



### Notes regarding this copy of the *Student Press Freedom Act*

This copy of the *Student Press Freedom Act* ("*SPFA*") has been annotated with brief and concise explanations for each section of the draft legislation, describing its purpose and function in simple terms.

The *SPFA* has four main goals:

1. Introduce statutory protection for student journalists' freedom of expression and freedom of the press, in addition to existing (but variable) protection offered under section 2(b) of the *Canadian Charter of Rights and Freedoms* in public schools;
2. Prohibit the unnecessary disclosure of confidential journalistic sources;
3. Shield students, teachers, and school officials from retribution for exercising their rights, or refusing to infringe the rights of others; and
4. Provide a forum for access to justice through an appeal process.

As the Act's primary drafters, we would like to stress the supremacy of the *Charter* as the originating text for the fundamental freedoms the *SPFA* extends and uplifts. The reason the *SPFA* is needed is reflected in the aforementioned goals — **none of these processes and guidelines exist, or to the extent some do, with the nuance capable of addressing the challenges faced by student journalists.** To that end, the *SPFA* is designed to be user-friendly, meaning that it has been drafted to be followed by a student without legal guidance, especially its initial provisions, and has been fitted to the B.C. education policy and legislation regime as provided by the *School Act*, *Teachers Act*, the regulations made under them, as well as with heavy consideration of the laws relating to expressive content, which includes the *Copyright Act*, *Criminal Code*, *Libel and Slander Act*, *Freedom of Information and Protection of Privacy Act*, *Human Rights Code*, *Personal Information Protection Act*, *Privacy Act* (provincial one), the professional responsibilities of educators under the *Teachers Act*, and framework of the *School Regulation* under the *School Act*.

To date, the *SPFA* has been endorsed by the B.C. Civil Liberties Association, B.C. Freedom of Information and Privacy Association, Canadian Association of Journalists, Canadian Civil Liberties Association, Canadian Institute for Information and Privacy Studies, Canadian University Press, Privacy and Access Council of Canada, Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic, Institute for Public Education British Columbia, Student Press Law Center, and Toronto Metropolitan University Centre for Free Expression.

Questions regarding the Act or campaign are welcome and happily received via e-mail to [sfapmail\[at\]gmail.com](mailto:sfapmail@gmail.com).

## ***STUDENT PRESS FREEDOM ACT***

### **Preamble**

WHEREAS it is paramount that a free and democratic society ensures that all its members are able to enjoy their fundamental freedoms as set out in the *Canadian Charter of Rights and Freedoms*;

AND WHEREAS the purpose of the British Columbia school system is to enable all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

AND WHEREAS it is essential that the student journalists of public schools in the British Columbia school system are free to exercise their rights to freedom of expression and of the press as enshrined in the *Canadian Charter of Rights and Freedoms*;

AND WHEREAS it is difficult for students and student journalists to assert the rights necessary for a free press when disagreements arise over news coverage, it is important to clarify these rights and provide procedural vehicles for their assertion;

AND WHEREAS it is the purpose of this Act to ensure the rights of student journalists to freedom of expression and of the press, the rights of students and the public to receive and communicate news and other intelligence free from unjust interference, retribution, or reprisal, and further to encourage civics, journalism, and news media education;

THEREFORE HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

### **Definitions**

- 1** (1) In this Act:
- “**appellant**” means a person who commences an appeal under section 8;
  - “**board**” or “**board of education**” has the same meaning as in the *School Act*;
  - “**educational program**” has the same meaning as in the *School Act*;
  - “**journalistic source**” has the same meaning as in the *Canada Evidence Act*;
  - “**limitation**” means a limitation regarding content in student media under section 3 (1);
  - “**ministers responsible for this Act**” means the Attorney General and Minister of Education and Child Care
  - “**proceeding**” has the same meaning as in the *Supreme Court Act*;
  - “**prohibition**” means a prohibition regarding content in student media under section 3 (1);
  - “**professional standards**” means the set of standards for the competence and conduct for applicants and for certificate holders established under section 10 (b) of the *Teachers Act*;
  - “**policy or rule**” means a policy or rule established by a board of education under section 85 of the *School Act*;
  - “**school**” has the same meaning as in the *School Act*;
  - “**school district**” has the same meaning as in the *School Act*;
  - “**school official**” means a principal, vice principal, director of instruction, superintendent of schools, assistant superintendent of schools, member of a board, or any person similarly employed or appointed with responsibility for the operation of schools and educational programs;
  - “**student**” has the same meaning as in the *School Act*;
  - “**request for disclosure**” means a request for disclosure under section 6;

