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Complexity and Compliance:



NANAIMO LADYSMITH
PUBLIC SCHOOLS

Schools Business Officials and the Law



The Goals Today



- 1. Overview the legislative framework that governs public education*
- 2. To discuss emerging issues in the schools*
- 3. Review the venues for challenge and liability*

Legislative Framework of Public Education



Introduction

- ▶ Mandate of the School System
“The purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills, and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy” - (OIC 1280/89)

https://www2.gov.bc.ca/assets/gov/education/administration/legislation-policy/legislation/schoollaw/d/oic_128089.pdf

- ▶ Public School v. Private School Legislation

Public Schools

- ***School Act***
- **Defines legal rights and duties**
 - Teachers, students, parents, administrators
 - Boards, Ministry of Education, Superintendents, Secretary-Treasurers etc.



School Act – Roles and Responsibilities

- **principals (ss. 20, 26 and Reg. 5)**
 - Appointment, powers and duties
- **students (ss. 2, 6 and 82)**
 - Who is a student, duties and rights, access and fees.
- **parents (ss. 7, 9 and 11)**
 - Informational, participatory and appeal rights
 - Right and responsibility to meet with teacher
- **volunteers (s. 7.1)**
 - Right to volunteer
- **secretary-treasurers (s. 23 and Reg. 7)**
- **superintendents (s. 22 and Reg. 6)**



School Act – Teacher Role and Responsibilities



Teachers' responsibilities

17 (1) A teacher's responsibilities include designing, supervising and assessing educational programs and instructing, assessing and evaluating individual students and groups of students.

(2) Teachers must perform the duties set out in the regulations.
(underlining added)



Duties of Teachers – *The School Regulation*

- **Teachers must (Section 4):**
 - Encourage attendance
 - Keep records as required by the Ministry and the Board
 - Attend meeting called by the Principal and Superintendent
 - Supervision
 - Educational services
 - Etc.
 - Resource - https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/265_89



Conduct of Schools – *School Act*

Conduct

76 **(1)** All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles.

(2) The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school.

(3) The discipline of a student while attending an educational program made available by a board or a Provincial school must be similar to that of a kind, firm and judicious parent, but must not include corporal punishment.

Limits on Liability – *School Act*



- Section 91: Requirement to report student with communicable disease or emotional disorder that endangers others in the system
- Section 94 and 95: Limitation of liability and indemnity
- Schools Protection Information Sharing
- Ministerial Order – Student Records Disclosure M14/91
- Resource -
<https://www2.gov.bc.ca/gov/content/education-training/k-12/administration/legislation-policy/manual-of-school-law>

Parent Appeals

– *School Act*
Section 11

- Board must have an appeal process
 - A Parent or Student can appeal “If a decision of an employee of a board significantly affects the education, health or safety of a student”
 - Avenue of Appeal to Superintendent of Appeals
 - Resource - <https://www2.gov.bc.ca/gov/content/education-training/k-12/support/student-disputes-and-appeals>
- Examples may include inclusion or exclusion from a program
 - Special Needs Students Order 150/89 envisions a partial day program in certain circumstances

School Lands

- School Site Acquisition Charge
 - Charge based on residential development provided to school district acquire land
 - Governed by *Local Government Act*
 - Resource - <https://www2.gov.bc.ca/assets/gov/education/administration/resource-management/capital-planning/ssacguide.pdf>
- Employee Housing (Section 102 – 106)
- Land disposition

Powers of the Board – *School Act*

- A board is responsible for the improvement of student achievement in the school district (Section 65(1.1)).
- Section 85(1) – For the purposes of carrying out its powers, functions and duties under this Act, a board has the power and capacity of a natural person of full capacity ...

