Legislative amendments recognize system principals in Ontario's school system

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On Dec. 4, 2024, Bill 227, the *Cutting Red Tape, Building Ontario Act, 2024*, SO 2024, c 28 received Royal Assent. Among other legislative changes, Bill 227 amended the *Education Act*, RSO 1990, c. E.2, the *Teaching Profession Act*, R.S.O. 1990, c. T.2, the *School Boards Collective Bargaining Act, 2014*, S.O. 2014, c. 5, and the *Provincial Schools Authority Act*, R.S.O. 1990, c. P.35 to recognize the role that system principals play in Ontario's school system.

These legislative amendments address and seek to correct a situation in Ontario that saw decades of arbitral jurisprudence stifling the ability of school boards to attract talent to system principal positions and develop such talent thereafter. In essence, arbitrators have repeatedly found system principal positions to be "teacher positions" that must be filled by members of a teacher's bargaining unit, but this doesn't need to be so anymore.

Key takeaways

- The amendments to the *Education Act*:
  - Empower boards (namely, district school boards and school authorities) to appoint teachers to be system principals;
  - Require all system principals to satisfy the following three minimum requirements: (1) be members of the Ontario College of Teachers; (2) have board-wide responsibilities related to leading or supporting a function, program or initiative of a board; and (3) supervise one or more board employees;
  - Recognize system principals as distinct from, and not a subcategory of, principals; and
  - Stipulate that the *Labour Relations Act, 1995* does not apply to system principals.
- The amendment to the *Teaching Profession Act* adds system principals to the list of positions that are excluded from the statutory definition of "teacher."
- The amendment to the *School Boards Collective Bargaining Act* adds system principals to the list of positions that are not eligible to be members of any bargaining unit of employees of a school board.

- The amendment to the *Provincial Schools Authority Act* identifies system principals as employees of the Provincial Schools Authority.
- As a result of these legislative amendments, teachers' unions can no longer claim to have any jurisdiction over the decisions that school boards make vis-à-vis system principals (provided that they fulfill the minimum statutory requirements under the *Education Act*).

The jurisprudential history

For several decades, Ontario arbitrators have been determining whether various positions, known as "system principals," "program coordinators," or "program principals," among other titles, are teacher positions that school boards are required to exclusively fill with members of a teacher's bargaining unit, or non-teacher positions that are open to non-bargaining unit personnel.

Throughout this decades-long jurisprudence, arbitrators consistently held that this determination required a functional analysis of the individual position's duties and responsibilities, and the nature of the work being performed by its incumbent. The relevant question was whether the work being performed by the individual in question constituted "teaching" in the broadest sense (that is, work that is part of, or related to, or integral or vital to, the teaching program, or in furtherance of education) and was thus within the scope of the work of a teacher's bargaining unit.

If this question could be answered in the affirmative, and the incumbent of the position fit the definition of "teacher" in s. 1 of the *Education Act* (which is to say, "a member of the Ontario College of Teachers") and the collective agreement, the position in question was deemed to be a teacher position. Given the broad definition of "teaching," throughout the first decade of the 2000s arbitrators found a series of system principal positions to be teacher positions that school boards were required to fill with members of a teacher's bargaining unit.

One principle established by this jurisprudence is that the title a school board uses to refer to a particular position is not determinative of the issue. In three decisions released between 2000 and 2006,[1] arbitrators considered whether positions that had "principal" in their titles were excluded from the teacher's bargaining unit on the grounds that they were principal positions. The arbitrators considered whether the incumbents of these positions fit the definition of "principal" in s. 1(1) of the *Education Act* (which was previously "a teacher appointed by a board to perform in respect of a school the duties of a principal under this Act" before Bill 227's legislative amendments came into force). The arbitrators also assessed whether incumbents performed the statutory duties of a principal as outlined in the *Education Act* and its regulations.

In all three of these decisions, the arbitrators found that the positions at issue were not principal positions. Whereas a principal's duties pertain to the organization and management of a specific school of the board, and to the instruction and discipline of pupils within that school, the duties of the positions' incumbents consisted of leading or supporting a particular function, program, or initiative in respect of multiple schools of the board, or to the schools or pupils of the board generally. Accordingly, the arbitrators found that the positions' incumbents were performing the work of a teacher; as such, their positions were found to be teacher positions that the boards were required to fill with members of a teacher's bargaining unit.

