



## Joint Submission

to

The Standing Committee on General Government

*Re: Bill 8, Public Sector and MPP Accountability and  
Transparency Act, 2014*

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The four school board/trustee associations would like to take the opportunity to respond and comment on this omnibus piece of legislation and in particular two schedules, out of the total eleven schedules, that will directly affect our membership. The bill's title refers to accountability and transparency—two values that school boards and their elected trustees strive to ensure on a daily basis. Governed by the *Education Act*, school boards operate under many regulations, policies and guidelines and provide numerous reports, as required by the Ministry of Education, in order to demonstrate transparency and accountability measures.

While we believe the government's intention is to increase public confidence and to show an openness to the province's electorate, we feel that, without due consideration of the current mechanisms for accountability and transparency that apply to school boards, we have been unfairly captured in the consideration of Schedule 1 – Broader Public Sector Executive Compensation Act, 2014 and Schedule 9 – Amendments to the Ombudsman Act and Related Amendments. The reporting requirements for school boards far exceed requirements in any other sector. These include highly detailed financial reporting three times a year in addition to multiple layers of reporting with regard to students, employees and board improvement planning.

**Schedule 1: Broader Public Sector Executive Compensation Act, 2014**

The new proposed legislation aims to establish compensation frameworks for a lengthy list of public sector employers including those at Ornge, Metrolinx, OLG and the LCBO as well as the executives at school boards. It would give the government the power to directly control executive pay including the option to set sector specific hard caps. While we understand that these frameworks are to be developed through regulation, we have strong concerns about the inclusion of school board Directors of Education and possibly Supervisory Officers. We do not believe the compensation structure for these positions fairly compares with CEOs and senior executives at the other organizations identified in the Schedule. Considering the scope of work and amount of responsibility that comes with their positions, the compensation for Directors of Education and Supervisory Officers comes in at the lower end of market value. These are salaries that do not need to be "reined in" in the context of legislation which is otherwise directed at a small grouping of highly compensated executives. The inclusion of school boards sends an erroneous message.

School boards operate in an increasingly complex environment and succession planning is becoming a serious issue. Several school boards have or will be facing staffing gaps as retirements and resignations create vacancies in senior roles. Currently, there is research that indicates that teachers, by and large, are not enticed by the additional marginal compensation to apply for these very demanding school administrative roles. While this new Act suggests that current executive payment would be grandfathered, school boards need the ability to attract and retain the best leaders and educators for our students. The proposed legislation allows no incentive for succession planning and has the capacity to wreak havoc on internal equity

in compensation structures. It is possible that employees who collectively bargain could receive higher compensation in their current position than the person or level above them to whom they report (teachers to principals, senior board staff to Director of Education, etc.) This simply does not make sense nor would it be acceptable in most workplaces.

The challenges for school boards in recruiting for senior positions are impacted as well by practices within their municipalities. The two sectors are in competition for the same level of expertise in leaders. The proposed legislation does not apply to municipalities. Municipalities can continue to improve their compensation frameworks and can therefore offer more competitive salaries than school boards will be able to do. It is arguable that school boards and municipalities are both municipal level governments and school boards should not be included with organizations such as Hydro One or Ornge.

We note, as well, that as of last year school boards had changes introduced to their Board Administration funding line, the changes are being phased in over four years. How would the new salary frameworks that would emerge from this proposed legislation impact the benchmarks contained in the revised funding line for Directors of Education and Supervisory Officers?

Some of the unreasonable impacts of this new legislation for school boards stemming from these compensation frameworks could have the following results:

- A supervisory officer of a school board, who becomes a Director of Education after the effective date of the framework will no longer be grandfathered and could end up being paid less as a Director of Education than what the supervisory officer currently earns.
- It is possible that a new Director of Education of a particular school board may be paid within a compensation structure that is capped at a lower level than the compensation structure that applied to the outgoing Director of Education of that school board.

The proposed legislation identifies “compensation in excess of \$100,000” as the threshold which triggers its provisions. This appears to parallel the threshold in the *Public Sector Salary Disclosure Act, 1996*, a threshold that has not been adjusted in almost twenty years despite inflation and a range of factors affecting compensation and working conditions in the public sector. The 1996 Act was intended to capture senior employees but as the annual “Sunshine List” reveals, there are many levels of employees whose total compensation now exceeds the threshold. Of these, many are in bargaining units and, because of collective bargaining rights, are exempt from the current proposed legislation. We raise these issues to underscore logical inconsistencies that should be addressed.

This current legislation does not clarify who else might be affected at a school board, for example could it affect Chief Psychologists and Chief Social Workers? It also does not suggest any effective dates for the compensation framework to come into force.

