
ONTARIO LEGISLATURE PASSES BILL 122, THE *BROADER PUBLIC SECTOR ACCOUNTABILITY ACT*

*By Ryan M. Prendergast and Terrance S. Carter **

A. INTRODUCTION

On December 8, 2010, Bill 122, the *Broader Public Sector Accountability Act* (the “Act”)¹ received Royal Assent after being passed by the Ontario Legislature on December 2, 2010. The majority of the Act will come into force on a date to be proclaimed by the Lieutenant Governor, whereas the amendments to the *Freedom of Information and Protection of Privacy Act* described below and other statutes will come into force on January 1, 2012. The Act was briefly mentioned in the February 2011 *Charity Law Update*, which can be accessed online at <http://www.carters.ca/pub/update/charity/11/feb11.pdf>. The Act was created to increase the financial accountability of organizations in the broader public sector. The sections of the Act with relevancy for charities and non-profit organizations in Ontario are discussed in this *Charity Law Bulletin*.

The Act introduces new rules and higher accountability standards for “broader public sector organizations” which the Act defines as “designated broader public sector organizations” and “publicly funded organizations.” For definitional purposes, “designated broader public sector organizations,” include hospitals, school boards, universities and colleges, Children’s Aid Societies, community care access corporations, corporations controlled by a designated broader public sector organization and other public sector organizations, which could include charities, that have received more than \$10 million in funding

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¹ Online at: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2420&detailPage=bills_detail_the_bill&Intranet

from the provincial government. “Publicly funded organization” is broadly defined in the Act to include every authority, board, commission, committee, corporation, council, foundation or organization that received public funds in the previous fiscal year from the Government of Ontario, but excludes certain entities, such as a ministry of the provincial government or a municipality.

B. LOBBYISTS

Section 4 of the Act prohibits certain organizations from using public funds or revenue generated by the organization to engage lobbyists. Organizations subject to this prohibition include:

- Every agency of the Government of Ontario;
- Designated broader public sector organizations;
- Hydro One and its subsidiaries;
- Ontario Power Generation Inc. and its subsidiaries;
- Independent Electricity System Operator; and
- Organizations provided for by regulation.

C. ENHANCED REPORTING REQUIREMENTS FOR LHINS AND HOSPITALS

1. Reporting on Use of Consultants

According to sections 5 and 6 of the Act, hospitals and local health integration networks (“LHINs”) must prepare reports concerning the use of consultants by the hospital or LHIN. The Minister of Health and Long-Term Care may issue directives to LHINs or hospitals respecting the information that should be included, to whom the reports should be submitted, as well as the form, manner and timing of the reports. The Act will also permit the Lieutenant Governor in Council to make regulations extending the requirement to prepare reports on the use of consultants to designated broader public sector organizations.

2. Public Reporting of Expense Claim Information

Section 8 of the Act requires LHINs and hospitals to post information on their public website concerning expense claims of designated individuals, which include the board members and senior managers of the LHIN or hospital. This information must be posted in compliance with certain directives issued by the Minister of Health and Long-Term Care. Section 9 of the Act also states that

the Lieutenant Governor in Council may make regulations requiring other broader public sector organizations, in addition to hospitals and LHINs, to make public postings of their expenses.

D. EXPENSES AND PROCUREMENT

Sections 10 to 13 of the Act authorize the Management Board of Cabinet, a committee of the provincial government at the Office of the Premier, to establish requirements related to expenses and procurement.

1. Expense Standards

Section 10 of the Act requires designated broader public sector organizations to establish expense rules concerning “allowable expenses” and “not allowable expenses.” The directives may require the following in relation to the expense rules:

- an accountability framework;
- prohibition on reimbursement of meal and hospitality expenses for consultants and other contractors;
- rules specific to serving alcohol;
- rules for hospitality events;
- good record-keeping practices;
- rules for individuals making claims (e.g. all appropriate approvals should be obtained before incurring the expense, original itemized receipts are required); and
- rules for individuals approving claims (e.g. cannot approve their own claims, provide approval only for expenses incurred in the performance of organization business).²

In addition, section 11 of the Act permits the provincial government to issue guidelines with respect to allowable expenses for publicly funded broader public sector organizations.

