Update

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# HARRIS GOVERNMENT LEGISLATES ON ISSUES OF CO-INSTRUCTIONAL ACTIVITIES, INSTRUCTIONAL TIME, CLASS SIZE AND LENGTH OF TEACHERS COLLECTIVE AGREEMENTS

## BILL 80: STABILITY AND EXCELLENCE IN EDUCATION ACT, 2001 First Reading

On Tuesday 12 June 2001, the Harris Government introduced Bill 80, the *Stability and Excellence in Education Act, 2001* for First Reading in the Legislature.

Bill 80 amends both the *Education Act* and the *Ontario College of Teachers Act, 1996*. The amendments to the *Education Act* are set out in Schedule A to Bill 80. The amendments to the *Ontario College of Teachers Act* are set out in Schedule B.

In particular, Bill 80 does the following:

* repeals some of the unproclaimed provisions from last year's Bill 74 regarding co-instructional activities that would have made co-instructional activities mandatory for teachers;

* allows school boards to pass resolutions to exceed by one the prescribed average secondary class size of 21 pupils;

* makes amendments to the *Education Act* in relation to how secondary teachers' activities may be counted towards meeting their 6.67 program workload; and

* prescribes that all new collective agreements entered into after 1 July 2001 must expire on 31 August 2004 and requires that after this date all collective agreements must run for three-year terms.

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Bill 80's amendments to the *Education Act* will come into force, either on the day Bill 80 receives

Royal Assent, or on 1 July 2001, whichever is later.

In addition, Bill 80 amends the *Ontario College of Teachers Act, 1996* to introduce mandatory teacher professional learning and re-certification. The amendments to the *Ontario College of Teachers Act, 1996* come into effect on the day Bill 80 receives Royal Assent.

This summary reviews the amendments to the *Education Act* that have been introduced by Bill 80. A separate and accompanying document summarizes changes to the *Ontario College of Teachers' Act* which introduce mandatory teacher re-certification.

## CO-INSTRUCTIONAL ACTIVITIES

### 1. Overview

Bill 74, the *Education Accountability Act, 2000*, which was enacted in June 2000, proposed to amend the *Education Act* to make co-instructional activities mandatory for teachers. These highly controversial provisions were never proclaimed. But while they did not come into effect, they equally had not been repealed.

In early 2001, the Government appointed an Advisory Group to make recommendations with respect to the provision of co-instructional activities. In its April 2001 report, one of the key recommendations of the Advisory Group was that the unproclaimed provisions in Bill 74 be repealed.

To some extent, Bill 80 follows up on this recommendation by repealing some of the unproclaimed provisions, although it leaves other provisions in place (albeit still unproclaimed as of the date of this summary).

### 2. What Remains: Statutory Framework for Providing Co-Instructional Activities

Bill 80 leaves in place the requirement that every school board shall, in accordance with any guidelines issued by the Minister, develop and implement a plan to provide for co-instructional activities for pupils enrolled in elementary and secondary schools: s. 170(1) para. 7.1 and 7.2.

It also leaves in place the authority of the Minister

* to require boards to submit a co-instructional plan to the Minister and report on any matter relating to a co-instructional plan and to give directions as to the form, content and deadline for submitting such plans and reports [s. 170(2.5) to (2.7)]; and

* where the Minister has concerns about the plans' compliance with the statute, to direct a school board to alter the co-instructional plan in the manner directed by the Minister and to require the board to make the alteration and implement the plan as altered [s. 170(2.8)].

Failure to comply with these above provisions may lead the Minister, either of his or her own initiative or in response to a complaint, to direct an investigation of the board's affairs and ultimately can leave a board subject to the trusteeship provisions established in Part VIII of the *Education Act* as enacted by Bill 74.

