

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*;
 “**trustee**” 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.
- (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.

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 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.
- (2) A teacher or school official may invoke this section on behalf of a student journalist, including a former student journalist.

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 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*.

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.

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).

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.