

“MODEL” FIRST NATION EDUCATION LAW

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WHEREAS

Commented [A1]: The following recitals contain only the basic information necessary to set the context for the laws. First Nations may wish to add additional context.

- A. [First Nation] has inherent jurisdiction over education;
- B. Canada has enacted the *First Nations Jurisdiction over Education in British Columbia Act*, S.C. 2006, c.10;
- C. [First Nation] entered into an Education Jurisdiction Agreement with Canada, pursuant to the federal enabling legislation on [date];
- D. The First Nations Education Authority (“FNEA”) became operational on July 1, 2022 pursuant to the federal enabling legislation;
- E. [First Nation] adopted a protocol for making laws pursuant to the federal enabling legislation on [date]; and
- F. [First Nation] entered into a co-management agreement with FNEA on [date].

GENERAL

Definitions and interpretation

1. In this Act:
 - (a) “appeal” means an appeal brought under section 37;
 - (b) “appellant” means a student or parent of a student who is directly affected by an administrative decision of the [School Governing Authority] or its employees and who files an appeal under section 37;
 - (c) “Council” means the Chief and Council of the [First Nation];
 - (d) “education program” means education programs and services for kindergarten to grade 12 students;¹
 - (e) “employee” means an employee of the [First Nation/CEA];
 - (f) “First Nations Graduation Certificate” means a certificate of graduation issued by the First Nations Education Authority under section 58;
 - (g) “First Nation land” means the reserve of the [First Nation] within the meaning of the Indian Act and includes [First Nation] land administered under the *First Nations Land Management Act* (Canada);²
 - (h) “First Nation school” means the _____ School, operated by the [First Nation/CEA];
 - (i) “First Nations Authorized Courses process” means the process adopted by FNEA for the approval of courses required to graduate from a participating first nation school, as amended from time to time;
 - (j) “First Nations Schools Assessment and Certification Process” means the process adopted by FNEA for the certification of a participating first nation school, as amended from time to time;
 - (k) “FNEA” means the First Nations Education Authority established under the *First Nations Jurisdiction over Education in British Columbia Act* (Canada);
 - (l) “kindergarten” includes kindergarten programs for children who have reached the age of four by December 31 of that school year;
 - (m) “Member” means a member of the [First Nation];

¹ This definition may need to be varied in schools that use a different grade system.

² Only include the words “includes [First Nation] land administered under the *Framework Agreement for First Nations Land Management Act* (Canada)” if the First Nation is part of the First Nations Land Management Initiative.

Commented [A2]: This model FN Education Law is designed on the basis of Chief & Council wanting to delegate some authority to a committee or board, but not create a separate legal entity or Community Education Authority (CEA) to operate the school.

Nonetheless, we have noted where the CEA would take the place of the First Nation in circumstances where there is a CEA (under other approaches described in the materials below).

See “Approaches to Governance under Education Jurisdiction” (dated August 13, 2021) and the chart entitled “Four Principal Approaches to School Governance under Education Jurisdiction” (dated September 8, 2021).

- (n) “non-Member” means a person who is not a member of the [First Nation];
- (o) “parent” means:
 - i. the guardian of a student;
 - ii. the person legally entitled to custody of a student; or
 - iii. the person who has the usual care and control of a student;
- (p) “parents’ committee” means a parents’ committee established under section 6;
- (q) “Participating First Nation” means a First Nation that signs a Canada-First Nation Education Jurisdiction Agreement;
- (r) “principal” means the principal of the First Nation school;
- (s) “reviewer” means an impartial person appointed by Council under section 39; and
- (t) “special needs student” means a student who has a disability of an intellectual, physical, sensory, emotional or behavioural nature, has a learning disability or has special gifts or talents.

