



GUIDE TO
School Legislation
in British Columbia

PART V

**BOARDS OF
EDUCATION**

BCSTA

British Columbia
School Trustees
Association

GUIDE TO SCHOOL LEGISLATION IN BRITISH COLUMBIA

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PART V

BOARDS OF EDUCATION

Part V reviews the composition, legal status and principal functions of the province's boards of education, as well as procedures at board of education meetings. Matters affecting individual school trustees, including trustee elections, are covered in Part VI. In 2007, "school boards" were renamed as "boards of education," which is the term used throughout this book except in historical references.

50.0 Composition of Boards of Education

50.1 Number of School Districts and Boards

Each school district in British Columbia is required to have a board of education composed of school trustees locally elected or appointed by the minister of education (section 30 *School Act*). The number of school districts in BC is determined by the Lieutenant Governor in Council (effectively the provincial cabinet), which has the power to create, abolish or alter the boundaries of school districts (section 176 *School Act*). Where a new school district is created by amalgamation or division of existing school districts, the cabinet may terminate the terms of office of the existing board members (section 31(4) *School Act*).

Amalgamations in 1996 reduced the number of public school boards (not including the CSF) from 75 to 59.

50.2 Number of Trustees and Electoral Areas

The minister of education determines the number of trustees for each board of education (three, five, seven or nine – though there have been no three-member boards in recent years), and whether there should be more than one electoral area in the school district. If there is to be more than one electoral area, the minister must also determine the number of trustees to represent each area (section 30(2) and (3) *School*

Act). The minister may change the number of trustees and the electoral areas within a school district at any time, as well as the number of trustees for an electoral area, though usually at the request of the board of education (section 30(4) and (5) *School Act*). Trustee elections in School District #39 (Vancouver) must be for the district at large (one electoral area) unless an order of the minister of education provides otherwise (section 30(7) *School Act*). A board may be comprised of a combination of trustees elected at large to represent the whole school district and trustees elected to represent smaller trustee electoral areas.

50.3 Official Trustee

The exception to the "each school district to have a board of education" rule is where cabinet decides to appoint an official trustee to replace a board that is "in serious financial jeopardy," where there is substantial non-compliance with the *School Act*, Regulations or Rules or Orders made under the Act, where there is "a risk to student achievement and it is in the public interest to do so," or "where the Board has failed to comply with an administrative directive issued by the Minister" (*School Act*, s. 172). The appointment of an official trustee is rare and usually a temporary measure.

51.0 Legal Status of Boards

51.1 The Legal Hierarchy

If the role of boards of education is to be in perspective, one must understand their position in the legal hierarchy of BC public school education. Section 93 of the *Constitution Act*, 1867 (formerly the *British North America Act*) gives the provinces almost complete authority in education matters. The Legislature is the supreme provincial authority, and in British Columbia the *School Act*, as approved by the Legislature, delegates certain provincewide administrative functions to the Ministry of Education, and many regional administrative functions to local boards of education. But this delegation of authority to the ministry and to boards of education does not transfer the ultimate responsibility for operating the educational system from the Legislature.

Boards of education may, therefore, exercise only those powers granted or implied by the *School Act*, any of which may be revoked or added to by the Legislature. Some of the functions currently assigned by the Legislature are mandatory duties (the board “must”), and some are optional powers (the board “may”). The ways in which these functions are performed are at the individual board’s discretion, limited by methods specified in the *School Act* and Regulations, Minister’s Orders, and by the requirements of the common law concerning natural justice and the duty to act fairly, as well as by the *Canadian Charter of Rights and Freedoms*.

This view of the provincial Legislature’s authority over boards of education was affirmed in 2000 by the Supreme Court of Canada in a court case launched by the Public School Boards Association of Alberta, in which it was unsuccessfully argued that the Canadian Constitution, understood in its historical context, implies a guarantee of a reasonable level of local autonomy for municipal institutions, including school boards.

51.2 Boards are Corporations

The *School Act* makes it very clear that a board of education is a corporate body, and that its rights, duties and powers reside with the board and not with individual trustees (section 65(1) and (3) *School Act*). All decisions of the board must be made by formal bylaw or resolution (proposer, seconder and majority vote in favour) at a legally constituted board meeting (section 65(4) *School Act*). Board decisions may not be made at a committee meeting or by the board chair, whose statutory functions are limited to presiding at board meetings, certifying minutes and signing financial statements. That is not to say that individual trustees including the chair may not have other functions, such as representing the board at meetings or acting as the board’s spokesperson with the news media. In addition, trustees often have influence in their communities through their elected status or from their specialized knowledge of educational matters.

