



## ADMINISTRATIVE GUIDELINE

### Title: School Council and Member Liabilities

**Effective Date:** February 10, 2000

**Responsibility:** Superintendent of  
Program and Schools

#### 1.0 RATIONALE

School Council members need to understand their roles and potential legal liabilities. This guideline cannot possibly address all potential liabilities but does outline some factors and risk-management strategies that school councils and principals must consider.

#### 2.0 LEGAL STATUS OF THE SCHOOL COUNCIL

In the province of Ontario, school councils are mandated by legislation. The purpose and function of school councils and the role and responsibilities of principals in relation to school councils are described in legislation. In addition to references made in the Education Act and Regulation 298, Program Policy Memorandum #122 and the Near North District School Board's "School Council Policy" outline expectations for the establishment and maintenance of school councils.

While there is certainly an important element of volunteerism implicit in the demands of membership on school councils, the school councils differ from volunteer committees in that:

- a) they are specifically referred to in legislation;
- b) their composition is defined;
- c) they have specific legal responsibilities; and
- d) they are ongoing entities as opposed to *ad hoc* committees.

School councils are not "bodies corporate". (District School Boards do have corporate status conferred by legislation.) Since school councils are not volunteer committees, nor bodies corporate, that means they are fundamentally *non-corporate bodies*.

#### 3.0 IMPLICATIONS FOR SCHOOL COUNCILS

The Ontario School Board Insurance Exchange indicates that the statutes leading to the formation of school councils appear to protect them from being sued for damages.

As legal entities, school councils are limited in their activities to those specific roles and authorities specifically conferred upon them by legislation. Any activities that stray

beyond the scope of their delegated authority are *ultra vires* (i.e., beyond their legal powers). School council members must be clear in the understanding of their responsibilities and the importance of remaining within them from a legal protection perspective. This will go a long way to minimizing the potential risks to school councils and their members.

Where school councils are functioning within their proper mandate, the potential for valid claims against their members is quite low. Individual members who are performing their duties responsibly and within the parameters established by legislation, regulation or otherwise will have little risk of liability. Any claims that might arise in the future would probably be based on the same types of claims as are brought against school boards (i.e., negligence, defamation, procedural errors, breach of contract, human rights violations, conflicts of interest, or criminal conduct).

#### 4.0 LIABILITY INSURANCE

In Ontario, school councils have been added as “named insured” under their school board’s liability insurance policy. School councils are protected by the board’s liability insurance while they are working within their mandate to provide advice to the principal on a variety of issues. School councils are protected by the board’s liability insurance while they are working within the scope of their duties for the board.

Such insurance would be invalid if school council activities are outside their defined responsibilities. To keep within their areas of responsibility, the following are examples of actions that must be taken by school councils.

- a) The school council will only involve itself in a fundraiser or other activity if it falls within the control, procedures and/or guidelines of the school or school board.
- b) The school council may run a program on school premises for the benefit of children and families in the community but must involve the school or board in setting up the program and prescribing the rules of operation.

School councils must obtain their own liability insurance coverage for activities that are beyond their assigned duties. This may include such examples as:

- a) The school council must get permission to use the school premises (e.g., gym) for any after-school program that parents are running and the parents would have to obtain their own liability insurance coverage.
- b) The school council provides babysitting for members.
- c) The school council runs a music program or other program.
- d) The school council runs a Christmas party or other social activity.

#### 5.0 INCORPORATION OF SCHOOL COUNCILS

School Councils who choose to become incorporated bodies must understand that they cannot do so *as school councils*. They automatically place themselves in a position where they must identify themselves as a separate entity from the school council. The incorporated group may have the same membership as the school council but it is not a school council. The very act of incorporation changes their status and bestows upon them the capacity to sue or be sued.