Principles

2. *[Optional – to be developed by the [First Nation] if it chooses.*

The [First Nation] recognizes the following principles in respect of its education system:

- (a) *First Nation students must have access to educational opportunities that:*
 - i. *ensure that they are confident in their self-identity, their families, their communities and traditional values, languages and cultures;*
 - ii. *give them the skills they need to thrive in contemporary society, including 21st century technological skills; and*
 - iii. *prepare them to access any opportunities they choose for higher learning, employment and life choices;*
- (b) *Traditional teaching methods and knowledge must form part of the educational development of students in the First Nation school.*
- (c) *The First Nation school will provide a learner-centered education program that addresses the unique needs of individual students.*
- (d) *The First Nation school will recognize and support the importance of the [First Nation’s] language, culture and knowledge.*

- (e) *The value of life-long learning is recognized.*
- (f) *A multi-generational approach will be incorporated as part of the learning environment in the First Nation school.*
- (g) *[Others???]*

Duties of students

- 3. Students must comply with the school policies and procedures authorized by the [School Governing Authority].

Parents' rights

- 4. A parent of a student of school age attending the First Nation school has a right:
 - (a) to be informed of the student's attendance, behaviour and progress in school;
 - (b) to belong to a parents' committee, if one has been established; and
 - (c) to consult with the teacher or principal with respect to the student's education program.

Commented [A3]: Note: many matters can be dealt with in the law, in regulations or in policy. PFNs should therefore consider which provisions need to be in the law, and which are better addressed through policy.

Parents' committee

- 5. Parents of students attending the First Nation school may apply to the [School Governing Authority] to establish a parents' committee for the school.
- 6. On receipt of an application under section 5, the [School Governing Authority] must establish a parents' committee for the First Nation school.
- 7. Parents of non-Member students are entitled to participate as full members on the parents' committee.³
- 8. The parents' committee, through its [elected] officers, may:
 - (a) advise the [School Governing Authority] and the principal and staff of the First Nation school respecting any matter relating to the school; and
 - (b) at the request of the [School Governing Authority], be involved in the First Nations Schools Assessment and Certification Process.
- 9. The [First Nation] will consult with the parents' committee on any proposed amendments to this Act.

³ Another option for meeting the requirements of paragraphs 2.5 and 2.14 of the CFNEJA is to allow parents of non-Member students to have a designated seat on the [School Governing Authority], except where the School Governing Authority is Chief and Council.

10. The [School Governing Authority] must provide the parents of any non-Member children who attend the First Nation school with the opportunity to have input, through their participation in the parents' committee, into any decision with respect to a program or service where that decision directly and significantly affects their rights as parents or the rights of their children as students.⁴
11. A parents' committee, in consultation with the principal and the [School Governing Authority], must establish written procedures governing its meetings, business and conduct of affairs.

School calendar

12. The [School Governing Authority] must develop or direct the Principal to develop a school calendar for each school year in accordance with any requirements that are set out in a policy adopted by the [School Governing Authority].

Commented [A4]: To be clear, the SGA must develop a policy for the school calendar, and then set (or have the Principal) set each school year calendar in accordance with the policy.

ACCESS

13. A person is eligible to enroll in an education program provided by the [First Nation/CEA] if:
 - (a) the person meets the [School Governing Authority]'s enrollment criteria, consistent with the provisions of this Act and the Canada-First Nation Education Jurisdiction Agreement; and
 - (b) the [School Governing Authority] determines that space and facilities are available for the person at the First Nation school.

14. A Member must:
 - (a) enrol in an education program provided by the [School Governing Authority], a public school, a school operated by or on behalf of another First Nation, an independent school or an education program otherwise provided by the Province of British Columbia on the first day of the school year, if on or before December 31 of that school year, the Member reaches the age of five; and
 - (b) participate in an education program provided by the [School Governing Authority], a public school, a school operated by or on behalf of another First Nation, an independent school or an education program otherwise provided by the province of British Columbia until they reach the age of 16.

Commented [A5]: If a First Nation wants to make enrollment mandatory, but also authorize home schooling, they should adopt a provision similar to section 12 of the *School Act*, such as:

A parent of a child who is required to enroll in an educational program under section 14:

(a) may educate the child at home or elsewhere in accordance with the policies of the [School Governing Authority], and

(b) must provide that child with an educational program.

Commented [A6]: A PFN could consider lowering this age to 4, if you want to make K4 (Kindergarten for four year olds) mandatory.

Commented [A7]: Each PFN to determine if it wants to: (i) make enrolling in a school program mandatory, (ii) "encourage" parents" to enroll their children, or (iii) remain silent. It should be noted that section 3 of the *School Act* already makes it mandatory from age 5/6 to 16.

