

## 411: INDEMNIFICATION AGAINST PROCEEDINGS (P)

Approved: 91 05 21

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### POLICY

**The Board of Education believes that the provision of indemnification for its employees will support its employees in their good faith efforts to perform their duties, inclusive of Board authorized extra-curricular activities, even where such efforts may expose them to personal legal liability or guilt.**

**The Board will indemnify employees against all legal costs actually and reasonably incurred by the employee in a civil or administrative action or proceeding which is brought against the employee, subject to the Regulations of this policy.**

**The Board may, at its discretion, pay any sum required to indemnify an employee where a prosecution arises out of the performance of school board duties. The Board will not pay a fine, penalty or orders imposed on an administrative employee as a result of a conviction.**

**The Board will not seek indemnity against an employee in respect to any action of the employees that results in a claim for damages against the Board, except where the claim for damages arises out of gross negligence of the employee or where the employee has acted willfully contrary to the terms of his or her employment or an order of a superior.**

School Act Reference  
Section 113

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### REGULATIONS

#### 1.0 TYPES OF PROCEEDINGS AND BOARD INDEMNIFICATION

##### 1.1 Civil

###### 1.1.1 Definition

Civil suits are legal proceedings taken in disputes between parties to enforce rights or obtain civil remedies.

###### 1.1.2 Examples

*Negligence, wrongful dismissal, defamation, assault, and breach of contract.*

###### 1.1.3 Board's Indemnification Position

The Board, through the SCHOOL PROTECTION PROGRAM (SPP), will cover liability and legal costs associated with civil action brought against an employee while in the performance of his or her curricular and extra-curricular duties on behalf of the Board, excepting the following exclusions as set out by SPP.

- i) personal injury resulting from performance of a criminal or illegal act
- ii) any claim arising out of dishonest, fraudulent, criminal or malicious acts
- iii) damages other than personal injury or property damage for false arrest, detention or imprisonment or malicious prosecution; libel or slander or defamation of character; invasion of privacy; wrongful eviction or wrong entry; assault and battery, and
- iv) a \$2,000 deductible for property damage, not applicable if the total claim exceeds \$2,000.

## 1.2 Criminal and Quasi-criminal

### 1.2.1 Definition

Criminal and quasi-criminal charges are proceedings taken by the Crown accusing a person of disobeying a provision of the Criminal Code of Canada or a Provincial Statute, thereby committing a crime.

### 1.2.2 Examples

- i) criminal – sexual exploitation of a young person, breach of trust by a public officer, and dangerous driving
- ii) quasi-criminal – failure to report a child in need of protection, careless driving, failure to file a disclosure when ordered, and failure to comply with WCB regulations and orders.

1.2.3 The Board, by an affirmative vote of not less than 2/3 of its members, will indemnify the employee for legal costs incurred during the police investigation of the charge or allegation, where in the opinion of the Board, the employee acted reasonably and in good faith and with reasonable grounds that the conduct was lawful.

## 1.3 Administrative

### 1.3.1 Definition

Administrative proceedings are proceedings before regulatory and licensing bodies.

### 1.3.2 Examples

Proceedings before the College of Teachers relating to competence or conduct.

### 1.3.3 Board's Indemnification position

The Board will indemnify for legal costs where in the opinion of the Board, the employee acted properly in the performance of his or her duties and had reasonable grounds for believing his conduct was lawful.

## 2.0 ADVANCEMENT OF FUNDS

- 2.1 The Board may, at its discretion, advance funds to an employee prior to the final resolution of a claim or action or prosecution in order to prevent undue hardship being suffered by the employee.

## 3.0 RETAINING COUNSEL

- 3.1 The Board will retain the option to retain legal counsel of its choice to defend civil or administrative action against an employee and the authority for the direction of the defense and for the acceptability of any compromise or settlement of any claim or action.
- 3.2 In the event the Board chooses to retain legal counsel, it has no obligation to indemnify the employee for any legal fees associated with any legal representative the employee may choose to retain.

## 1.0 NOTIFICATION OF LEGAL ACTION

- 4.1 In order to be eligible for indemnification, the employee must immediately notify the Board, in writing, of any incident or course of events about which he or she becomes aware that may lead to any legal proceedings or action against the employee.

## 2.0 APPEALS

- 2.1 The costs, charges, and expenses associated with any appeal by an employee of any conviction, sentence, judgment or order are not covered by Board indemnification.
- 2.2 Employees may apply for indemnification at the resolution of the case.
- 2.3 If the other party to the proceedings appeals, the Board indemnity applies as for any other proceeding brought against an employee.

## 3.0 BOARD ACTION AGAINST AN EMPLOYEE

Board indemnification does not apply to costs, charges and expenses associated with any action or proceedings taken by the Board against its employee.