These arbitral decisions, as well as several more that followed in subsequent years,[2] stifled the ability of school boards to develop management talent using system principal positions.

The legislative amendments

When Bill 227 was introduced on Nov. 20, 2024, the Ministry of Education proposed the legislative amendments to the *Education Act*, the *Teaching Profession Act*, the *School Boards Collective Bargaining Act*, and the *Provincial School Authority Act* as a means to:

(a) recognize the system principal role as part of the legislative framework for public education in Ontario; and

(b) support system capacity in succession planning and leveraging of board management roles, including system principals, in advancing board-wide initiatives for student success and well-being, and system effectiveness.

When Bill 227 received Royal Assent on Dec. 4, 2024, these legislative amendments came into force.

Education Act

The definition for "principal" in s. 1(1) was amended to explicitly clarify that it "does not include a system principal." At the same time, a definition for "system principal" was added, according to which a system principal means "a teacher appointed by a board to perform the duties of a system principal under this Act and the regulations." This establishes the first of the three statutory requirements that system principals must fulfill: in accordance, the definition of "teacher" in s. 1(1) a system principal must be a member of the Ontario College of Teachers.

The definition of "system principal" in s. 1(1) is given force by the addition of paragraph 5.2 to s. 171(1), which empowers a school board to "appoint teachers to be system principals" and specifies that "every appointee shall hold the qualifications and perform the duties required under this Act."

These duties are outlined in the newly added s. 265.1, which is dedicated to system principals. Subsection 265.1(1) states that it is the duty of a system principal to:

> **(a)** lead or support a function, program, or initiative of a board in respect of multiple schools of the board, or in respect of the schools or the pupils of the board generally;
>
> **(b)** exercise managerial functions for one or more employees of a board; and
>
> **(c)** perform any other duties assigned by the board or prescribed by the regulations. These duties constitute the second and third statutory requirements that system principals must fulfill.

Lastly, s. 265.1(2) states that "[t]he *Labour Relations Act*, 1995 does not apply to a system principal," while s. 265.1(3) states that "[t]he Lieutenant Governor in Council may make regulations governing terms and conditions of employment for system principals."

Teaching Profession Act

The only amendment to the *Teaching Profession Act* is the addition of system principals to the list of positions explicitly excluded from the definition of "teacher" in s. 1.

School Boards Collective Bargaining Act

Similarly, the amendment to the *School Boards Collective Bargaining Act* consists in the addition of system principals to the list of positions excluded from a bargaining unit of employees of a school board at s. 8. This amendment is crucial in that it categorically establishes system principals as non-bargaining unit positions.

Provincial Schools Authority Act

System principals are also now added to the list of positions in s. 3(1) of the *Provincial Schools Authority Act* deemed to be employed.

Anticipated impact and next steps for school boards

Given that it has been less than six months since these legislative amendments came into effect, it will take some time to appreciate their full impact on Ontario's school system. These legislative amendments are anticipated to improve system capacity and support for schools. They will also enable school boards to optimize their ability to attract, retain, and manage talent, develop talent pipelines that will make succession planning easier, and leverage the skills of individuals with school management experience or subject expertise for the benefit of the broader student population. Moving forward, school boards should review the job descriptions for their existing positions.

Contact us

If you have any questions about these important decisions, please contact John-Paul Alexandrowicz and Melissa Eldridge, the Co-Chairs of BLG's national School Boards practice.

Footnotes

[1] *Algonquin & Lakeshore Catholic District School Board v. O.E.C.T.A.*, [2000] O.L.A.A. No. 988, 61 C.L.A.S. 3; *Huron-Superior Catholic District School Board and OECTA, Re*, 2005 CarswellOnt 10960, 81 C.L.A.S. 235; *Dufferin-Peel Catholic District School Board v. O.E.C.T.A.*, 2006 CarswellOnt 10464, [2006] O.L.A.A. No. 430, 86 C.L.A.S. 116.

[2] *Ottawa-Carleton Catholic District School Board and OECTA*, *Re*, 2008 CarswellOnt 10657, [2008] O.L.A.A. No. 469, 95 C.L.A.S. 27; St. Clair Catholic District School Board and OECTA, Re, 2009 CarswellOnt 10381, 100 C.L.A.S. 58.

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