“**respondent**” means a person responding to an application made under section 7;

“**student journalist**” means a student who prepares, compiles, writes, researches, edits, photographs, records, or gathers information for publication or broadcast in student media;

“**student media**” means any journalistic material that is prepared, compiled, written, edited, published, or broadcast by a student or students, with or without the assistance of other persons, for the purpose of dissemination to others, including but not limited to print and digital newspapers, news websites, yearbooks, podcasts, broadcasts, and other media of communication;

“**teacher**” has the same meaning as in the *School Act*;

### **Rights to a free student press**

- 2 (1) Subject to section 3 (1), student journalists enjoy rights to freedom of expression and freedom of the press.

### **Limits to a free student press**

- 3 (1) No teacher, school official, or board of education may prohibit or limit the creation, publication, or dissemination of student media except where the content of the student media:
- (a) is unlawful;
  - (b) is defamatory;
  - (c) constitutes a genuine threat or harassment;
  - (d) constitutes a discriminatory publication within the meaning of section 7 of the *Human Rights Code*;
  - (e) unjustifiably invades substantial privacy or confidentiality interests, and
    - (i) is not a matter of public interest or a fair comment on a matter of public interest, or
    - (ii) is not privileged in accordance with the rules of law relating to defamation;
  - (f) infringes upon the copyright of a third party; or
  - (g) is otherwise directly incompatible with the functioning of the school.

### **Interpretation of student press rights**

- 4 (2) The rights conferred under this Act must be interpreted broadly in accordance with the purposes of the Act and in accordance with purposes of freedom of expression and freedom of the press, and must not be interpreted in a manner that is inconsistent with a school’s obligation to uphold those rights and permit the circulation of news and fair comment regarding the school and its employees, and other matters in the public interest.
- (1) Nothing in this Act must be construed so as to
- (a) prevent a teacher or school official from teaching professional standards of English, French, or another language being published in, or journalism to student journalists, provided that the teacher or school official does so with regard for the rights referred to in section 2, or
  - (b) limit rights otherwise enjoyed by students, student journalists, teachers, or student media under the *Canadian Charter of Rights and Freedoms*.

### **Professional autonomy and circular student press**

- 5 (1) Where the content of student media is material produced in a course of study in an educational program under the instruction of a teacher, a school official must not
- (a) interfere with the professional methods and techniques employed by the teacher providing instruction in the course of study, or
  - (b) issue directives to the teacher providing instruction in the course of study regarding the preparation of that content, except if regarding
    - (i) content within the meaning of section 3 (1), or
    - (ii) matters of professional conduct or standards unrelated to content.

- (2) To the extent that a policy or rule or a provision of a policy or rule made by a board of education or respecting teachers or school officials interferes with subsection (1), it is of no force or effect.

### **Protection of confidential journalistic sources**

- 6** (1) A student journalist, including a former student journalist, may refuse a request for the disclosure of information that, in the opinion of the student journalist, identifies or is likely to identify a journalistic source, unless a teacher or school official can demonstrate that
- (a) the information cannot be obtained by any other reasonable means, and
  - (b) the public interest in disclosing the information outweighs the public interest in preserving the confidentiality of the journalistic source.

### **Notice of limitations on student press rights**

- 7** (1) Any teacher, school official, or board of education who prohibits or limits the creation, publication, or dissemination of student media pursuant to section 3 (1) or issues a request for disclosure under section 6 must promptly provide in writing the affected student journalist or student journalists with:
- (c) the specific and articulable reasons, as well as legal authority, for the prohibition or limitation or request for disclosure;
  - (d) notice of their right to appeal under this Act, including notice of the time limit imposed on filing an appeal under this Act; and
  - (e) a copy of this Act in print or electronic form.

### **Right to an appeal**

- 8** (1) Any student affected by a prohibition or limitation under section 3 (1) or a request for disclosure under section 6 has a right to appeal the prohibition, limitation, or request for disclosure.
- (2) Any teacher affected by a prohibition or limitation under section 3 (1) or a request for disclosure under section 6, with the consent of student or students concerned, may file an appeal on their behalf.