The proper corporate name is set out in section 65(1) of the *School Act*: “The Board of Education of School District No. 5 (Kootenay-Columbia),” or as the case may be. Boards commonly adopt a more user-friendly name for common usage (e.g., Vancouver School Board). The term “school district,” which properly refers to the geographic entity, is often used as a short form to refer to the corporate board.

In 2002, Part 6.1 Companies was added to the *School Act*. This part provides boards of education with the ability for boards to create separate “business companies” for pursuing entrepreneurial activities that boards would otherwise be unable to do (see Guide 54.0).

52.0 Functions Of Boards

52.1 Major Functions

Schools are vitally important to communities. Boards of school trustees are elected to represent the interests of the community in improving student achievement and to engage the members of the community in that work. They advocate for public education and their communities both locally and provincially. They are responsible for the delivery of quality education programs to students who enroll in the schools in their district.

It follows from the fact that trustees are elected that the board's role is to be the link between the community and the education system, and the means to hold the education system accountable to the community for improvement in student achievement in that community. The *School Act* (section 85) gives boards of education general powers to carry out their functions under the Act. Specifically mentioned functions include:

- setting local policy for the effective and efficient operation of schools;
- making rules regarding the suspension of students;
- employing the staff necessary for school district operations, such as teachers, principals, supervisory personnel, aides, clerical and administrative personnel, custodians, building maintenance staff, bus drivers, etc. (*School Act*, s 15);
- establishing conditions of employment for employees, within the framework of collective bargaining for unionized staff (*School Act*, s. 27);
- preparing and approving the board's operating budgets and capital plans (*School Act*, ss 113 and 142);
- hearing appeals from parents and students where a staff decision significantly affects a student (*School Act*, s. 11);
- approving local courses and resource materials for use in the school district;
- acquiring, owning and disposing of school property and making decisions on school facilities, such as the closing of schools where necessary (Guide 84.0);
- operating early learning programs, with agreement of the minister (*School Act* s. 86(5)).

A board is responsible for improving student achievement in the school district (*School Act* s. 65(1.1)).

Locally elected trustees are expected to identify and recognize the priorities of their community at the board table but to act for the benefit of the district and its students as a whole. BC is a large and diverse province with different priorities, needs and special requirements in different areas. School trustees must work within their boards to address their local communities' priorities, meet their needs and address their special requirements.

52.2 Local Policies and Community Priorities

Each board of education guides the district's school system by means of policies, to which are often attached more specific regulations or procedures (section 85(2)(a) *School Act*). Such policies provide rules of general application throughout the district, and may provide an overall educational philosophy or objective for the district, such as the elimination of school bullying, or may cover such specific matters as commercial sponsorships, the role of volunteers, or the use of video surveillance. Boards often have a policy on how they will make policy: who will be consulted and how.

Board policies are designed to ensure consistency and provide direction for school district staff in administering and operating the schools.

Through the establishment and timely change of board policies, the local community lets the school district staff know what is important to the community. The board's annual budget, which determines where and on what the available funding is to be spent, reflects the board's application of the community's priorities.

52.3 Board's Power to Delegate

In defining the powers of the corporate board, the *School Act* uses the term "board" and does not generally distinguish between those powers that must be exercised by the elected trustees and those that are exercised by board officers or staff on behalf of the corporate entity. However, section 65(2)(c) of the *School Act* provides that the board may delegate "specific and general administrative and management duties" to its employees. Some matters, such as establishing a budget, are not "administrative or

management” duties, so the board of trustees must make the final decision.

Section 28 of the *School Act* states that collective agreements between boards and their teachers may include provisions respecting the manner in which the board of education will exercise its powers under the *School Act* or Regulations, and their consequences, but also states that express provisions in the Act or Regulations prevail over the agreement should they be in conflict. Section 27(3) of the *School Act* prohibits the inclusion in a collective agreement between a board and its teachers of provisions regulating the selection and appointment of teachers and teachers’ assistants, the courses of study, teaching methods, and the board’s assignment of teaching duties to principals and vice-principals.

