

## LEGAL and GOVERNANCE CORNER

### Background:

With the recent controversy about the ability of the Minister to create a province wide vaccine mandate we thought it might be useful to review the structure of the *School Act* and how the Board and the Minister get their authority.

### Discussion:

The Board is a creature of statute. That is, it gets its authorities and limits on its authority directly from the *School Act*. It is a corporation (section 65). Further, while its primary purpose is the responsibility for the improvement of student achievement (section 65(2)), like a corporation, it has the powers of a natural person, subject to any limits in the *School Act*. The practical meaning of this is that Board can take any action it sees fit to pursue its goals subject to the restrictions in the *School Act* and of course subject to acting lawfully and according to its by-laws. Further, the *School Act* also sets out a variety of specific requirements that a Board must perform (providing an educational program, creating certain policies etc.)

Why is this important? Notably, there is often a misconception that a Board cannot act unless it can find specific authority under the *School Act* (see section 85(2) for a variety of examples of deemed authority) e.g. use of volunteers, maintenance of facilities etc. However, the opposite is true, the Board can act unless it is prohibited by the *School Act*. For instance, the *School Act* was recently changed to allow Boards to provide childcare services if it was so inclined. It is my opinion that such a statutory revision was not necessary (please note that there is differing opinions on this issue). Similarly, a Board must seek Ministerial approval to provide housing for staff or students (section 102). However, there is no provision prohibiting a Board from creating housing for non-employees. Arguably, such a service does not support the mission of the Board, however, there may be circumstances in which it does (e.g. to maintain enrollment, support reconciliation etc). Essentially, unless specifically prohibited by a provision of the *School Act*, or an order stemming from the Minister's jurisdiction, a Board has the authority to proceed in a manner it sees fit.

The Minister gets their authority from restrictions within the *School Act* (e.g. the requirement for Ministerial approval to build employee housing or for the disposition of land). They also get authority from section 168 which provides the Minister the broad authority to issue orders related to many (if not most) of the areas of Board operations. In fact, it is the authority in this section that most of the restrictions on Board flow from. Therefore, there are matters that theoretically the Board can make decisions under its general authority that later the Minister could create an order altering the local requirement. One example is codes of conduct, a Board must adhere to Ministerial orders on this. Further examples are FSAs, land disposition, FESL, etc.

This push and pull between a centralized authority and local autonomy is likely the explanation for the success of the public education system in British Columbia but being aware of the statutory basis for the co-governance model is something that folks involved in the system should be aware of.