### **Burden of justification is on the respondent**

- 9** (1) In any appeal filed under section 8, the respondent has the burden of demonstrating the limitation or prohibition being imposed is justifiable or the request for disclosure is warranted, consistent with section 4.

### **Organization of an appeal**

- 10** (1) Any person who has a right to an appeal under section 8 may file an appeal by delivering in writing to the secretary treasurer for the school district notice of their intention to appeal within 60 calendar days from the date they were informed of the notice of the prohibition, limitation, or request for disclosure.
- (2) Within 5 business days of being notified of an appeal, the superintendent of schools of the school district must establish an appeal committee to hear the appeal.
- (3) Subject to subsection (4) and (5), an appeal committee shall be comprised of the following:
- (a) the superintendent of schools or a designate of the superintendent,
  - (b) the secretary treasurer for the school district or a designate of the secretary-treasurer,
  - (c) a director of instruction,
  - (d) a trustee of the board of education, and

- (e) three representatives selected by the appellant.
- (4) If a school official
- (a) who issued the prohibition or limitation or request for disclosure being appealed is also required pursuant to subsection (3) to sit on the an appeal committee, or
  - (b) otherwise has a conflict of interest that would impair their ability to faithfully, honestly, and impartially perform their duties on an appeal committee
- they must recuse themselves and select suitable designate in consultation with the appellant.
- (5) If a trustee of a board of education on an appeal committee or any of the three representatives selected by the appellant have a conflict of interest that would impair their ability to faithfully, honestly, and impartially perform their duties on an appeal committee, they must recuse themselves and select suitable designate in consultation with the appellant.
- (6) A board must establish procedures governing the conduct of appeal hearings and must make those procedures available to the public.

### **Administration of an appeal**

- 11** (1) An appeal committee must
- (a) convene within 10 business days of being notified of an appeal,
  - (b) not charge an administrative fee or any other fee in relation to hearing the appeal,
  - (c) in advance of the hearing, provide the appellant with documentation regarding the procedures of the hearing, and
  - (d) provide the appellant with sufficient opportunity to make and respond to statements during the hearing.

### **Application of the *Administrative Tribunals Act***

- 12** (1) The following sections of the *Administrative Tribunals Act* apply to an appeal committee as if the appeal committee were a tribunal under the *Administrative Tribunals Act*:
- (a) section 32 [*representation of parties to an application*];
  - (b) section 33 [*intervenors*];
  - (c) section 35 [*recording tribunal proceedings*];
  - (d) section 41 [*hearings open to public*];
  - (e) section 50 (4) [*decisions*];
  - (f) section 51 [*final decision*];
  - (g) section 52 [*amendment to final decision*];
  - (h) section 56 [*immunity protection for tribunal and members*];
  - (i) section 57 [*time limit for judicial review*];
  - (j) section 59 [*standard of review without privative clause*];
  - (k) section 61 [*application of Freedom of Information and Protection of Privacy Act*].
- (2) Section 59.2 of the *Administrative Tribunals Act* applies to an appeal committee, which shall provide the required reporting information to the ministers responsible for this Act as soon as practicable.

### **Appeal decisions**

- 13** (1) Within 10 business days of hearing an appeal, an appeal committee must issue a decision in writing that either:
- (a) confirms the limitation or prohibition or orders the disclosure of information requested;

- (b) confirms and amends the limitation or prohibition; or
- (c) quashes the limitation or prohibition or request for disclosure.

(2) A board of education must notify ministers responsible for this Act of any decision under section 13 as soon as practicable.

#### **Costs associated with judicial review**

- 14** (1) A board of education, in any judicial review resulting from a decision under section 13 that results in a judgement in the appellant's favour, shall
- (a) pay any reasonable costs to the appellant or the litigation guardian of the appellant, and
  - (b) not seek to recover its own legal costs from any appellant or litigation guardian of the appellant, teacher, or school official.

#### **No retribution**

- 15** (1) No student may be dismissed, suspended, demoted, disciplined, transferred, reassigned, harassed or otherwise disadvantaged by a teacher or school official for creating, publishing, or disseminating student media.
- (2) Despite subsection (1), a student journalist may be disciplined where the student journalist knowingly and intentionally creates or publishes content within the meaning of section 3 (1).
- (3) No teacher or school official may be dismissed, suspended, demoted, disciplined, transferred, reassigned, harassed or otherwise disadvantaged for
- (a) assisting or supporting the creation, publication, or dissemination of student media, or
  - (b) refusing to infringe upon the rights enjoyed by student journalists pursuant to this Act or the *Canadian Charter of Rights and Freedoms*.
- (4) Despite subsection (3), a teacher or school official may be disciplined where a student journalist creates or publishes content within the meaning of section 3 (1) and the teacher or school official knew or ought to have known the content was within the meaning of section 3 (1).

