

FTR Now

Labour Relations Impact of Ontario's Proposed New Child and Family Services Framework

Date: February 14, 2017

Editor's Note: On April 30, 2018, the majority of the Bill 89 amendments outlined below will come into force. The Child and Family Services Act will also be repealed on April 30, 2018.

Change is coming to your current service delivery model. Legislation recently proposed by the Ontario government to repeal and replace the *Child and Family Services Act* will enhance existing accountability and compliance rules – and could directly impact your organization's collective bargaining strategy. Are you prepared?

Background on Bill 89

Legislation Proposed

On [December 8, 2016](#), the Minister of Children and Youth Services introduced Bill 89, the [Supporting Children, Youth and Families Act, 2016](#) (Bill 89). Effectively, this omnibus legislation will, if passed in its present form, repeal the current *Child and Family Services Act*, and enact new legislation in its place.

Oversight & Enforcement

Binding Directives & Compliance Orders

Among other things, Bill 89 replaces Part 1 of the current Act with new funding and accountability rules that would:

- Permit the Minister to issue binding directives to certain service providers and lead agencies
- Permit a program supervisor to issue compliance orders to certain service providers and lead agencies for failure to comply with the Act, the regulations or the directives.

Accountability Agreements & Impact on Bargaining

The Bill 89 amendments build on existing rules, including current regulations that require every society to enter into a mandatory "accountability agreement" with the Minister as a condition of receiving funding. This specific accountability requirement would be enshrined within the Act itself. Of particular note, an accountability agreement must include a requirement that the society operate within its approved budget allocation and any other prescribed terms. This will continue directly impacting negotiations strategy, as discussed below.

Other compliance and enforcement reforms under Bill 89 provide that:

- The Minister may issue binding directives to societies
- Directors may issue compliance orders to societies for failure to comply with the Act, the regulations, an accountability agreement or the directives.

The Minister could make a variety of orders where a society fails to comply with a compliance order, or where it is in the

public interest. These include orders:

- requiring a society to take corrective action
- suspending, amending or revoking the society's designation
- appointing or replacing members of the society's board of directors
- designating or replacing a chair of the board
- appointing a supervisor to operate and manage the society.

Expanded enforcement rules provide that a program supervisor may enter and inspect certain premises to determine compliance with the Act and the regulations with and/or without a warrant or notice in order to conduct an inspection. The supervisor shall issue a non-compliance report.

Impact on Labour Relations

As outlined above, compliance under the Act requires strict adherence to approved budget allocations. This will necessarily impose a limit on monies available at the bargaining table for labour relations purposes such as wages, benefits and other items that involve a direct or indirect cost. Societies will have a limited ability to offer increases, and will need to adapt their bargaining strategies and approach accordingly, given that enshrining this requirement within the legislation itself may signal an increased focus on enforcement going forward.

Society Amalgamation & Restructuring Framework

Two or more societies may propose, in the prescribed form, to amalgamate and continue as one society. In these instances, the Minister may approve or amend and approve the proposal. Significantly, however, the Minister would be authorized to order amalgamations if the Minister considers it to be in the public interest, or "to enhance the efficiency, effectiveness and consistency of services." Thus, whether the societies at issue support a contemplated amalgamation or not, the Minister may:

- order that a society amalgamate with one or more other societies
- order that a society undertake other types of restructuring (including transfer or cease operations, dissolve or wind up), if the Minister considers it to be in the public interest and, in certain circumstances, appoint a supervisor to "implement or facilitate" the order's implementation.

Notably, Bill 89 provides that the *Public Sector Labour Relations Transition Act, 1997* applies upon the amalgamation of two or more children's aid societies.

Regulation of Personal Information

Bill 89 creates an extensive scheme to regulate the personal information of individuals receiving or participating in the provision of services outlined in the Bill. The provisions set out detailed descriptions as to when personal information can be collected, used and disclosed with or without consent of an individual or their substitute decision-maker, including disclosures without consent between societies. There are also express provisions for the disclosure of personal information to the Ministry to permit it to exercise its oversight functions. Organizations governed by the *Freedom of Information and Protection of Privacy Act*, *Municipal Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004* are exempt from certain portions of the Bill 89 scheme but remain subject to those Acts.

Next Steps?

As noted, Bill 89 was introduced on December 8, 2016 and is awaiting debate at Second Reading. The Ontario Legislative Assembly resumes sitting on February 21, 2017, and we will continue to monitor and report on the Bill's progress as it moves



through the normal legislative process.

Takeaways for Service Providers

The Bill 89 reforms outlined above appear to be part of a move towards greater oversight by the Ministry, and a greater emphasis on accountability within the sector. Going forward, children's aid societies must now more than ever strive to achieve and maintain efficiencies in all aspects of their operations – including with respect to labour relations. To prepare, proactive societies should:

- audit current compliance protocols and accountability safeguards
- review existing compliance policies, training and communications
- review labour costing and budgeting processes
- implement budget monitoring systems.

We will continue to monitor Bill 89 and provide you with timely updates.

Hicks Morley's [Social Services practice group](#) is well-positioned to provide your organization with proactive compliance advice. If you would like more information about the potential impact of Bill 89 on your organization, please contact [Daniel B. Fogel](#) at 416.864.7349 or your regular [Hicks Morley lawyer](#).

The articles in this client update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©