In addition, while the principal's power to assign co-instructional duties to teachers is repealed [formerly s. 265(2)(b)], the principal retains the duties to

* provide for co-instructional activities in accordance with the board plan, and to develop and implement a school plan providing for co-instructional activities; and

* consult at least once in each year with the school council respecting the school plan for providing co-instructional activities: new s. 265(2) and (3).

### 3. What Was Repealed

While it leaves the above provisions in place, Bill 80 repeals the unproclaimed provisions from Bill 74 that would have

* required that a board's co-instructional plan include a framework within which principals were required to assign duties relating to co-instructional activities [formerly s. 170(2.1)];

* required the board's co-instructional plan to address the times during which and places at which co-instructional duties could be assigned [formerly s. 170(2.2)]; and

* removed all matters relating to co-instructional activities from the scope of collective bargaining and the jurisdiction of an arbitrator by prescribing that it was the exclusive function of the employer to determine how co-instructional activities would be provided [formerly s. 170(2.3) and (2.4)].

In addition, Bill 80 repeals the unproclaimed provisions from Bill 74 that would have

* given the principal the duty to assign co-instructional activities to teachers [formerly s. 265(2)(b)]; and

* given elementary and secondary teachers the corresponding duty to participate in co-instructional activities in such manner and at such times as directed by the principal [formerly s. 264(1.2) and (1.3)].

Consequential amendments are also made by Bill 80 to those provisions which remain so as to remove reference to any of the provisions that have been repealed.

However, we note that the definition of "strike", which was one of the few provisions of Bill 74 that had been proclaimed in force, has not been amended. The definition of "strike" continues to explicitly refer to action or activity "designed to curtail, restrict, limit or interfere with the operation or functioning of ... programs involving co-instructional activities" as action or activity that constitutes a strike.

## INSTRUCTIONAL TIME AND CLASS SIZE

The Government has announced that Bill 80's amendments in respect of class size and instructional time are intended to provide school boards with greater flexibility to take into account teachers' participation in co-instructional activities when calculating teacher workload.

### 1. Class Size

Bill 80 introduces new provisions to the *Education Act* which would allow school boards to pass resolutions allowing them to exceed the prescribed average class size by no more than one pupil.

Subject to the new s. 170.1(4.4), boards are required to ensure that the average size of its secondary school classes, in the aggregate, does not exceed 21 pupils: s. 170.1(3).

However, a board may, at a meeting that is open to the public, pass a resolution specifying that the average size of its secondary school classes, in the aggregate, may exceed 21 pupils by not more than one pupil: s. 170.1(4) and (4.1).

The Minister may make regulations governing the above resolution that school boards may make and these regulations may deal with a variety of itemized matters, including the period of time in respect of which a resolution may apply: s. 170.1(4.2) and (4.3).

A board that has passed a resolution under s. 170.1(4) shall ensure that the average size of its secondary school classes, in the aggregate, does not exceed 22 pupils: s. 170.1(4.4).

However, as the Act also provided prior to Bill 80, the average size of the board's classes may exceed the statutory maximum to the extent that the Minister, at the request of the board, may permit: s. 170.1(4.5) and (4.6).

### 2. Instructional Time

Bill 80 also amends the provisions regarding the calculation of secondary teachers' instructional time.

Bill 80 maintains secondary teachers' workload at an average of at least "6.67". However, while Bill 74 had expressed this 6.67 workload in terms of "instruction to pupils" in "6.67 eligible courses", Bill 80 now expresses the workload in terms of "6.67 eligible programs". The new requirement is set out in s. 170.2.1(2) as follows:

> "Every board shall ensure that, in the aggregate, its classroom teachers in secondary schools are assigned to provide instruction to or supervision of pupils or to perform duties in an average of at least 6.67 eligible programs in a day school program during the school year" [emphasis added].

The calculation of whether a school board is complying with this 6.67 average shall be based on all the board's classroom teachers in secondary schools and their assignments to provide instruction or supervision or to perform duties in eligible programs, on a regular timetable, during the school year: s. 170.2.1(7).