#### **General provisions**

- 16** (1) No teacher or school official may delegate the authority to make a prohibition or limitation or request for disclosure to a person who is not a teacher or school official.
- (2) A teacher or school official may invoke section 6 on behalf of a student journalist, including a former student journalist.
- (3) For the purposes of this Act, no records of an appeal committee shall be considered a "**student record**" as defined in the *School Act*.

**Conflicts with other Acts or a regulation or order made under other Acts**

- 17 If a provision of this Act is inconsistent or in conflict with a provision of the *School Act* or *Teachers Act*, or a regulation or order made under them, this Act prevails unless the other Acts expressly provide that they, or a provision of them, apply despite this Act.

## Preamble

WHEREAS it is paramount that a free and democratic society ensures that all its members are able to enjoy their fundamental freedoms as set out in the *Canadian Charter of Rights and Freedoms*;

AND WHEREAS the purpose of the British Columbia school system is to enable all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

AND WHEREAS it is essential that the student journalists of public schools in the British Columbia school system are free to exercise their rights to freedom of expression and of the press as enshrined in the *Canadian Charter of Rights and Freedoms*;

AND WHEREAS it is difficult for students and student journalists to assert the rights necessary for a free press when disagreements arise over news coverage, it is important to clarify these rights and provide procedural vehicles for their assertion;

AND WHEREAS it is the purpose of this Act to ensure the rights of student journalists to freedom of expression and of the press, the rights of students and the public to receive and communicate news and other intelligence free from unjust interference, retribution, or reprisal, and further to encourage civics, journalism, and news media education;

THEREFORE HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

## DEFINITIONS

Definitions are a standard part of legislation and explain the meaning of the various terms used. Many definitions are borrowed for consistency with other statutes.

## Definitions

- 1 (1) In this Act:
- “**appellant**” means a person who commences an appeal under section 8;
  - “**board**” or “**board of education**” has the same meaning as in the *School Act*;
  - “**educational program**” has the same meaning as in the *School Act*;
  - “**journalistic source**” has the same meaning as in the *Canada Evidence Act*;
  - “**limitation**” means a limitation regarding content in student media under section 3 (1);
  - “**ministers responsible for this Act**” means the Attorney General and Minister of Education and Child Care
  - “**proceeding**” has the same meaning as in the *Supreme Court Act*;
  - “**prohibition**” means a prohibition regarding content in student media under section 3 (1);
  - “**professional standards**” means the set of standards for the competence and conduct for applicants and for certificate holders established under section 10 (b) of the *Teachers Act*;
  - “**policy or rule**” means a policy or rule established by a board of education under section 85 of the *School Act*;
  - “**school**” has the same meaning as in the *School Act*;
  - “**school district**” has the same meaning as in the *School Act*;



“**school official**” means a principal, vice principal, director of instruction, superintendent of schools, assistant superintendent of schools, member of a board, or any person similarly employed or appointed with responsibility for the operation of schools and educational programs;

“**student**” has the same meaning as in the *School Act*;

“**request for disclosure**” means a request for disclosure under section 6;

“**respondent**” means a person responding to an application made under section 7;

“**student journalist**” means a student who prepares, compiles, writes, researches, edits, photographs, records, or gathers information for publication or broadcast in student media;

“**student media**” means any journalistic material that is prepared, compiled, written, edited, published, or broadcast by a student or students, with or without the assistance of other persons, for the purpose of dissemination to others, including but not limited to print and digital newspapers, news websites, yearbooks, podcasts, broadcasts, and other media of communication;

“**teacher**” has the same meaning as in the *School Act*;

“**trustee**” has the same meaning as in the *School Act*;

## Section 2 - The free press clause

Section 2 provides that student journalists have rights to freedom of expression and freedom of the press, which may only be limited in accordance with the specifics of s. 3. This is directly inspired by the relationship between s. 2(b) and s. 1 of the *Charter*.

### Rights to a free student press

- 2 (1) Subject to section 3 (1), student journalists enjoy rights to freedom of expression and freedom of the press.