2. Procurement Standards

Section 12 of the Act states that the Management Board of Cabinet may issue directives governing the procurement of goods and services by designated broader public sector organizations. The provincial government may also issue guidelines with respect to the procurement of goods and services by publicly funded organizations under section 13 of the Act.

² Ministry of Health and Long-Term Care, *Legislation: The Broader Public Sector Accountability Act, 2001, Expenses and Procurement*, at http://www.health.gov.on.ca/en/legislation/bpsa/expenses_procurement.aspx

E. COMPLIANCE REPORTS

Under Sections 14 and 15 of the Act, LHINs, along with public and private hospitals, must prepare attestations with respect to compliance with the requirements of the Act.

The attestations will confirm the organizations’:

- completion and accuracy of reports on the use of consultants;
- compliance with the prohibition on engaging lobbyists using public funds;
- compliance with the expense directives issued by the Government; and
- compliance with procurement directives issued by the Government.³

According to section 16 of the Act, the Lieutenant Governor in Council may also make similar regulations requiring broader public sector organizations to file attestations about compliance with the requirements under this Act.

F. AMENDMENTS TO THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT* (FIPPA)

Part VIII of the Act includes amendments to *Freedom of Information and Protection of Privacy Act* (“FIPPA”)⁴ so that it will now apply to both public and private hospitals. The Ministry of Health and Long-Term Care anticipates that these changes will help to increase the transparency of the hospital system in addition to the other measures in the Act. Hospitals will need to comply with certain provisions under FIPPA starting January 1, 2012. However, records that came into a hospital’s custody or control on or after January 7, 2007 will also be subject to the Act as well.

In this regard, certain types of hospital records will be excluded from the application of FIPPA. As of January 1, 2012, records that will be excluded from the application of the Act include:

- “ecclesiastical records” of a church or religious organization that is affiliated with an educational institution or hospital. These include the operation, administrative and theological records including those related to the practice of faith of the church of religious organization;
- records that relate to the operations of a hospital foundation;
- the administrative records of a health professional solely in relation to their personal practice; and
- records that relate to charitable donations made to a hospital.

³ Ministry of Health and Long-Term Care, *Legislation: The Broader Public Sector Accountability Act, 2001, Compliance Reports*, at http://www.health.gov.on.ca/en/legislation/bpsa/reports_rules.aspx

⁴ *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter. F.3.1

However, it will be important for hospitals and associated foundations to be aware of the provisions within FIPPA concerning the use and disclosure of personal information that will now apply to them, particularly in the context of fundraising. In this regard, section 41 of FIPPA, which prohibits the use of personal information, is amended by the Act to state under clause (d) that hospitals may use personal information for its fundraising activities if the information is reasonably necessary, subject to the notice provisions under subsection 41(2) of FIPPA. Furthermore, section 42 of FIPPA, which states where disclosure is permitted, is amended so that hospitals may disclose personal information in its records for either its own fundraising activities or those of its associated foundation if a written agreement is entered into between the hospital and the person to whom the information is disclosed and it is reasonably necessary for the fundraising activities. Certain notice requirements under subsection 42(2) must also be met in order for the hospital or associated foundation to do so.

With respect to fundraising agreements, hospitals that disclose personal information in the hospital's records for fundraising activities must comply with the notice provisions under subsection 42(2), disclose that information to the individual to whom it relates upon their request and require that the person to whom the information is disclosed ceases to use the personal information of any individual who requests that the information not be used.

The amendments to FIPPA do not change the existing rules for hospitals that are applicable to personal health information. In this regard, the *Personal Health Information Protection Act* will continue to apply to a hospitals collection, use and disclosure of personal health information.

G. CONCLUSION

While the intent of increasing the transparency and accountability for broader public sector organizations in Ontario is a worthwhile goal, the changes in the Act are numerous and technical. As such, both the board and legal counsel of such organizations will want to become familiar with the new standards and record keeping requirements under the Act. Those organizations will also want to review the Act to ensure compliance with the new requirements prior to the Act coming into force.

More information about the Act can be found online at the Ontario Ministry of Health and Long Term Care website at: <http://www.health.gov.on.ca/en/legislation/bpsa/default.aspx>.