The detail as to what activities will count towards meeting the 6.67 workload will be set out in regulations to be made by Cabinet. Section 170.2.1(9) gives Cabinet the authority to make regulations

* prescribing courses or programs, or portions of courses or programs that may be considered as "credit-equivalent courses", as "equivalent programs", or as "programs of special duties";

* respecting how to count "credit courses", "credit equivalent courses" and "equivalent programs" for the purposes of s. 170.2.1;

* authorizing boards to count "equivalent programs" differently that prescribed, subject to such conditions as may be set out in the regulations;

* respecting how to count "programs of special duties" for the purposes of s. 170.2.1;

* respecting when a classroom teacher is considered to be assigned to provide instruction or supervision or to perform duties in an eligible program.

Without restricting any of the above, s.170.2.1(10) also gives Cabinet the authority to make regulations regarding the calculation of the 6.67 average workload which

* set maximum average numbers for which specified types of eligible programs may be counted;

* set special rules for how to count specified types of eligible programs, including but not limited to rules that provide that specified types of eligible programs shall be excluded from the calculation;

* set special rules for how to count eligible programs, or specified types of eligible programs, in specified kinds of circumstances, including but not limited to circumstances related to pupil attendance levels, class size and patterns of teacher assignments.

Bill 80 also amends s. 170.2.1 to add a new subsection 170.2.1(17) as follows:

> "Nothing in this section or the regulations made under this section shall be construed as a limit on the amount of supervision or instruction in an eligible program to which a board may assign classroom teachers".

## COLLECTIVE BARGAINING

Bill 80 makes changes to two issues relating to collective bargaining.

First, it introduces transition provisions which would require all new teacher collective agreements to expire on 31 August 2004 and provisions which would require all subsequent agreements to run for three-year terms.

Second, it expands the role of the Education Relations Commission to encompass making recommendations regarding jeopardy in the

context of strikes by school board workers other than teachers.

### 1. Length of Teacher Collective Agreements

Bill 80 introduces a new s. 277.11 which would prescribe the term of operation of teacher collective agreements. This provision requires that:

> "The first collective agreement between a board and a designated bargaining agent for a teachers' bargaining unit that is entered into after July 1, 2001 shall provide that the agreement expires on August 31, 2004." [emphasis added]

This requirement applies even if the resulting collective agreement would have a term of less than one year: s. 277.11(2).

Any collective agreement that fails to provide for expiry on 31 August 2004 in accordance with s. 277.11(1) shall be deemed to provide for it: s. 277.11(5).

Bill 80 expressly provides that, despite s.58(2) of the *Labour Relations Act*, a school board and teachers' bargaining agent cannot enter into any agreement to continue the operation of a collective agreement beyond 31 August 2004 and any renewal provision in a collective agreement that purports to do so shall be deemed to be void: s. 277.11(4).

After 31 August 2004, every subsequent collective agreement between a board and a designated bargaining agent for a teachers' bargaining unit shall provide for a term of operation of three years, beginning on 1 September of the year in which the previous collective agreement expired: s. 277.11(3).

Any subsequent collective agreement that fails to provide for a term of operation of three years in accordance with s. 277.11(3) shall be deemed to provide for it: s. 277.11(5).

### 2. ERC's Jurisdiction on Jeopardy

Finally, in response to the recent strikes by school board employees in Toronto and Windsor, Bill 80 introduces the new s. 57.2 which would extend the Education Relations Commission's jurisdiction to advise on jeopardy to strikes by all board employees, not just teachers:

> "Despite the repeal of section 59 of the *School Boards and Teachers Collective Negotiations Act*, the Education Relations Commission is continued for the purposes of advising the Lieutenant Governor in Council when, in the opinion of the Commission, the continuation of a strike by board employees or of a lock-out of board employees will place in jeopardy the successful completion of courses of study by the affected pupils."