## Section 3 - The limits to free press

This section lists the types of expression produced by student journalists that may be limited by a school. This respects the need to maintain the safety and security of the school while upholding civil liberties. Creation, publication, and dissemination are singled out in this manner because they are distinct activities.

### Limits to a free student press

- 3 (1) No teacher, school official, or board of education may prohibit or limit the creation, publication, or dissemination of student media except where the content of the student media:
- (a) is unlawful;
  - (b) is defamatory;
  - (c) constitutes a genuine threat or harassment;
  - (d) constitutes a discriminatory publication within the meaning of section 7 of the *Human Rights Code*;
  - (e) unjustifiably invades substantial privacy or confidentiality interests, and
    - (i) is not a matter of public interest or a fair comment on a matter of public interest, or
    - (ii) is not privileged in accordance with the rules of law relating to defamation;

- (f) infringes upon the copyright of a third party; or
  - (g) is otherwise directly incompatible with the functioning of the school.
- (2) No teacher, school official, or board of education may delegate the authority to make a prohibition or limitation or request for disclosure to a person who is not a teacher or school official.

#### Section 4 - How to interpret rights under the SPFA

The purpose of section 4 is to affix the interpretation of the rights given to student journalists under the *SPFA* to its purpose: to ensure that a school takes a rights-based approach to regulating student journalism, where regulation is appropriate, reflecting the principles of a democratic society and *Charter* values.

#### Interpretation of student press rights

- 4 (2) The rights conferred under this Act must be interpreted broadly in accordance with the purposes of the Act and in accordance with purposes of freedom of expression and freedom of the press, and must not be interpreted in a manner that is inconsistent with a school's obligation to uphold those rights and permit the circulation of news and fair comment regarding the school and its employees, and other matters in the public interest.
- (1) Nothing in this Act must be construed so as to
- (a) prevent a teacher or school official from teaching professional standards of English, French, or another language being published in, or journalism to student journalists, provided that the teacher or school official does so with regard for the rights referred to in section 2, or
  - (b) limit rights otherwise enjoyed by students, student journalists, teachers, or student media under the *Canadian Charter of Rights and Freedoms*.

#### Section 5 - Curricular student media and teachers

Student media can be either curricular or extracurricular. Where a teacher is the one who generally controls the editorial production and process of a student publication in a curricular educational program (for example, a student newspaper is the output of a journalism class a teacher is instructing), a teacher is to be free from administrative interference except for if related to section 3 (limits to a free press) or other professional considerations that are not related to content. This is to protect the publication's editorial independence and ensure a teacher is not pressured into making content decisions preferred by the school at the direction of the school. A school board shall not use its powers under the *School Act* to make a policy directing otherwise.

#### Professional autonomy and circular student press

- 5 (1) Where the content of student media is material produced in a course of study in an educational program under the instruction of a teacher, a school official must not
- (a) interfere with the professional methods and techniques employed by the teacher providing instruction in the course of study, or

- (b) issue directives to the teacher providing instruction in the course of study regarding the preparation of that content, except if regarding
  - (i) content within the meaning of section 3 (1), or
  - (ii) matters of professional conduct or standards unrelated to content.
- (2) To the extent that a policy or rule or a provision of a policy or rule made by a board of education respecting teachers or school officials interferes with subsection (1), it is of no force or effect.

### Section 6 - Confidential sources are protected

Inspired by the *Journalistic Sources Protection Act*, which came into force in 2017, s. 6 requires that teachers and school officials present a strong, public-interest reasoning before requesting the disclosure of a confidential source. A journalist's right to maintain the confidentiality of those willing to speak to them is essential to freedom of the press, and thus requires robust protection within the *SPFA* to extend those rights to students journalism.

#### Protection of confidential journalistic sources

- 6 (1) A student journalist, including a former student journalist, may refuse a request for the disclosure of information that, in the opinion of the student journalist, identifies or is likely to identify a journalistic source, unless a teacher or school official can demonstrate that
  - (a) the information cannot be obtained by any other reasonable means, and
  - (b) the public interest in disclosing the information outweighs the public interest in preserving the confidentiality of the journalistic source.
- (2) A teacher or school official may invoke this section on behalf of a student journalist, including a former student journalist.

### Section 7 - Information regarding limits on content

If a school decides to limit the content of student media, they must provide all of the information required under s. 7 to the student journalists affected: why the content is being limited; notice of their right to appeal; and a copy of the *SPFA*.