52.4 Scope of Board Actions

The *School Act* provides boards with “the power and capacity of a natural person,” so long as the power is used to carry out functions and duties under the Act.

Boards of education do not have to be specifically empowered by the *School Act* to do something before they may do that thing. While boards cannot act in ways that are contrary to the *School Act*, the Regulations or Minister’s Orders, they can act in ways not specified by the *School Act* provided the action (or policy) is for the purposes of carrying out the board’s powers, functions and duties under the Act or Regulations (section 85(1) *School Act*).

52.5 Challenges to Board Actions

Provisions for appeals to a superintendent of appeals (Guide 20.21) only apply to board decisions made on appeal of decisions of board employees under section 11 of the *School Act*. Otherwise a board decision is not appealable to the minister of education.

Some board decisions or actions may be challenged by unions under grievance procedures set out in collective agreements.

Board decisions may be challenged in court through “judicial review” procedures. The most common examples are school closure decisions, although challenges to other types of decisions (e.g., *Chamberlain v. Surrey School Board*, the “three books case”) may also proceed in this way. Judicial review processes are not intended to address the rightness or wrongness of a decision but whether the board had the right to make the decision (its jurisdiction) and whether it made the decision in the right way (without bias or bad faith and with any required procedural fairness). Board decisions may also be challenged in the courts on the grounds that they conflict with the *Canadian Charter of Rights and Freedoms*.

A board decision (or an action taken by board employees on behalf of the board) that is alleged to have a discriminatory effect can be challenged before a Human Rights Tribunal under the *Human Rights Code*.

A complainant may request an investigation and report by the provincial Ombudsperson. Though the Ombudsperson cannot directly reverse a board of education decision, the report may reach conclusions and make recommendations that have considerable influence in the community.

53.0 Board Meetings and Procedures

53.1 General Requirements

The *School Act* provides for the secretary treasurer to convene the first meeting of a newly elected board, and for further meetings at least every three months thereafter; at these meetings the business of the board shall be conducted in public (sections 67 and 69 *School Act*).

In practice, most new boards meet early in November and hold regular meetings once or twice a month thereafter, other than in July and August. The agenda for these regular meetings normally include such business as receiving delegations and considering committee reports, as well as new and pending business.

Section 67(5) of the *School Act* requires a board of education to “establish procedures governing the conduct of its meetings and shall permit any person to inspect those procedures.” Most boards have developed and adopted bylaws or policies containing detailed meeting procedures, because the *School Act* specifies few requirements for board meetings and the Regulation is silent. These bylaws or policies must first meet the few requirements of the Act; they are then usually based on *Robert’s Rules of Order*.

Following are some requirements of the *School Act* concerning board meetings (also, see Guide 63.0 on the implications of disclosure of a pecuniary interest by a trustee):

- at its first meeting every board shall appoint a chair to preside at board meetings and may appoint a vice-chair to preside at meetings in the absence of the chair (section 67(2) *School Act*);
- a majority of the board may elect a new chair or vice-chair at any time (section 67(4) *School Act*);
- the secretary treasurer or another employee designated by the board must be present at the meeting at the time a decision is made and must record the decision (section 69(3), (4) *School Act*);
- minutes should be kept of any meeting, and unless a meeting is closed to the public, on certification by the board, shall be open for inspection by the public (section 72(2), (4) *School Act*);

- a quorum is a majority of the trustees holding office at the time of the meeting (section 66 *School Act*);
- the chair may expel from the meeting a person, other than a trustee, whom the chair considers guilty of improper conduct (section 70(1) *School Act*). To disturb or interrupt a board meeting is an offence and subject to penalty (section 70(3) *School Act*);
- a majority of the trustees present may expel a trustee for improper conduct (section 70(2) *School Act*);
- meetings are open to the public unless, in the opinion of the board, the public interest requires a closed, or in camera, meeting or part of a meeting (section 69 *School Act*);
- a meeting may be held by telephone or other means of communication provided all trustees and other participants or attendees can communicate with one another (section 67(6) *School Act*);
- bylaws must be read three times; readings cannot take place all at the same meeting unless with unanimous consent of those trustees present at the meeting (section 68 *School Act*).

53.2 Special Meetings

Most board meeting procedural bylaws allow a “special” meeting of the board to be called by the chair or a majority of the trustees to consider a specified item or items of business, and no other business may be conducted. Though a “special” meeting may be called at any time, at least 48 hours’ notice usually is given unless the board has to deal with an extremely urgent matter.