Keep in mind that, in the case of any conflict between a PFN law and a provincial or federal law, the PFN law will prevail to the extent of the conflict (see para 6.2 of Canada-FN Education Jurisdiction Agreement).

⁴ The First Nation may determine that it wishes to involve parents of non-Member students in a more inclusive manner.

15. A parent of a child referred to in paragraph 14(a) may defer the enrollment of their child until the first school day of the next school year.

Commented [A8]: Delete section 15 if 14 is deleted.

Registration

16. Subject to section 20, a student is entitled to be enrolled in the First Nation School for a school year if:
- (a) they are over the age of [4];
 - (b) they are a member of the First Nation or are a student for whom the First Nation can access funding for their education;
 - (c) they meet the [School Governing Authority]'s enrollment criteria, consistent with the provisions of this Act and the Canada-First Nation Education Jurisdiction Agreement;
 - (d) the [School Governing Authority] has determined that space, facilities and services are available at the First Nation school for them; and
 - (e) the student's parent enrolls them with the First Nation school by September 30 of that school year,
17. The principal of the First Nation school may, subject to the policies of the [School Governing Authority], enroll a student:
- (a) for whom the First Nation cannot access funding for their education; or
 - (b) whose parent enrolls them after September 30 of a year.
18. The [First Nation] may purchase education for members of the First Nation enrolled in a BC Public School, a BC Independent School, or a school operated by another first nation, in accordance with the requirements of the Canada-First Nation Education Jurisdiction Agreement.

Commented [A9]: Each First Nation should customize the start age based on their own education programs.

We have not specified an upper age limit. If a First Nation school does not offer adult education, (d) would apply, but a First Nation could consider putting an upper age limit in the law as well.

Code of Conduct & Suspension

19. The [School Governing Authority] must have a policy regarding code of conduct, including suspension and a review process, applicable to students of the First Nation school.

Exclusion and eviction from school

20. The [Principal/School Governing Authority] may refuse to admit onto, exclude or evict from, school property a person whose presence in the school or classroom would, in the principal's judgment, be detrimental to the physical or mental well-being of students or staff or disrupt the proceedings of the school or school function.

Commented [A10]: PFNs are encouraged to review their own trespassing law or bylaw to ensure that this provision is in alignment with that law or bylaw.

Special needs students

21. The [School Governing Authority] [must/may] develop a special education policy.

[SCHOOL GOVERNING AUTHORITY]

Scope of authority

22. The [School Governing Authority] may, subject to this Act and the regulations, do all or any of the following:
- (a) make policies and procedures for the effective and efficient operation of the First Nation school;
 - (b) make rules for internal governance of the [School Governing Authority];
 - (c) permit people other than students to utilize First Nation school facilities, equipment and personnel;
 - (d) develop and offer local courses for use in the First Nation school, in accordance with the requirements of the First Nations Authorized Courses process, where applicable;
 - (e) approve an education assessment mechanism for students or groups of students;
 - (f) establish committees and specify the functions and duties of those committees, provided that Committees or individual members of the [School Governing Authority] may not exercise the rights, duties and powers of the [School Governing Authority]; and
 - (g) delegate specific duties to one or more of its employees.
23. Despite the other provisions of this Act, the [School Governing Authority] may refuse to continue to provide an education program to a student 16 years of age or older if that student has refused to comply with the code of conduct referred to in section 19 or other rules, policies or procedures referred to in section 22.
24. The [School Governing Authority] may exercise a power with respect to the acquisition or disposal of property owned or administered by the [First Nation/CEA] only by resolution.

Approval of policies, procedures and rules

25. All of the powers of the [School Governing Authority] may be exercised by resolution. Policies and procedures, and rules for internal governance of the [School Governing Authority], must be adopted by resolution of the [School Governing Authority].
26. *[Optional – could include a requirement that the [School Governing Authority] provide notice of [and seek input on] any proposed policy or procedure to the parents' committee and the Members prior to its approval.]*

Attendance of Members, parents and students

27. The meetings of the [School Governing Authority] are open to Members unless, in the opinion of the [School Governing Authority], the matters to be discussed at the meeting pertain to confidential information, in which case only members of the [School

Commented [A11]: PFNs to review carefully.