#### Notice of limitations on student press rights

- 7 (1) Any teacher, school official, or board of education who prohibits or limits the creation, publication, or dissemination of student media pursuant to section 3 (1) or issues a request for disclosure under section 6 must promptly provide in writing the affected student journalist or student journalists with:
  - (c) the specific and articulable reasons, as well as legal authority, for the prohibition or limitation or request for disclosure;
  - (d) notice of their right to appeal under this Act, including notice of the time limit imposed on filing an appeal under this Act; and
  - (e) a copy of this Act in print or electronic form.

### Section 8 - Who can appeal

This section states that student journalists, or their teacher, with the students' consent, have a right to appeal the decision of a school to limit content in student media.

#### Right to an appeal

- 8**
- (1) Any student affected by a prohibition or limitation under section 3 (1) or a request for disclosure under section 6 has a right to appeal the prohibition, limitation, or request for disclosure.
  - (2) Any teacher affected by a prohibition or limitation under section 3 (1) or a request for disclosure under section 6, with the consent of student or students concerned, may file an appeal on their behalf.

### Section 9 - School must justify its limits

Modelled on the logic of the *Charter*, a school must demonstrate limits being placed on student media are justifiable under the *SPFA*.

#### Burden of justification is on the respondent

- 9**
- (1) In any appeal filed under section 8, the respondent has the burden of demonstrating the limitation or prohibition being imposed is justifiable or the request for disclosure is warranted, consistent with section 4.

### Section 10 - How to organize an appeal

This section states how soon an appeal is to be heard, who is responsible for organizing it, and who must or can sit on an appeal committee.

#### Organization of an appeal

- 10**
- (1) Any person who has a right to an appeal under section 8 may file an appeal by delivering in writing to the secretary treasurer for the school district notice of their intention to appeal within 60 calendar days from the date they were informed of the notice of the prohibition, limitation, or request for disclosure.
  - (2) Within 5 business days of being notified of an appeal, the superintendent of schools for the school district must establish an appeal committee to hear the appeal.
  - (3) Subject to subsection (4) and (5), an appeal committee shall be comprised of the following:
    - (i) the superintendent of schools for the school district or a designate of the superintendent,
    - (ii) the secretary treasurer for the school district or a designate of the secretary-treasurer,
    - (iii) a director of instruction,
    - (iv) a trustee of the board of education, and

- (v) three representatives selected by the appellant.
- (4) If a school official
    - (i) who issued the prohibition or limitation or request for disclosure being appealed is also required pursuant to subsection (3) to sit on the an appeal committee, or
    - (ii) otherwise has a conflict of interest that would impair their ability to faithfully, honestly, and impartially perform their duties on an appeal committee they must recuse themselves and select suitable designate in consultation with the appellant.
  - (5) If a trustee of a board of education on an appeal committee or any of the three representatives selected by the appellant have a conflict of interest that would impair their ability to faithfully, honestly, and impartially perform their duties on an appeal committee, they must recuse themselves and select suitable designate in consultation with the appellant.
  - (6) A board must establish procedures governing the conduct of appeal hearings and must make those procedures available to the public.
  - (7) For the purposes of this Act, no records of an appeal committee shall be considered a "**student record**" as defined in the *School Act*.

### Section 11 - Administering an appeal

This section sets out how an appeal is to be administered. More information about the administration of an appeal will be provided in the subsequent section.

#### Administration of an appeal

- 11 (1) An appeal committee must
  - (a) convene within 10 business days of being notified of an appeal,
  - (b) not charge an administrative fee or any other fee in relation to hearing the appeal,
  - (c) in advance of the hearing, provide the appellant with a copy of the procedures governing the conduct of appeal hearings, and
  - (d) provide the appellant with sufficient opportunity to make and respond to statements during the hearing.

### Section 12 - The *Administrative Tribunals Act* and appeal committees

Section 12 borrows certain provisions from the *Administrative Tribunals Act*, a provincial law that governs the hearing processes of quasi-judicial bodies, to standardize the procedures of an appeal under the *SPFA* in a manner consistent with the appeal procedures in similarly-scoped statutes like BC's *School Act*, *Teachers Act*, *Human Rights Code*, *Freedom of Information and Protection of Privacy Act*, and Ontario's *Education Act* and *Child, Youth, and Family Services Act*, along with the regulations made under them.

