School Board Update

School Board Update – Provincial Interest Regulation Now In Effect

Date: March 19, 2010

Overview of the PIR

The Ministry of Education filed its long-awaited Provincial Interest Regulation (PIR) on February 26, 2010 and the PIR is now in effect. It is intended to strengthen the accountability of school boards for student achievement and well-being. Most notably, the PIR allows the Minister of Education to intervene in the affairs of a board if there are concerns regarding a board's performance in defined areas.

After consultation with a number of education sector stakeholders, including school boards and provincial trustee associations, the draft PIR was revised to address concerns raised regarding a potential decrease in the autonomy of school boards. The final PIR creates a process for intervention that is collegial, collaborative and respectful of the partnership between school boards and the government.

Grounds for Performance Review

The legislative authority for the PIR arises under section 11.1 of the Education Act as recently amended by Bill 177, *An Act to amend the Education Act with respect to student achievement, school board governance and certain other matters*. The PIR will allow the Minister to intervene if there are concerns regarding a school board's performance in any of the following areas:

- academic achievement of the board's pupils, as measured by specific academic outcomes;
- performance of the board and the board's director of education in ensuring student achievement and effective stewardship of resources;
- involvement by parents of pupils of the board;
- health and safety of the board's pupils;
- the degree of cooperation among board members and between the board and the board's director of education in providing good governance;

In addition, the Minister may also intervene if the board's director of education fails to bring a contravention of the *Education Act* (or any policy, guideline or regulation under the *Act*) to the attention of the board, or where the board has not responded to such a contravention in a satisfactory manner.

Section 11.1 of the *Education Act* provides authority to issue regulations governing the duties of boards in seven discrete areas. This PIR only covers five of these areas, leaving subjects such as special education services and the effective use of funds and resources untouched for now. It remains to be seen whether the Minister will issue additional regulations to address these areas.

Intervention Process

If a concern is raised, the Minister may appoint one or more individuals to investigate and review the board's performance. The board has a corresponding duty to cooperate with the review by taking all necessary steps to facilitate the process. The reviewer(s) will conduct an investigation and prepare a draft report outlining their findings, which will be provided to the board for review and comment. The reviewer(s) will take the board's comments into consideration in preparing a final report, which will then be submitted to the Minister. If any of the board's comments were not incorporated in the final report, they will be

outlined in a separate document that will be provided to the Minister.

Based on the final report and outline document, the Minister may then make recommendations for action to the board. In response, the board will be required to give “full and fair consideration” to the Minister’s recommendations and to advise the Minister as to how these recommendations will be taken into account in improving its performance. The board may also be required to submit one or more reports to the Minister establishing compliance with the PIR, outlining the steps taken to implement the Minister’s recommendations and any improvements observed in the area of intervention.The Minister will consider seeking supervision of the board under section 230. 3 of the *Education Act* only in the limited circumstance where the board refused to or did not fully participate in the review process, or otherwise failed to give full and fair consideration to the changes recommended by the Minister. While the term “full and fair consideration” is not defined in the PIR or in the *Education Act*, there is some guidance offered in the requirement that the board take the Minister’s recommendations into account when carrying out its duties with respect to a multi-year plan.

If you have any questions regarding the PIR, contact Bushra Rehman or your regular Hicks Morley lawyer.

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