Under the second approach to governance, these responsibilities may be divided between Chief and Council and the education committee/board. This section should be revised to reflect the division of those responsibilities.

Governing Authority], and staff or advisors whose participation has been requested by the [School Governing Authority], may participate in the meeting.

Conduct at meetings

28. The [School Governing Authority] may establish a code of conduct, which will include rules with respect to conduct at [School Governing Authority] meetings.

ACCOUNTABILITY

Obligations

29. A member of the [School Governing Authority] must:
 - (a) act honestly and in good faith and in the best interests of the [First Nation/CEA]; and
 - (b) exercise the care, diligence and skill of a reasonably prudent person,in exercising the powers and performing the functions as a member of the [School Governing Authority].

Conflict of interest

30. The [School Governing Authority] must adopt conflict of interest rules and procedures and all members of the [School Governing Authority] are required to adhere to these rules and procedures.

Accountability to Members

31. The [School Governing Authority] must prepare and submit to Council reports and statements in the form, with the information and at the time required by Council.
32. The [School Governing Authority] will hold an annual meeting that will be open to all Members and members of the parents' committee.
33. At each annual meeting, the [School Governing Authority] must provide:
 - (a) updates on the First Nation school's annual activities;
 - (b) an audited financial report on the most recent fiscal year; and
 - (c) updates on the [School Governing Authority]'s annual activities.
34. The [School Governing Authority] will provide an aggregate outcome report on student performance to parents of school age students.

Input of non-Members

35. If a parents' committee has not been established under section 6 and there are non-Member students enrolled in the First Nation school who are 18 years of age or younger,

the [School Governing Authority] will establish an advisory committee made up of parents of those non-Member students.

36. The purpose of the committee referred to in section 35 is to allow parents of non-Member students to have input into the [School Governing Authority]'s decision-making process with respect to programs and services which directly and significantly affect their rights as parents.

APPEAL OF ADMINISTRATIVE DECISIONS

Filing appeal

37. An individual who is, or whose child is, directly and significantly affected by an administrative decision of the [School Governing Authority] or its employees may file an appeal with [Council or some other appeal body].

Rejection of appeal

38. [Council or some other appeal body] may reject an appeal if:
- (a) the appellant did not first provide the [School Governing Authority] with a copy of the appeal;
 - (b) the appeal does not relate to an administrative decision that significantly affects the health, education or welfare of the appellant or their child, as the case may be; or
 - (c) the appeal lacks sufficient detail to determine the parties involved or the nature of the administrative decision to be resolved.

Appointing a reviewer

39. Unless an appeal is rejected under section 38, Council shall appoint a reviewer who must issue a decision within 45 days of the appeal being properly filed with Council. At the request of the reviewer, Council may extend the time within which the reviewer is required to make their decision.

Rules and procedures for appeal

40. The reviewer may establish rules and procedures for reviewing an Appeal, and may hear, request and receive evidence in an informal manner and shall, at a minimum, ensure that:
- (a) all affected parties have notice of the appeal; and
 - (b) all affected parties have the opportunity to provide evidence regarding the appeal.

Judicial review

41. The reviewer has exclusive jurisdiction to hear and determine all matters of fact, law and discretion arising or required to be determined in a review and to make any decision to be made pursuant to this law.

Commented [A12]: Under paras 2.5 and 2.14 of the Canada-First Nation Education Jurisdiction Agreement, a PFN law must include mechanisms through which Non-Members, who receive education or have their children receive education provided by the First Nation, will have input into the decisions with respect to a program or service where that decision directly and significantly affects the rights of students who receive education or their parents.

Alternative: A PFN could make the parents committee a mandatory structure, and clarify it is open to the parents of all students at the school.

42. A decision over which a reviewer has exclusive jurisdiction is final and conclusive and is not open to question or review by any court.
43. A reviewer's decision is only subject to judicial review if an application for judicial review is brought within [30/60/90] days of the reviewer rendering the decision.

Commented [A13]: This privative clause will not actually prevent a court from considering a judicial review, but it should result in the court deferring to the discretion of the reviewer.

Commented [A14]: Each PFN should choose an appropriate time for starting appeals (or whether to have any time limit).