Open meeting requirements apply to special as well as regular meetings, though the subject matter of such meetings often dictates that they be closed to the public.

53.3 Closed Meetings

The Act also provides that the board may exclude the public, or the public and the board’s officials and employees, from a meeting if in the board’s opinion the public interest requires such exclusion (section 69(2) *School Act*). The minutes of such a closed meeting need not be made available to the public,

though a general statement on the matters discussed and decisions reached shall be made available for inspection (section 72(3) *School Act*).

A board's procedures often specify what matters shall be discussed in a closed meeting. Usually a board closes meetings on individual matters of personnel and student discipline, on proposed land acquisitions, and when receiving legal advice. A decision of the board not to disclose certain business is binding on all trustees; should a trustee violate this majority decision, that trustee may be censured by the board. The secretary treasurer or another employee must be present at the time a decision is rendered at a closed meeting and must record the decision (section 69(3),(4) *School Act*).

When only a portion of a meeting is closed to the public, it is often referred to as an in camera session.

53.4 Resolutions and Bylaws

To be legally binding, all board of education decisions must be made by formal resolution or bylaw at a properly constituted board meeting (section 65(4) *School Act*). A resolution requires a motion to be moved and seconded, and to receive a majority of votes cast following an opportunity for debate and amendment, and one reading of the final motion. A bylaw also needs to be moved and seconded, but it requires majority approvals at three readings, bylaws being usually reserved for matters of a more formal and continuing nature than resolutions – for example, regulations governing the use of board property, or for setting board meeting procedures.

The use of bylaws is also required for certain board actions, as specified in the *School Act* or by Regulation:

- adoption of annual or amended operating budgets (section 113 *School Act*);
- establishment of student and parent appeal procedures against decisions made by board employees (section 11(3) *School Act*);
- implementation of the board's capital project plan by means of a capital borrowing and expenditure bylaw (sections 143, 144 *School Act*); and
- establishment of trustee elections arrangements (sections 45, 46 *School Act*).

A bylaw may not receive more than two readings at any one board meeting unless all of the trustees present agree to hold all three readings at that meeting. The bylaw must be read in full at each reading, unless there is a written copy of the bylaw for each trustee and for each member of the public present at the meeting, in which case a reading may consist of the bylaw's title and a summary of its contents (section 68 *School Act*).

53.5 Invalidation of Proceedings

No board decision may be invalidated because it is discovered subsequently that a trustee serving at the time of the decision was not qualified or validly elected as a trustee, even if the trustee's vote on the issue was critical to the decision taken (section 54 *School Act*). A board decision taken in such circumstances may be reconsidered subject to the rules of procedure governing board decision-making. Most boards' procedural bylaws include a provision for reconsidering matters decided at previous board meetings.

In the case of non-disclosure of a pecuniary interest by a trustee (see Guide 63.0), the actual decision reached by the board at the time of the non-disclosure is voidable at the instance of the board for up to two years, subject to any subsequently acquired rights of another person (section 64 *School Act*).

54.0 Business Companies

In 2002, Bill 34 added a new part 6.1 to the *School Act*, which provides a board of education (or francophone educational authority) the ability to incorporate a separate company, to be named “School District No. ## Business Company,” to conduct business activities that the board does not have the capacity to conduct under the rest of the Act, or where the board wishes to limit its exposure to liability. These provisions were substantially amended in 2007.

These companies have many of the same rights, powers and obligations as companies established under the *Business Corporations Act*, but with some restrictions on the name, share structure, financing, directorship and reorganization of the company. A business company must have at least three directors, one of whom must be the secretary treasurer or a trustee of the incorporating board, but the majority of whom must be at arm’s length from the board (section 95.4(2.1) *School Act*).

The business company’s annual general meeting must be in public. An annual report must be prepared and made public, including financial statements that meet specific requirements, including a schedule of transactions between the company and the board. The minister of education can direct how the financial statements are prepared (section 95.53 *School Act*).

Boards may not provide any property or services to the company for less than market value unless permitted by the minister.

Boards may use these companies to carry on activities to raise funds that can be used by the board to enhance educational programs.

For More Information

BC School Trustees Association
<https://bcsta.org/>

School District Incorporated Companies
<https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/school-district-business-company>