

TO: Sherri Bell

FROM: Mark Walsh

DATE : January 28, 2014

RE: **Parental Liability for Damages**

Background

You have forwarded me a request from trustee requesting information on the potential liabilities of parents in the District that the trustee received from one of the schools in their family.

You have asked that I provide a general overview of liability issues with respect to the questions asked by the parent. I have provided a memo for convenience that I believe provides a general answer.

I would caution, however, that with damage claims each circumstance is individual and would require an opinion on potential liability and coverage so it is important that this memo is viewed as a general guidance document only.

I would also suggest that if the PAC was interested in specific legal advice that they contact their provincial organization.

Response

Under the *School Act*, parents are deemed to be jointly and severally liable for damage caused by a student. This means that where a student is found negligent for damage that a parent may be held responsible for the actions of their student.

For instance, in *Nanaimo-Ladysmith School District No. 68 v. Dean*, 2015 BCSC 11, a 14 year old student caused \$48,000 dollars damage to school by tampering with the sprinkler system as a prank. The District's insurer made a claim against the student and his parents for the damages pursuant to section 10 of the *School Act*.

The court held that the student, based on his age, should have known the damage that he would cause and therefore the action was intentional. It also found he owed a duty of care to the District in respect of its property. Applying section 10 of the *School Act* the court held that the parents were jointly liable for the damage caused.

The *School Act*, however, also contains a provision that prevents a damage claim against a volunteer except where the volunteer has been found to be dishonest, malicious, acted with gross negligence or alternatively faces a claim of libel or slander.

This means that the volunteer activities of a PAC for a school purpose (e.g. a dance or field trip) would fall under the limitation of liability provisions of the *School Act* except where one of the exceptions arise (e.g. behaving in a grossly negligent manner). Essentially, where a volunteer performs the duties of the volunteer in a reasonable manner and in good faith they are not subject to a claim.

If the volunteer's child was to cause intentional damage to Board property during the same event (a dance or field trip) and was found negligent a parent could still be held liable even if they were volunteering. This liability, however, stems from the actions of the child and not the parent as a volunteer.

In addition, where PAC and DPAC are performing District approved activities they generally are covered by our insurance.

I have not addressed what would constitute "gross negligence", "malicious" or "dishonest" conduct as such an analysis would require further research beyond your current request. Moreover, as noted above, any situation would be fact specific.

Conclusion

The *School Act* deems that parents are jointly and severally liable for the negligent actions of children with respect to District property. Conversely, the *Act* also specifically protects volunteers against claims of damages when volunteering for school events. This distinction is important given recent case law involving parental liability. Finally, actions of PAC and DPAC members are generally covered by our insurance where they are performing activities approved by the District.

School Act

Actions against board

94 (1.1) No action for damages lies or may be instituted against a volunteer for anything said or done or omitted to be said or done by him or her in the provision of volunteer services for a board, or for any alleged neglect or default in the provision of volunteer services for the board by the volunteer.

- (2) Subsection (1) and (1.1) do not provide a defence if
- (a) the trustee, officer or employee or volunteer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct, or
 - (b) the cause of action is libel or slander.

Liability for damage to property

10 If property of a board or a francophone education authority is destroyed, damaged, lost or converted by the intentional or negligent act of a student or a francophone student, that student and that student's parents are jointly and severally liable to the board or francophone education authority in respect of the act of that student.