SCHOOL PROPERTY

Maintenance and operation of buildings and facilities

44. The [School Governing Authority] may:
- (a) open, close or reopen the First Nation school permanently or for a specified period of time; and
 - (b) temporarily close a First Nation school building if the health or safety of the students is endangered.
45. The [School Governing Authority] may not close a school permanently unless it has first consulted with the Members and Council.
46. The [School Governing Authority] is responsible for the management of the First Nation school and for the custody, maintenance and safekeeping of all property owned or leased by the [First Nation/CEA].

Liability for damage to property

47. If property of the [First Nation/CEA] is destroyed, damaged, lost or converted by the intentional or negligent act of a student, that student and that student's parents are jointly and severally liable to the [First Nation/CEA] in respect of the act of that student.

STUDENT CONDUCT POLICIES

48. The [School Governing Authority] must develop written policies concerning student discipline, bullying and harassment, anti-racism and anti-discrimination, and illicit drug use.

STUDENT RECORDS MANAGEMENT

49. The [School Governing Authority] must develop written policies concerning management and access to student records.

Commented [A15]: PFNs should be aware that they must have their policies in place immediately after laws are in place.

REPORTING

50. The [School Governing Authority] must develop written policies concerning reporting for child protection purposes.

Commented [A16]: Where a PFN has its own child protection legislation, these policies must align with that legislation.

FIRST NATIONS EDUCATION AUTHORITY (FNEA)

51. The [First Nation] will appoint two directors to sit on the board of directors of FNEA for an initial term of up to two years, and thereafter for terms of appointment to be established by the board of directors of FNEA.

The policies must also take into account that anyone (including a teacher) who has reason to believe that a child or youth has been or is likely to be abused or neglected must report the suspected abuse or neglect under BC's *Child, Family and Community Service Act*.

52. At least one of the directors appointed by the [First Nation] to the board of directors under section 51 must be a Member.
53. FNEA's rules, as amended from time to time, regarding the process, standards and requirements in respect of:
- (a) teacher certification;
 - (b) school certification;
 - (c) graduation requirements; and
 - (d) courses that are required to graduate,
- are adopted, and form part of, this law.

Teacher certification

54. FNEA's rules for the certification and regulation of teachers, as amended from time to time, apply to teachers employed by the [First Nation/CEA].

School certification

55. FNEA's rules for the certification of Participating First Nation schools, as amended from time to time, apply to the First Nation and First Nation school.

Standards for courses

56. Any courses developed by the [First Nation/CEA] that are necessary to meet graduation requirements must be authorized in accordance with FNEA's rules for courses required to graduate, as amended from time to time.

GRADUATION DIPLOMAS

57. The [School Governing Authority] may issue a [PFN] Graduation Certificate to:
- (a) a student attending the First Nation school who has met the graduation requirements established by the [First Nation/CEA] and approved by FNEA; and
 - (b) a Member attending a provincial public school, independent school, or the school of another first nation, who has met the graduation requirements established by the [First Nation/CEA] and approved by FNEA.
58. The [School Governing Authority] may request that FNEA issue a First Nations Graduation Certificate in accordance with FNEA's rules regarding graduation certificates.
59. The [School Governing Authority] may request that British Columbia issue a British Columbia Certificate of Graduation (Dogwood) or a British Columbia Adult Graduation Diploma (Adult Dogwood) in respect of a student if that student has both completed an education program at the Grade Twelve level at the First Nation school and has achieved

learning outcomes substantially comparable to those required for graduation by the Ministry of Education.

60. The [School Governing Authority] may adopt policies to provide for recognition of students [who have exceptionalities/disabilities/diverse abilities and] who complete their personal learning goals but did not meet graduation requirements.

Commented [A17]: This is an optional clause which allows PFNs to issue something like the provincial Evergreen certificate. If included, PFNs will require strong policies that clarify the students to whom it applies and how it is issued.

FINANCIAL MATTERS

General financial matters

61. The [School Governing Authority] must prepare an annual budget in the form, containing the content and by the date specified by the Council. Once the budget has been prepared, the [School Governing Authority] will provide it to the Council for their approval.
62. The [School Governing Authority] will administer funds, provide reports, and comply with all terms and conditions of funding agreements associated with the operation of the First Nation school.
63. Subject to section 64, estimated expenditures in the annual budget must not exceed estimated revenues.
64. At the request of the [School Governing Authority], Council may, by resolution, approve a budget that provides estimated expenditures that exceed estimated revenues.
65. If the [School Governing Authority] wishes to exceed the total budget approved by the Council, it may request that the Council vary its budget.