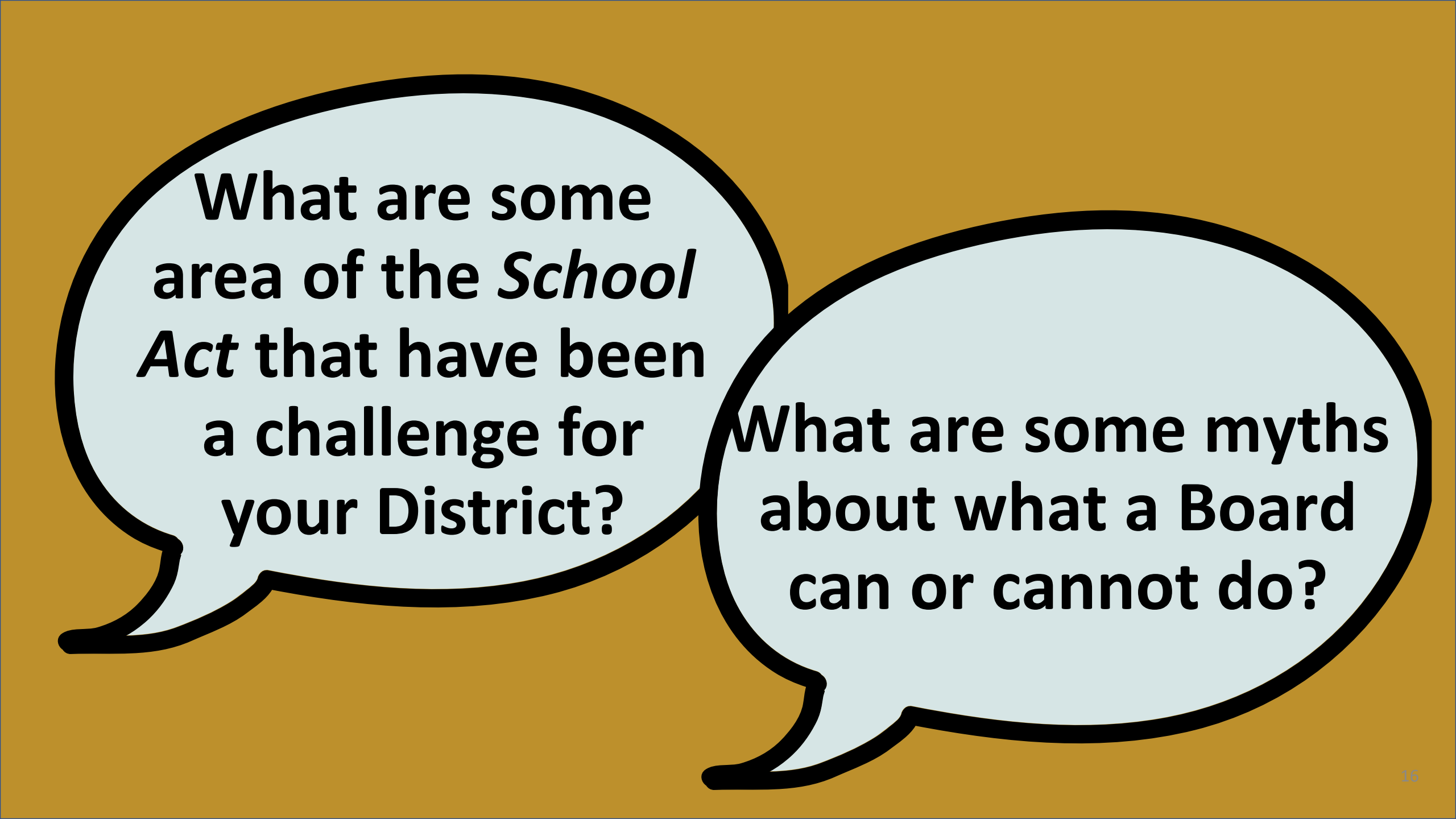
(2) Without limiting subsection (1), a board may, subject to this Act and the regulations, do all or any of the following....

Powers of the
Minister –
School Act

- **Section 168 – Wide powers**
 - Foundation Skills Assessment
 - Financial Reporting
 - OICs, Regulations, Ministerial Orders

OICs,
Regulations
and
Ministerial
Orders –
School Act

- **Tip – A surprising number of issues have specific guidance in legislative instruments so this should be your first stop**
 - Open and Closing Schools, disposal of land
 - Insurance
 - Special Needs Services
 - Information Collection and Disclosure
 - Powers and duties
 - Enrollment



What are some area of the *School Act* that have been a challenge for your District?

What are some myths about what a Board can or cannot do?



