School Board Update

School Board Update – Ontario's 2010 Early Learning Program: Bracing for the Fallout

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When was the last time your Board was involved in the legal "ins and outs" of a hotly contested certification drive before the Ontario Labour Relations Board? Ontario's newly announced Early Learning Program could well provide you with an opportunity in the coming year. In this *School Board Update*, we discuss the ramifications and new challenges that face school boards throughout the province in light of this announcement.

BACKGROUND

Late last year, the Ministry of Education announced the first phase of Ontario's plan for a province-wide "Early Learning Program", which involves the implementation of full-day early learning for four- and five-year-olds. Phase One is intended to provide early learning for up to 35,000 four- and five-year-olds – 15 percent of the Junior and Senior Kindergarten population – during the 2010-2011 school year. The Ministry's ultimate goal is to provide access to full-day early learning in all schools by the 2015-2016 school year.

Because the Early Learning Program is a school-based initiative, school boards will have a lead role in achieving the province's vision for early learning, and will be required to consult with their school communities and other partners.

THE EARLY LEARNING PROGRAM

The Early Learning Program is based on two components:

1. A core component that will be offered each school day during the hours of the instructional program (for example, from 9:00 am to 3:30 pm). In each classroom, a team of one teacher and one early childhood educator ("ECE") registered with the College of Early Childhood Educators will work side by side to deliver the program.
2. An extended day component that will be available before and after school (for example, from 7:00 to 9:00 am and 3:30 to 6:00 pm). This component will be led by ECEs and funded through parent fees set on a cost-recovery basis, with subsidies available for families who need help with the cost.

The Ministry has also established a class size standard for the Early Learning Program of an average of 26 students on a board-wide basis, which provides for a child-adult ratio of 13:1.

As a first step, school boards were required to prepare preliminary plans involving the selection of the schools that would offer full-day learning for the 2010-11 school year. These plans will be reviewed by the Ministry of Education and Ministry of Children and Youth Services by January 15, 2010.

CHALLENGES

In implementing Phase One, boards will need to respond to a number of financial, administrative and logistical challenges. Some of the most significant challenges involve the following human resources and labour relations issues:

Representation rights concerning the ECEs. In light of the absence of any legislative direction as to appropriate bargaining

units for ECEs, there may be intense competition among existing (and possibly new) unions and teacher federations for representation rights. Boards will therefore need to familiarize themselves with the process for (and their rights during) applications for certification under the *Labour Relations Act, 1995 ("LRA")*. In addition, in light of the positions that some trade unions have already taken, it will also be necessary to review carefully the recognition provisions of existing collective agreements to determine if the new positions already fall within an existing bargaining unit (e.g. professional) and to understand the possible advantages and pitfalls associated with the voluntary recognition process.

Pay equity considerations. In light of the number of new employees arriving at school boards and the funding model for ECE wages introduced by the Ministry (which has already raised pay equity concerns), any negotiations that follow the determination of representation rights could create significant challenges for school boards.

Operational issues relating to the extended day. The Ministry's direction concerning the extended day component will require boards to reconsider their existing arrangements for a number of employee groups, ranging from principals to caretakers and administrative staff. As boards work to implement new schedules and establish new responsibilities, they will have to review their contractual and collective agreement obligations, as well as the hours of work requirements of the *Employment Standards Act, 2000*.

Instructional issues. The Ministry has indicated that it expects teachers and ECEs to work side by side in delivering the classroom component. However, the teachers' federations have already made clear statements concerning the scope of their members' authority in the classroom. Each board's demarcation of the responsibilities of each employee may therefore require a review of the *Education Act*, arbitral jurisprudence concerning teachers' duties and an understanding of the process for jurisdictional disputes under the *LRA*. In addition, the Ministry's class size standard for the Early Learning Program may in some cases conflict with collective agreement obligations.

The arrival of the ECEs, a large and distinct complement of new employees. As noted above, participating ECEs must be registered with the College of Early Childhood Educators and will be subject to regulation by that body in the same way that other professionals (e.g. teachers, social workers, psychologists, physiotherapists, etc.,) are governed by their Colleges. Boards will therefore need to familiarize themselves with the requirements for membership in the College, as well as the professional standards imposed on ECEs by the *Early Childhood Educators Act.*

In addition to these employment-related issues, boards may need to consider the impact of the *Human Rights Code* and the *Education Act* on pupils' access to the limited number of schools offering the Early Learning Program during its early phases, and related issues concerning access to special education.

Hicks Morley's School Board Practice Group has established a team of lawyers who are actively considering and reviewing these issues as they arise. If you would like to discuss how any of these issues may affect your board, please contact your regular Hicks Morley lawyer.

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