Adoption of budget

66. Council:
- (a) must disclose to the [School Governing Authority] the amount of funding it receives to support education programs and services provided by the [School Governing Authority] (*optional*);
 - (b) must approve an annual budget for the [School Governing Authority] on or before June 30 of each year for the next fiscal year; and
 - (c) may amend the annual budget adopted under paragraph (b).
67. If funding expected to be received by the [First Nation] is withheld or reduced by funders, Council may request that:
- (a) the [School Governing Authority] propose amendments to its annual budget; and
 - (b) the [School Governing Authority] forward a proposed amended annual budget to Council for its consideration.

Commented [A18]: Each PFN should consider whether this is appropriate.

Commented [A19]: In some cases, the SGA may be solely responsible for setting the budget, and if so, Council should merely be entitled to receive notice of the SGA approved budget.

Commented [A20]: Delete if Council has no role to approve the SGA budget.

AGREEMENTS

Authority of [School Governing Authority] to enter agreements

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68. The [School Governing Authority] may on behalf of the [First Nation/CEA], subject to this Act:
- (a) enter into an agreement to purchase or provide managerial, administrative or other services with respect to the operation of the First Nation school;
 - (b) enter into an agreement to purchase education services that will be under the general supervision of an employee; and
 - (c) enter into an agreement concerning the promotion, development or operation of recreational and community services.
69. The [School Governing Authority] may, subject to this Act and resolutions of Council, enter into an agreement with one or more boards to provide health and support services, including busing and education resources, to one or more students enrolled with that [School Governing Authority] or board.
70. The [School Governing Authority] may enter into an agreement with the government of British Columbia or any agency of the government of British Columbia with respect to the education matters.

LIABILITY

Actions against [School Governing Authority] and [First Nation/CEA]

71. No action for damages lies or may be instituted in connection with this Act against a director, officer or employee of the [School Governing Authority] for anything said or done or omitted to be said or done by them in the performance or intended performance of their duty or the exercise of their power or for any alleged neglect or default in the performance or intended performance of the duty or the exercise of the power.
72. No action for damages lies or may be instituted in connection with this Act against the Chief, other member of Council or employee of the [First Nation/CEA] for anything said or done or omitted to be said or done by them in the performance or intended performance of their duty or the exercise of their power or for any alleged neglect or default in the performance or intended performance of the duty or the exercise of the power.
73. No action for damages lies or may be instituted in connection with this Act against a volunteer for anything said or done or omitted to be said or done by them in the provision of volunteer services for the [School Governing Authority], or for any alleged neglect or default in the provision of volunteer services by the volunteer.
74. Sections 71 to 73 do not provide a defence if:
- (a) the director, officer or employee of the [School Governing Authority], the Chief, Council Member or employee of the [First Nation/CEA] or volunteer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct, or
 - (b) the cause of action is libel or slander.

75. Sections 71 to 73 do not absolve:
- (a) the [School Governing Authority] from vicarious liability arising out of a tort committed by a director, officer, or employee of the [School Governing Authority], a student or a volunteer for which the [School Governing Authority] would have been liable had sections 71 and 72 not been in force; or
 - (b) the [First Nation/CEA] from vicarious liability arising out of a tort committed by the Chief, a member of Council or employee of the [First Nation/CEA] for which the [First Nation/CEA] would have been liable had sections 71 to 73 not been in force.