General Legislation



Criminal Record Review Act

- Requires all employees working with children to have criminal record check
- Checks on teachers conducted by Teacher Regulation Branch
- Where criminal charge, may not be able to continue working



Teachers Act

- Teachers in public schools must be certified or have letters of permission
- The Teacher Regulation Branch has power to issue and cancel certificates of qualification
- Standards set by TRB
- The TRB also has power to impose discipline



Unionized Employees

- *Public Education Labour Relations Act (PELRA) and Labour Relations Code govern:*
 - Collective Bargaining
 - Strikes
 - Local and provincial bargaining matters (Monetary Issues, post and fill etc).
 - Difference with CUPE



*Child, Family and
Community Service
Act*

- Obligation to report a child in need of protection
- Defines “in need of protection”
- Includes physical, sexual, and emotional abuse
- Provides ability to confidentially report



Human Rights Code

- Prohibits discrimination in the provision of educational services (s. 8) - students
- Prohibits discrimination in employment (s. 13) – teachers/support staff
- Both parents and students are increasingly relying on the Code



Privacy

- ***Freedom of Information and Protection of Privacy Act (Public)***
 - Provides protection for personal information for students and for employees
 - Provides right of access to public information
- ***Personal Information Protection Act (Private)***
 - Governs collection, use and disclosure of personal information
 - Individual access to personal information



General Legislation

- ***Workers' Compensation Act***
 - Health and safety of workers
 - Certain workplace mandatory requirements (e.g. Bullying and Harassment awareness)
- ***Family Law Act***
 - Guardianship, Parenting time
- ***Employment Standards Act***
- ***Electronics Transactions Act***

General Legislation

Criminal Code

- Provides a defense to charge of assault to teachers and parents (s. 43)
- Allows use of reasonable force
- Corporal punishment prohibited under School Act (s. 76)

Local Government Act

- *Elections*
- *SSAC*

Emerging Issues



Emerging/and or Ongoing Issues

- **Technology and Privacy**
 - Privacy and Compliance
- **Human Rights**
 - As a manager
 - For the District

Technology Issues

- Major recent changes to the *Freedom of Information and Protection of Privacy Act*
 - Privacy Impact Assessments
 - Privacy Breach Notification Requirements
- Pro-d on this issue is highly recommended



Technology - Tips

- Be aware of school and/or District employee Codes of Conduct and technology policies (Make sure they are up to date)
- The “Front Page” rule



- Right to educational program
 - Programming
 - Resources
- Discrimination and schools
 - Accessing programs (physical issues)
 - Accommodate minor issues (P.E., lunch time etc.)
 - Partial Day Programs
- Hiring and accommodation





Liability Issues

Negligence (Tort Law)

- Individual actions of employees
- Slips and falls
- Field Trips
- Lack of Maintenance (e.g. Shops)
- Addressing liability issues - Tips



Negligence Test (Tort Law)

- **Courts will ask the following questions under the common law in determining liability:**
 - **Duty to care for students**
 - **Standard of Care -
reasonable prudent parent**
 - **Reasonable foreseeability**

Negligence Expectations

“I am not satisfied that the unmaterialized risk contemplated by the supervision aides could be effectively addressed by a rule....Think of all the many non-hazardous objects on the school grounds that could be used by a student in a way that might pose at least some theoretical risk, and then think about whether it would be possible or appropriate to regulate all such risks by simply adding the potential misuses to the list of rules. The list would be endless. It would be impossible for school staff to create and maintain, impossible for students to remember, and impossible for supervision aides to enforce banning certain school ground activities as a reaction to "grossly atypical eventualities" is likely to produce an environment in which 'the activities of the young would be unduly circumscribed and only inactivity and inanition could be planned”

Deo v. Vancouver School District No. 39 2018 BCSC 133



Conduct expectations

- **Teachers have under the common law:**
 - **Higher standard expected of teachers**
 - **Must ensure confidence in the education system**

Conduct expectations

“The behaviour of the teacher must satisfy the expectations which the British Columbia community holds for the educational system. Teachers must maintain the confidence and respect of their superiors, their peers, and in particular, the students, and those who send their children to our public schools. Teachers must not only be competent, but they are expected to lead by example. Any loss of confidence or respect will impair the system, and have an adverse effect upon those who participate in or rely upon it. That is why a teacher must maintain a standard of behaviour which most other citizens need not observe because they do not have such public responsibilities to fulfil”

Shewan v. Abbotsford School District No. 34, [1987] B.C.J. No. 2495

Legal Process and Venues for Liability

- **Courts (Liability or Contract)**
- **Superintendent of Appeals**
- **Human Rights Tribunal**
- **Arbitration**
- **Labour Relations Board**



Legal Process and Venues for Liability

- **Coroners' Inquest**
- **Ombudsperson's Office**
- **Office of the Information and Privacy Commissioner**
- **Courts (Decision making and judicial review)**
- **Professional Regulatory Bodies**



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Questions?