the *School Act*;
- 3.1.5. liability and/or legal fees incurred by a trustee where the Court determines that the trustee knowingly permitted or authorized an expenditure not otherwise authorized by an enactment;
- 3.1.6. liability incurred by a Trustee resulting from any restitution ordered pursuant to Section 63 of the *School Act*;
- 3.1.7. Those matters for which the Board may seek indemnity from a trustee pursuant to its authority under section 95 of the *School Act*.
- 3.1.8. legal fees incurred in an appeal of any conviction, sentence, judgment, or order unless the Board agrees to pay for these legal fees.

4. Insurance:

4.1. In the event that insurance coverage is available to the trustee with respect to the liability of a trustee, the Board shall not indemnify the trustee until the available insurance coverage is exhausted.

5. Legal Counsel

5.1. For those matters provided in Sections 1 and 2 of this By-law, and not excluded by Section 4 and 5, the trustee may either:

- 5.1.1. be represented by legal counsel appointed and instructed by the Board, in which case legal counsel shall be paid for and directed by the Board; or
- 5.1.2. with the prior approval of the Board, retain legal counsel chosen by the trustee in which case the Board shall have the right to:
 - a. approve, in advance, any agreement for legal fees and disbursements;
 - b. pay all or part of the legal fees and disbursements and to set a maximum for legal fees and disbursements;
 - c. direct the defense and settle or compromise the claim or action; and
 - d. 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.

6. Amounts Payable

6.1. Any amount that may be payable by the Board shall be reduced by any court costs awarded and paid to the trustee.

7. Advancing Legal Costs

7.1. The Board may advance legal costs to the trustee 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, the trustee shall provide written authorization for the Board to deduct an amount equivalent to the costs advanced from future funds payable to the trustee by the Board. The authorization shall only be used by the Board if it is determined at a later date that the trustee is not entitled to be indemnified pursuant to the terms of this By-law.