

## LEGISLATIVE UPDATE

Nicholas Caughey \*

### *Broader Public Sector Accountability Act*

2010, S.O. 2010, c. 25

Proclamation: Sections 1 to 4, 17 to 23 and 25 to 27 in force January 1, 2011; sections 5 to 16 in force April 1, 2011 (Ont. Gazette, Jan. 1, 2011). Sections 24 and 28, which amend the *Freedom of Information and Protection of Privacy Act* to include hospitals, come into force on January 1, 2012.

#### **Introduction**

The *Broader Public Sector Accountability Act, 2010* (“BPSAA” or “Act”) will have a significant impact on broader public sector organizations. Its central purpose is to regulate the spending of public funds in a variety of areas, including new rules on the use of lobbyists and consultants, expenses and expense reporting, and procurement policies. While the BPSAA provides the framework, the full impact of the Act will occur when the government and ministries roll out regulations and directives containing specific obligations.

#### **Legislative History**

The BPSAA was introduced as Bill 122 in the Ontario Legislature in late October 2010. The Bill was fast-tracked through the legislative process and received Royal Assent in early December 2010. The Act responds to concerns raised in the Ontario Auditor General’s report, *Consultant Use in Selected Health Organizations*, with respect to irregularities in the health sector’s use of public funds, although the BPSAA is not so limited in scope. Certain sections of the BPSAA were proclaimed into force as of January 1, 2011, with further sections to come into force on April 1, 2011, and final sections on January 1, 2012.

#### **Application of the BPSAA**

Compliance under the BPSAA depends on the type of organization. Two subcategories define the “broader public service organizations” to which the Act applies.

First, an organization may be a “publicly funded organization”, which is any organization that received “public funds” in the previous fiscal year. Public funds include funding received by way of grants, taxes (school boards), and transfer payments. Public funds do not include money paid

by the government for goods or services, money paid under a fee for service arrangement, or money provided by a loan or guarantee.

Second, the BPSAA applies to “designated broader public sector organizations”, including the following: school boards, universities and other post-secondary institutions; hospitals and local health integration networks (“LHINs”); hydro entities; children’s aid societies; and every publicly funded organization that received more than \$10 million dollars in government funding in the previous fiscal year.

Explicit exclusions to this designation include municipalities, local boards defined in the *Municipal Act* and the *City of Toronto Act*, boards of health, long-term care homes, and for-profit organizations (subject to as yet unpublished regulations).

## NEW REQUIREMENTS

**Procurement:** Since April 2010, the government has expected that the existing directive on public procurement from the Management Board of Cabinet – the “BPS Supply Chain Guideline” – be applied to hospitals, school boards, colleges and universities. When portions of the BPSAA relating to procurement come into effect on April 1, 2011, the Management Board of Cabinet will have authority to issue directives governing the procurement of goods and services by broader public service organizations, including those listed above. The BPSAA states that such directives may incorporate existing government policies or standards, but does not specify which ones. Compliance for such organizations should remain with the BPS Supply Chain Guideline until further directives are issued.

**Lobbyists:** The BPSAA prohibits “designated broader public sector organizations” and agencies of the Government of Ontario (LCBO, Heritage Trust, Lottery and Gaming Corp., etc.) from using public funds to pay for the services of lobbyists, unless the lobbyist is employed in-house. Additionally, specific organizations (not including “designated broader public sector organizations”) are further prohibited from paying for lobbyists from revenues outside public funds. These prohibitions do not apply to fees for membership of associations established to represent a group or class of similar organizations.

All existing lobbyist contracts are deemed to expire 30 days after these requirements apply, despite any existing notice provisions in these contracts.

**Consultants:** LHINs, hospitals and any other organizations prescribed by regulation are required to prepare reports on the use of consultants. The Minister of Health and Long-Term Care may issue directives concerning the content, timing and form of these reports. The

Lieutenant Governor in Council may make regulations to be applied to “designated broader public sector organizations”.

**Expenses:** Starting April 1, 2011, hospitals and LHINs must post expense claim information on publicly accessible websites. Directives from the Ministry of Health and Long-Term Care will designate reporting specifics. Further, the BPSAA provides authority for the Management Board of Cabinet to make expense rules and guidelines for broader public sector organizations.

**Compliance and Enforcement:** Effective April 1, 2011, all hospitals and LHINs must provide “attestations” of their compliance with expense claim and procurement directives. Again, the BPSAA provides the Minister of Health and Long-Term Care with authority to issue directives as to content, form, timing, etc. Further, the Lieutenant Governor in Council can create regulations requiring attestations from other broader public sector organizations.

Requirements under the BPSAA are deemed to be part of funding agreements and must be complied with as part of those agreements. The BPSAA takes precedence over any contract found to be in violation of the Act, even if the contract was executed before the BPSAA came into force. Furthermore, the BPSAA restricts the ability of a party affected by its requirements to claim against the Crown or to claim compensation for any damages, loss of revenues, etc., as a result of an application of the Act, or its regulations and directives.

\*Nicholas Caughey is an Associate at WeirFoulds LLP ([www.weirfoulds.com](http://www.weirfoulds.com)).