Finally, we strongly reiterate that we do not feel school boards ought to be considered in this grouping of public sector organizations. If there are to be compensation frameworks for our sector, they need to be developed and based on consultation and research of the labour market, considerations of internal equity, as well as jurisdictional analysis. Any benchmarks or frameworks for our senior administrators must closely

reflect the reality of the education sector. Consideration must be given to frameworks to allow for differences in school board size, organizational structure and span of control within a board.

### **Schedule 9: Amendments to the Ombudsman Act and Related Amendments**

The changes being contemplated in these amendments would now give the Ombudsman the power to investigate school board decisions, which could be triggered by an individual complaint or by the Ombudsman himself. We would emphasize that the education sector is complex and involves not just the delivery of education but the physical and mental health of students, raising issues that go beyond the expertise of an Ombudsman. Furthermore, in the education sector there are currently provisions for review of decisions, most of which involve external third parties, including internal standard reviews, objections, appeals and hearings. Examples include disagreements in the areas of special education; suspensions, expulsions, exclusions, human rights violations; privacy violations; challenging the content of an Ontario Student Record; school closings; union grievance processes for staff, and so on. These offer protections that are built into our system and this is not true, to this extent, of other sectors that the Ombudsman oversees. It must be stated as well that many complaints that school boards receive from parents and community involve matters legislated by the Ministry of Education or are restricted because of the funding model mandated by the Ministry; such complaints will need to include the Ministry of Education.

We understand that an Ombudsman's investigations would not occur until a decision review has followed all of the above-mentioned existing processes that are at the complainant's disposal, or until a right of appeal or objection has expired. The proposed provisions still allow for a thoroughly reviewed complaint to be brought to the Ombudsman, requiring a school board to undergo yet another layer of investigation and administrative process with the delays, uncertainty and costs that this would entail. Based on real experience, we have strong concerns that legitimate and necessary school board processes will be undermined and even taken advantage of by those seeking to generate attention, including media attention, for their own purposes. It is, in fact, unclear to us what the problems are that this proposed legislation aims to resolve and we would caution that the proposed solution has the potential to create even greater issues for the government.

In fact, there was a statement by a Liberal minister in the house during second reading debate that said, "*The proposed act would give the Ombudsman the authority to investigate complaints about school boards. This would give parents and members of the public the option to direct their complaints to the Ombudsman, if they're not satisfied with a school board decision.*" "Not satisfied" covers a broad spectrum of personal perspectives that can be at odds with the reasonable exercise of one's rights to a decision review and raises concerns about the circumstances and possible agendas that would have an individual call on this additional level of intervention. Furthermore, we must point out that there already exists an effective level of provisions and protocols for provincial oversight through the office of the Provincial Auditor.

We note that this schedule proposes an addition to the *Ombudsman's Act* that would protect the denominational and linguistic rights of staff students and communities served by Catholic and French Language Boards:

Nothing in this Act adversely affects the rights and privileges guaranteed by section 93 of the *Constitution Act 1867* and section 23 of the *Canadian Charter of Rights and Freedoms*, and the Ombudsman shall exercise his or her authority under this Act with respect to school boards in a manner that is consistent with and respectful of those rights and privileges.

While we would strongly argue that there are sufficient levels of oversight and appeal to render it unnecessary to extend the purview of the Ombudsman to school boards, we would submit that, if the legislature proceeds with these amendments, they must include provisions to protect denominational and linguistic rights. Amendments should also include stronger provisions to ensure that review of school boards by an Ombudsman cannot take place in matters where provisions already exist for review and these have been followed.

Communities elect school board trustees to be their voice in the advocacy of public education. They are democratically elected local politicians who work with staff at school boards to develop policies and procedures that support parental inquiries and concerns and that provide mechanisms for appeal. They are accountable to their communities to represent their interests, as well as making decisions on behalf of the entire board. As previously noted, the options for review and appeal of school board decisions are already extensive and exceed what exists in other sectors. The Ombudsman will need additional public resources if his jurisdiction is expanded to include Education. Adding yet another unnecessary layer of review is not a reasonable act of public policy or prudent use of taxpayer's money.

What is curious to us is the fact that this same larger bill includes a separate and exclusive Patient Ombudsman for hospitals. That schedule includes "the right of the Patient Ombudsman to refuse to investigate if the patient has not sought to resolve the complaint directly with the health sector organization." Why was this sector given its own ombudsman, including the provision that allows the ombudsman to refuse to investigate, and why wouldn't the same provisions be made for other sectors, particularly in the school board sector which has well-established and multiple layers of review and appeal already?

In closing, we emphasize that school boards are willing partners in advocacy for transparency and accountability. School boards need the ability to act responsibly in the exercise of their local governance – this includes having the mechanisms to implement effective hiring of their staff and recognition of the proven processes and procedures that work for their communities.

Sincerely,



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