#### Application of the *Administrative Tribunals Act*

- 12 (1) The following sections of the *Administrative Tribunals Act* apply to an appeal committee as if the appeal committee were a tribunal under the *Administrative Tribunals Act*:
- (a) section 32 [*representation of parties to an application*];
  - (b) section 33 [*intervenors*];
  - (c) section 35 [*recording tribunal proceedings*];
  - (d) section 41 [*hearings open to public*];
  - (e) section 50 (4) [*decisions*];
  - (f) section 51 [*final decision*];
  - (g) section 52 [*amendment to final decision*];
  - (h) section 56 [*immunity protection for tribunal and members*];
  - (i) section 57 [*time limit for judicial review*];
  - (j) section 59 [*standard of review without privative clause*];
  - (k) section 61 [*application of Freedom of Information and Protection of Privacy Act*].
- (2) Section 59.2 of the *Administrative Tribunals Act* applies to an appeal committee, which shall provide the required reporting information to the ministers responsible for this Act as soon as practicable.

### Section 13 - decisions of an appeal committee

This section describes the types of decisions that may be given by an appeal committee. It is modelled after s. 6(4) of the *Behaviour, Discipline, and Safety of Pupils* regulation under Ontario's *Education Act*, which concerns the process of an appeal in relation to the expulsion of a student. The ministers responsible for the SPFA must be notified of any decision, too.

### Appeal decisions

- 13 (1) Within 10 business days of hearing an appeal, an appeal committee must issue a decision in writing that either:
- (a) confirms the limitation or prohibition or orders the disclosure of information requested;
  - (b) confirms and amends the limitation or prohibition; or
  - (c) quashes the limitation or prohibition or request for disclosure.
- (2) A board of education must notify ministers responsible for this Act of any decision under section 13 as soon as practicable.

### Section 14 - paying for a judicial review an appeal is successful

Section 14 states that where any judicial review results in the student's favour, the board of education that responded to that appeal, and lost, shall pay the costs associated with the proceedings incurred by the student. This is to encourage schools to make decisions only within the authority given to them under the Act, and support access to justice.

### Costs associated with judicial review

- 14 (1) A board of education, in any judicial review resulting from a decision under section 13 that results in a judgement in the appellant's favour, shall
- (a) pay any reasonable costs to the appellant or the litigation guardian of the appellant, and
  - (b) not seek to recover its own legal costs from any appellant or litigation guardian of the appellant, teacher, or school official.

### Section 15 - student media does not and should not invite retribution

Using your rights as a student or teacher under this Act must not directly result in any adverse treatment that takes the form of a dismissal, suspension, transfer, or other form of retaliation, unless it is discipline related to expression that the *SPFA* does not protect. For example, if a student writes a story that is clearly and intentionally discriminatory within the meaning of the *Human Rights Code*, they may meet some sort of disciplinary action, within the scope of the *School Act*.

### No retribution

- 15 (1) No student may be dismissed, suspended, demoted, disciplined, transferred, reassigned, harassed or otherwise disadvantaged by a teacher or school official for creating, publishing, or disseminating student media.
- (2) Despite subsection (1), a student journalist may be disciplined where the student journalist knowingly and intentionally creates or publishes content within the meaning of section 3 (1).
- (3) No teacher or school official may be dismissed, suspended, demoted, disciplined, transferred, reassigned, harassed or otherwise disadvantaged for
- (a) assisting or supporting the creation, publication, or dissemination of student media, or
  - (b) refusing to infringe upon the rights enjoyed by student journalists pursuant to this Act or the *Canadian Charter of Rights and Freedoms*.
- (4) Despite subsection (3), a teacher or school official may be disciplined where a student journalist creates or publishes content within the meaning of section 3 (1) and the teacher or school official knew or ought to have known the content was within the meaning of section 3 (1).

### Section 17 - *SPFA* prevails

The last provision of the *SPFA* states that it takes precedence over the *School Act* and *Teachers Act* to ensure that its purpose, to protect the rights student journalism, is achieved under one law, where the *SPFA* is the sole non-constitutional enactment to govern student media in public schools.

### Conflicts with other Acts or a regulation or order made under other Acts

- 16** (1) If a provision of this Act is inconsistent or in conflict with a provision of the *School Act* or *Teachers Act*, or a regulation or order made under them, this Act prevails unless the other Acts expressly provide that they, or a provision of them, apply despite this Act.