Limitation of action and indemnification

76. The [School Governing Authority] may, by resolution, provide that the [School Governing Authority] will indemnify a director, officer or employee of the [School Governing Authority]:
- (a) against a claim for damages against a director, officer or employee of the [School Governing Authority] arising out of performance of their duties; or
 - (b) if an inquiry or a proceeding involves the administration and conduct of the business of the First Nation school,
- and, in addition, may pay legal costs incurred in proceedings arising out of the claim, inquiry or other proceeding.
77. The [School Governing Authority] may, by an affirmative vote of not less than 2/3 of all its directors, pay:
- (a) any sum required to indemnify a director, an officer or an employee of the [School Governing Authority] if a prosecution arises out of the performance of their [School Governing Authority] duties, and
 - (b) costs necessarily incurred,
- but the [School Governing Authority] must not pay a fine imposed on a director, officer or employee as a result of their conviction.
78. The [School Governing Authority] must not seek indemnity against a director, an officer or an employee of the [School Governing Authority] in respect of any action of the director, officer or employee that results in a claim for damages against the [School Governing Authority], but the [School Governing Authority] may seek indemnity:
- (a) against a director, officer or employee of the [School Governing Authority] if the claim for damages arises out of the gross negligence of the director, officer or employee; or
 - (b) against an officer or employee if, in relation to the action that gave rise to the claim for damages against an officer or employee, the officer or employee willfully acted contrary to:

- i. the terms of their employment; or
- ii. an order of a superior.

Insurance

- 79. The [School Governing Authority] must maintain general liability insurance and any insurance required by Council.
- 80. The [School Governing Authority] may maintain such additional insurance, other than insurance referred to in section 79, as the [School Governing Authority] considers necessary.
- 81. The [School Governing Authority] and the [First Nation/CEA] must be named beneficiaries of any insurance policy obtained by the [School Governing Authority] under section 79.

REGULATIONS

- 82. Council may make regulations pursuant to this Act respecting the following matters:
 - (a) governing the manner, form and amount of insurance that must be maintained by the [School Governing Authority];
 - (b) defining any expression that is used but not defined in this Act;
 - (c) respecting the procedures for the election of directors to the [School Governing Authority]; and
 - (d) respecting any matter or thing that Council considers necessary or advisable to facilitate the establishment and operation of the [School Governing Authority].

DRAFTING A FIRST NATION EDUCATION LAW

Once a First Nation has become a Participating First Nation, it may pass its own First Nation Education Law. The “Model First Nation Education Law” has been designed as a tool to assist First Nations in drafting their own education laws. First Nations are not required to follow this model or adopt any of its provisions. There are, however, a few key matters that must be addressed in the law and important considerations to be taken into account in drafting the law.

Matters required to be addressed in the First Nation Education Law

A First Nation Education Law **must** address the following matters:

- The law must include mechanisms through which Non-Members, who receive education or have their children receive education provided by the First Nation, will have input into the decisions with respect to a program or service where that decision directly and significantly affects the rights of students who receive education or their parents. (Canada-First Nation Education Jurisdiction Agreement [or CFNEJA], paras 2.5 and 2.14)
- If the First Nation is establishing a CEA as a separate legal entity under its own authority, it must establish the CEA and set out its powers, duties, composition and membership under the law. (CFNEJA, Part 3)
- The First Nation must incorporate by reference the process, standards and requirements developed by the FNEA in respect of teacher certification, school certification, graduation requirements and the process for evaluating locally developed courses that are required to graduate. (CFNEJA, paras 4.5(d) and 4.6)
- The First Nation must establish processes for appeal or review of administrative decisions taken by the First Nation Council or the CEA and, if there is a right of appeal to a court, the Supreme Court of British Columbia will have jurisdiction to hear those appeals (CFNEJA, para 5.2). While the CFNEJA does not specify that the appeal/review process must be set out in the law, it may be helpful to address this issue by making reference to, or incorporating the general outline of, the appeal/review process in the law. [*Note:* The CFNEJA also provides (5.10) that the BC Provincial Court has the jurisdiction with respect to violations of First Nation Education Laws. FNEA is currently working with the Province to ensure that provincial laws support the intent of these provisions of the CFNEJA.]

Considerations in drafting the First Nation Education Law

The First Nation Law may not interfere with the ability of a person to decide where to enroll, or of a parent to decide where to enroll their child, to receive education (CFNEJA, paragraph 2.2).

If the First Nation chooses to identify an existing or newly-established legal entity established under federal or provincial law (e.g. under the *Societies Act*) as its Community Education Authority for the purposes of the CFNEJA, it may confer additional rights, powers and privileges and impose restrictions on the legal entity as long as they are not inconsistent with the federal or provincial law under which the legal entity was established.

Once passed, PFNs must provide the Province with notice of their education law.