

402 – Indemnity Bylaw

BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT 68 (NANAIMO-LADYSMITH)

INDEMNIFICATION PROCESS BYLAW

Whereas The *School Act* states

A Board may, by bylaw, provide that the board will indemnify a trustee, an officer or an employee of the Board

- a) against a claim for damages against a trustee, officer or employee of the Board arising out of performance of his or her duties, or
- b) where an inquiry under Part 2 of the *Inquiry Act* or other proceeding involves the administration and conduct of the business of the school district

and, in addition, may pay legal costs incurred in proceedings arising out of the claim or inquiry or other proceedings.”

And “A board may, by an affirmative vote of not less than two-thirds of all its members, pay

- a) any sum required to indemnify a trustee, an officer or an employee of the Board where prosecution arises out of the performance of his or her school board duties, and
- b) costs necessarily incurred,

but the Board shall not pay a fine imposed on a trustee, officer or employee as a result of his or her conduct.”

And further “A Board shall not seek indemnity against a trustee, an officer or an employee at the Board in respect of any action of the trustee, officer or employee that results in a claim for damages against the Board, but the Board may seek indemnity

- a) against a trustee, officer or employee where the claim for damages arises out of the gross negligence of the trustee, officer or employee, or
- b) against an officer or employee where, in relation to the action that gave rise to the claim for damages against an officer or employee, the officer or employee willfully acted contrary to
 - i) the terms of his or her employment, or
 - ii) an order of a superior.”

Now therefore, the Board of School Trustees, School District No. 68 (Nanaimo) enacts the following Bylaw prescribing process for the disposition of claims for damages against an Employee arising out of the performance of his or her duties and 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.

The Board of Trustees will demonstrate fair, reasonable and lawful consideration for the Employee as the basic criteria for the implementation of this Bylaw.

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1. In this Bylaw the term “Employee” includes trustees, officers and employees of the Board, former trustees and former officers and former employees of the Board.
2. This Bylaw shall be effective for legal actions that are undertaken on or after April 9, 1992.
3. The Board shall indemnify an Employee against a claim for damages against an Employee arising out of the performance of his or her duties and 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 except as provided for in this Bylaw.
4. The Board shall not indemnify an Employee against:
 - a) Liability to pay a fine imposed as a result of the Employee’s conviction for a criminal act
 - b) Liability, other than liability to pay a fine, incurred as a result of a criminal act of which the Employee is convicted or obtains a conditional or absolute discharge, unless the Board by an affirmative vote of not less than two-thirds of all its members so agrees
 - c) Liability incurred as a result of proceedings taken by the Board against the Employee or as a result of proceedings taken by the Employee against the Board
 - d) Liability incurred as a result of proceedings under the *Teaching Profession Act* unless the Board, by an affirmative vote of a majority of its members attending a meeting so agrees and so informs the employee in writing
 - e) Legal fees (subject to Paragraph 5 below) of an Employee incurred in the defense of a criminal charge, unless:
 - i) The criminal charge arises out of the Employee’s performance of his or her duties; and
 - ii) The Employee is acquitted; and
 - iii) The Board, by an affirmative vote of not less than two-thirds of all its members so agrees
 - iv) The Employee has not been disciplined by the Board for the event or events that are the subject matter of the criminal action.
 - f) Legal fees (subject to Paragraph 5 below) of a Trustee, and costs against the Trustee awarded by the Court, under *Part 5* of the *School Act* (Conflict of Interest) where the Court determines that the Trustee knowingly contravened *Section 78* of the *Act*, unless the Board by an affirmative vote of not less than two-thirds of its members present at a special board meeting so agrees
 - g) Legal fees (subject to Paragraph 5 below) and costs against an Employee awarded by the Court incurred in proceedings initiated by the Employee unless the Board by an affirmative vote of a majority of its members attending a meeting so agrees
 - h) Those matters for which the Board may seek indemnity from an Employee pursuant to its authority under *Section 113(3)* of the *School Act*.
5. For those matters covered by *Sections 3 and 4*, the Employee shall:
 - a) Retain such legal counsel as the Board may appoint and such legal counsel shall be paid for by the Board, or
 - b) Retain such legal counsel as the Employee may choose, in which case the Board shall:

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- i) Have the right to approve, in advance, any agreement for legal fees and disbursements including the right to set a maximum for such legal fees and disbursements
 - ii) Have the right to tax the account of the legal counsel and the Employee agrees to include such a term in the agreement with his/her counsel
 - iii) Determine whether the Employee is reimbursed by the Board for legal fees or any portion of the legal fees that have been paid by the Employee prior to the approval of the Board.
6. The Board shall give consideration to advancing funds to the Employee prior to the final resolution of a claim or action in order to prevent undue hardship. When the Board advances funds to an Employee, the Employee shall sign a promissory note and provide a written authorization for the Board to deduct an amount equivalent to the funds advanced from future funds payable to the Employee by the Board. The authorization shall only be used by the Board if it is determined at a later date that the Employee is not entitled to be indemnified under the terms of this Bylaw.

This Bylaw for all intents and purposes, shall be known as School District No. 68 (Nanaimo) Indemnification Process Bylaw

(Corporate Seal)

R. Kocher
Chairperson of the Board

W. Dallamore
Secretary-Treasurer

Legal References:

Monitoring Method:

Monitoring Frequency:

Previous Policy Number: *Policy 4.2*

Adopted: *1992.04.08*

Amended: *2012.12.10*