

905 Indemnification Bylaw No. 2-93

Adopted: September 12, 1993

A bylaw to provide that the School Board shall indemnify a trustee, an officer or an employee of the Board against a claim for damages arising out of the performance of her/his duties; and for an inquiry or proceeding involving the administration and conduct of the 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* S.B.C. 1989, c.61 provides that the School 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* S.B.C. 1989, c.61 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 Board of School Trustees of School District No. 44 (North Vancouver) in open meeting assembled enacts as follows:

Interpretation

1. In this bylaw, which may be cited as "Indemnification Bylaw No. 2-93":
 - (a) "Board" means the Board of School Trustees of School District No. 44 (North Vancouver);
 - (b) "trustee" means a member of the Board of School Trustees of School District No. 44 (North Vancouver);
 - (c) "officer" means a superintendent, assistant superintendent, secretary-treasurer, director, or administrative officer 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 or a prosecution against the trustee, officer, or employee arising out of the performance of her/his duties and, in addition, pay the reasonable costs incurred by the trustee, officer, or employee in a court proceeding arising out of the claim or other prosecution except as otherwise provided for in this bylaw.
 - (b) The Board shall indemnify a trustee, an officer, or an employee where there is an inquiry under the *Inquiry Act* or other proceedings involving the administration and

conduct of the business of School District No. 44 (North Vancouver), and also pay reasonable legal costs incurred in such inquiries or proceedings, except as otherwise provided in this bylaw;

- (c) Section 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 School District No. 44 (North Vancouver).

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.

Contracts

- 4. This bylaw refers to officer and employee employment contracts, including collective agreements, now in force or in force in the future. It does not supersede those contracts or collective agreements.

Exclusions

- 5. 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.
- 6. 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 offense;
 - (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 Section 78 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 83(1)(b) of the *School Act*;
- (h) those matters for which the Board pursuant to its authority under Section 113(3) of the *School Act* may seek indemnity from an employee.

Legal Counsel

- 7. 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:
 - (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 defence and to settle or compromise the claim or action;
 - iv) 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 her/his 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, officer, or employee prior to the approval of the Board.

Amounts Payable

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

Advancing Legal Costs

- 9. 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 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.

Severability

- 10. 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.

Citation

11. This bylaw may be cited for all purposes as Board of School Trustees of School District No. 44 (North Vancouver) “Indemnification Bylaw No. 2-93”.

Read a first, second, and third time and reconsidered, finally passed, and adopted this 27th day of September, 1993.

Original signed by Chairperson, Don H. Bell, Board of Trustees and Len Berg, Secretary-Treasurer.