School Board Update

The Proposed Protecting Public Services Act Would Significantly Change Terms and Conditions of Employment for Directors, Superintendants and Senior Board Officials

Date: October 1, 2012

On September 26, 2012, the Ontario Minister of Finance announced draft omnibus legislation, the *Protecting Public Services Act, 2012* (the "Draft Bill"), that would, if enacted, implement new compensation restraint measures for the Broader Public Sector ("BPS") and would impose a significant new provincially mandated collective bargaining regime.

At first glance, the Draft Bill may appear to have little practical importance for school boards. This is because the Draft Bill as currently written would not apply to unionized employees. Moreover, while the Draft Bill's permanent compensation restraint mechanisms would apply to school board employees, they would only apply to non-union employees who earn in excess of two times the Premier's annual salary (that is, roughly in excess of $418,000). These limitations would exclude most (if not all) of a school board's employees.

In fact, however, if passed in its current form, the Draft Bill would likely have a significant impact upon the terms and conditions of employment of all Directors, Superintendents and other senior board officials, regardless of their annual salary. This *FTR Now* discusses the Draft Bill and its likely impact on these school board positions.

OVERVIEW OF DRAFT BILL

Schedule 1 of the Draft Bill would enact the *Public Sector Compensation Restraint Act, 2012* (the "*PSCRA*"). If introduced and enacted, the *PSCRA* would, for most BPS employees, replace the current compensation restraints that were introduced through Bill 55 and are now found in Part II.1 of the *Broader Public Sector Accountability Act, 2010* ("*BPSAA*"). That is, Part II.1 of the *BPSAA* would be repealed, and its "designated executive" and "performance pay envelope" regime would be replaced by the restraints described in the Draft Bill.

APPLICATION TO SCHOOL BOARDS

You will recall that the compensation freeze provisions of Bill 55 expressly applied to Directors of Education and Superintendents. They also applied to any employee who is "… a chief administrative officer, chief operating officer, chief financial officer or chief information officer of the designated employer or holds any other executive position or office with the designated employer, regardless of the title of the position or office."

The *BPSAA* did not legislate any *reductions* to compensation or changes to terms and conditions of employment. Essentially, this legislation had the effect of freezing the total compensation (including benefits, perquisites and payments) of senior school board officials in accordance with the current employment contract applicable to each of them. Specifically, existing entitlements to sick leave and retirement gratuity payments were preserved for these employees.

By contrast, the *Putting Students First Act* ("*PSFA*") did not simply freeze compensation packages. Rather, it has imposed significant new terms and conditions of employment on non-union employees, as well as imposing a new provincially mandated collective bargaining regime for unionized employees.

In particular, section 2 of the *PFSA* made the following major *changes* to the terms and conditions for non-union employees:

- a two-year compensation freeze;
- a freeze on the number of service credits and (subject to regulations under the *Education Act*) sick leave credits held by an employee as of August 31, 2012;
- limitations on the value of such vested service credits and sick leave credits for the purposes of any retiring gratuity;
- stipulation of ten (10) days of sick leave during a board's fiscal year paid at a rate of pay equal to 100 per cent of the employee's salary for the year; and
- stipulation of an additional 120 days of sick leave during a board's fiscal year paid at a rate of pay equal to either 90% of salary (through adjudication) or 66.67% of salary otherwise.

Presently, subsection 2(7) of the *PSFA* expressly states that these provisions concerning service credits, sick days, retiring gratuities and sick leave do not apply to employees covered by Part II.1 of the *BPSAA*. In other words, subsection 2(7) insulates "Bill 55 employees" from section 2 of the *PSFA*. This is clearly a significant exemption for senior school board officials.

However, the Draft Bill, if enacted, would repeal subsection 2(7) of the *PSFA*, thereby eliminating this exemption. The retiring gratuities and sick leave plans of senior board officials would then be subject to section 2 of the *PFSA*.

This result is reinforced by subsection 3(3) of the proposed *PSCRA*, which expressly states that the temporary restraint measures in the *PSCRA* do not apply to employees of a board to whom section 2 of the *PSFA* applies. Rather, those employees (including, now, senior board officials) will be subject to all of the two-year compensation restraint provisions of section 2 of the *PSFA*. This would appear to reflect a policy decision by the Government to make senior board officials subject to the same restraint regime that has been established for all other non-union board employees.

Finally, it must be recalled that subsection 3(3) of the *PSCRA* would only exempt non-union board employees from the "temporary" restraint measures established under the *PSCRA*. The *PSCRA's* permanent salary cap (set at two times the Premier's salary for future hires and those who accept a new position within a board) would also apply where necessary. Based on the Premier's current salary, the cap would initially be set at roughly $418,000, and would encompass salary, performance pay and bonuses.

Accordingly, the overall effect of the Draft Bill, if enacted in its present form, would be to remove the current *PSFA* exemption for senior school board officials and make them subject to the prescribed terms and conditions of employment in section 2 of the *PSFA* along with all other non-union board employees. There would also be the permanent salary cap described above.

It is important to emphasize that the Draft Bill has not yet been introduced in the Legislature. Rather, it has been released publicly for consultation purposes. At the time of writing, no formal consultation process has been announced, nor has the Government indicated how long it will hold open this consultation phase. For comparison purposes, the consultation period for the *PFSA* lasted eleven days this past August. However, the consultation period for the Draft Bill may not be that long. Therefore, in addition to reviewing the Draft Bill for its specific implications with respect to your organizations, school boards may wish to consider whether to contact their local Government representatives to provide feedback on it.

Hicks Morley will be carefully monitoring the development of the Draft Bill and will be reporting on any amendments of note. If you have any questions about the Draft Bill and its application to your school board, please do not hesitate to contact Dolores M. Barbini (416.864.7303), Michael A. Hines (416.864.7248) or your regular Hicks Morley lawyer.

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