

**BOARD OF EDUCATION OF SCHOOL DISTRICT NO.58  
(NICOLA-SIMILKAMEEN)**

**BYLAW NO. 3-23**

**INDEMNIFICATION BYLAW**

A Bylaw of the Board of Education of School District No. 58 (Nicola-Similkameen), hereinafter referred to as the "Board", to establish Board indemnification for trustees, officers and employees.

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**WHEREAS** section 95 of the *School Act* provides that the Board may enact a Bylaw to indemnify a trustee, officer, or an employee of the Board.

**AND WHEREAS** the Board wishes to enact indemnification provisions.

**NOW THEREFORE** the Board in an open meeting, hereby **ENACTS AS FOLLOWS:**

**1. CITATION**

- 1.1 This Bylaw may be cited as 'School District No. 58 (Nicola-Similkameen) Indemnification Bylaw 3-23.

**2. DEFINITIONS**

- 2.1 The terms used in this Bylaw have the meanings assigned by *the School Act* except when context indicates otherwise.
- 2.2 Within this this Bylaw:
- 2.2.1 "trustee" means an elected member of the Board;
  - 2.2.2 "officer" means a Superintendent, Assistant Superintendent, Secretary-Treasurer, or Assistant Secretary Treasurer of the Board;
  - 2.2.3 "employee" means Director, district and school based administrators and all excluded staff, teachers and non-teaching personnel other than officers;
  - 2.2.4 reference to a trustee, officer or employee includes a former trustee, officer or employee;
  - 2.2.5 "court" means a court of law and includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity.

**3. INDEMNIFICATION**

- 3.1 Subject to the exclusions below, the Board will, in accordance with the provisions of this Bylaw, indemnify a trustee, officer or employee:

- 3.1.1 against a claim for damages against arising out of the performance of their duties, or
  - 3.1.2 if an inquiry under the Public Inquiry Act or other proceeding that involves the administration and conduct of the business of the School District.
- 3.2 The Board may pay legal costs incurred in proceedings arising out of the claim, inquiry or other proceeding which involves the administration and conduct of the business of the School District.
- 3.3 The Board shall not seek indemnity from a trustee, officer or employee in respect of any action of the trustee, officer or employee that results in a claim for damages against the Board, except :
  - 3.3.1 where the claim for damages arises out of the gross negligence of the trustee, officer or employee; or
  - 3.3.2 where the officer or employee willfully acted contrary to the terms of their employment or, an order of a superior.

#### 4. CONTRACTS

- 4.1 This Bylaw shall be read into all officer and employee employment contracts that are in force, or may be in force in the future, including collective agreements.

#### 5. EXCLUSIONS:

- 5.1 The Board shall not indemnify a trustee, officer or employee against:
  - 5.1.1 any matters for which insurance coverage is available to cover the liability of the trustee, officer or employee;
  - 5.1.2 a fine or penalty imposed as a result of their criminal conviction, conditional discharge or absolute discharge;
  - 5.1.3 an action or proceeding by the Board against the trustee, officer or employee; or an action or proceeding by the trustee, officer or employee against the Board; or where the interests of the Board are, or may become, adverse to the interests of the trustee, officer or employee
  - 5.1.4 criminal prosecution that arises out of the performance of their duties, unless the Board agrees to do so by an affirmative vote of not less than two-thirds of all its members
  - 5.1.5 proceedings under the *Teachers Act*, unless the Board agrees to do so by an affirmative majority vote
  - 5.1.6 allegations of harassment, unless the Board agrees to the contrary, by an affirmative vote of a majority of its members
  - 5.1.7 a claim brought by a third party for liability arising out of the operation of a vehicle owned by or leased to the School District
  - 5.1.8 actions or claims regarding bodily injury caused intentionally, except when done to protect persons or property
  - 5.1.9 a restitution ordered pursuant to the *School Act*
  - 5.1.10 personal injury actions or claims arising out of the performance or alleged performance of a criminal or illegal act, unless they were not aware of, or party to, the performance of any such act
  - 5.1.11 legal cost or liability, where a Court determines that they knowingly contravened the *School Act* or other legislation; or knowingly permitted and/or authorized an expenditure which is not authorized by an enactment
  - 5.1.12 legal cost or liability where, in the opinion of the Board, they did not have

reasonable grounds to believe that their conduct was lawful

## **6. LEGAL COUNSEL**

- 6.1 For those matters provided for in Section 3 of this Bylaw, and not excluded by Section 5, the trustee, officer or employee may:
  - 6.1.1 retain legal counsel appointed by the Board, and the Board shall provide instructions and pay the appointed legal counsel directly, or
  - 6.1.2 retain legal counsel of their choice, and the Board shall have the right to:
    - 6.1.2.1 approve in advance, any agreement for legal fees and disbursements;
    - 6.1.2.2 pay all or part of the legal fees and disbursements, and set a maximum amount for legal fees and disbursements;
    - 6.1.2.3 direct the defense, and to settle or compromise the claim, action, or proceeding. The trustee, officer or employee agrees to include such a term in the agreement with their legal counsel;
    - 6.1.2.4 determine whether all, or any part, of the legal costs paid prior to the approval of the Board shall be reimbursed.

## **7. AMOUNTS PAYABLE**

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

## **8. ADVANCING LEGAL COSTS**

- 8.1 The Board may advance legal costs to the trustee, officer or employee prior to the final resolution of a claim, action or proceeding.
- 8.2 When the Board advances legal costs to a trustee, officer, or employee, they shall provide written authorization for the Board to deduct an amount equivalent to the costs advanced from future funds payable to them by the Board, to be used if it is later determined that the trustee, officer or employee is not entitled to be indemnified pursuant to the terms of this Bylaw.

## **9. MISCELLANEOUS PROVISIONS**

- 9.1 If any part of this Bylaw is held to be invalid by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.

10.1 School District No. 58 (Nicola-Similkameen) Indemnification Bylaw 2-96 dated December 2, 1996 and any previous Indemnification Bylaws, including any amendments thereto, are hereby repealed.

Read a Second Time                      this                      8<sup>th</sup>                      day of                      November 2023

ADOPTED this 13<sup>th</sup> day of December 2023

Chair

Secretary Treasurer