

Universities Accountability and Sustainability Act

CHAPTER 11 OF THE ACTS OF 2015



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**An Act Respecting Accountability
and Sustainability of Universities**

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Short title

1 This Act may be cited as the *Universities Accountability and Sustainability Act*. 2015, c. 11, s. 1.

Interpretation

2 (1) In this Act,

this Act;

- (a) “grant” means a grant to a university made pursuant to
- (b) “Minister” means the Minister of Labour and Advanced Education;
- (c) “outcomes agreement” means an agreement entered into by the Minister and a university pursuant to Section 19;
- (d) “prescribed” means prescribed by the regulations;
- (e) “significant operating deficiency” means an operating deficiency of a university that, in the opinion of the person who is determining pursuant to this Act whether a significant operating deficiency exists, can reasonably be expected to threaten the ability of the university to continue as a going concern under the existing financial framework, based on a five-year financial forecast and opinion, verified by an independent financial professional, that forecasts
 - (i) a significant annual operating deficit or significant cash flow deficiency in at least one year during the five-year period, or
 - (ii) a pattern of operating deficits or cash flow deficiencies during the five-year period.

(2) Except as otherwise provided in this Act, words and expressions used in Sections 6 to 8, 14, 16, 21 and 22 have the same meaning as in Part I of the *Trade Union Act*.

(3) In the event of a conflict between Sections 6 to 8, 21 and 22 and any other enactment or any collective agreement, arbitral or other award or decision, obligation, right, claim, agreement or arrangement of any kind, Sections 6 to 8, 21 and 22 prevail. 2015, c. 11, s. 2.

GRANTS

Minister may make grants

3 The Minister may, to the extent authorized by the Legislature, make grants to universities to assist the universities in defraying operating expenditures and expenditures for capital purposes. 2015, c. 11, s. 3.

Powers of Minister

- 4 (1) The Minister may
- (a) designate by regulation institutions or organizations as universities for some or all of the purposes of this Act;
 - (b) specify the amounts of grants or any grant;
 - (c) specify the terms and conditions upon which a grant is made, including terms or conditions that must be satisfied before all or part of a grant is paid and that the university
 - (i) provide evidence satisfactory to the Minister of the sustainability of the university’s financial operations,

- (ii) submit financial documents, including financial statements, projections and forecasts, as requested by the Minister,
 - (iii) have the financial documents provided pursuant to subclause (ii) independently audited, prepared or verified,
 - (iv) follow the university's revitalization plan,
 - (v) enter into and comply with an outcomes agreement, and
 - (vi) apply the grant to a specified purpose;
- (d) withhold, refuse to make or demand repayment of all or part of a grant, including, where a grant is payable in instalments, any instalment payments, if terms or conditions upon which a grant is made are not satisfied;
- (e) refuse to accept an application for a grant, if terms or conditions upon which a grant is made are not satisfied;
- (f) specify forms of applications for grants and the information to be supplied by an applicant for a grant; and
- (g) require recipients of grants to make reports or returns to the Minister and specify the form and content of such reports or returns.

(2) Where repayment of a grant is demanded pursuant to clause (1)(d), the amount demanded is a debt due to Her Majesty in right of the Province and may be recovered by action in a court of competent jurisdiction. 2015, c. 11, s. 4.

REVITALIZATION PLANS

Notice of intention to participate

5 (1) Subject to subsection (2), a university may participate in the revitalization planning process set out in this Act by submitting notice of its intention to prepare a revitalization plan, approved by an ordinary resolution of the university's governing body, to the Minister.

(2) A university may not submit notice pursuant to subsection (1) if the university has submitted a similar notice within the previous two years.

(3) The Minister shall immediately acknowledge receipt of the notice. 2015, c. 11, s. 5.

Procedure once notice submitted

6 (1) Where a university that has submitted notice pursuant to Section 5

- (a) has unionized employees; and
- (b) has determined that it has a significant operating deficiency,

the university may elect to have Section 8 apply with respect to the university, the university's unionized employees and any trade union that is representing those employees, by providing notice to the Minister, approved by an ordinary resolution of the university's governing body and in accordance with this Section, indicating that the university has determined that it has a significant operating deficiency and elects to have Section 8 apply.

(2) A notice provided pursuant to subsection (1) may be provided electronically, and must be accompanied by the five-year financial forecast and opinion on which the university has determined that it has a significant operating deficiency, the most recent audited financial statements for the university, any prescribed information and any other information that the university considers relevant to its decision to elect that Section 8 apply.

(3) A copy of the notice and accompanying information must immediately be provided by the university to any trade union that represents the university's unionized employees.

(4) A trade union that receives a copy of the notice and accompanying information pursuant to subsection (3) shall inform the university and the Minister immediately on receipt.

(5) A trade union that receives a copy of the notice and accompanying information pursuant to subsection (3) may, within 30 days of receiving the copy of the notice and accompanying information from the university, make written submissions to the Minister in relation to whether the university had a significant operating deficiency at the time the notice was provided.

(6) The Minister may extend the 30-day period in subsection (5) if necessary for a trade union to consider additional information provided pursuant to subsection 7(2).

(7) Section 8 applies immediately upon the Minister acknowledging, pursuant to subsection 7(1), receipt of the notice and the required accompanying information. 2015, c. 11, s. 6.

Powers and duties of Minister

7 (1) Upon being satisfied that the notice and information provided pursuant to subsection 6(1) meet the requirements of Section 6, the Minister shall immediately acknowledge receipt of the notice and the accompanying information, with a copy to any trade union that received the notice.

(2) The Minister may require

(a) the university to file additional financial statements, projections, forecasts or other information, within a period specified by the Minister; and

(b) the statements, projections, forecasts or other information to be independently audited, prepared or verified.

(3) Information filed pursuant to clause (2)(a) must immediately be copied by the university to any trade union that was entitled to receive notice

pursuant to subsection 6(3), and the trade union shall immediately acknowledge receipt to the university and the Minister.

(4) The Minister may engage persons to provide professional financial advice to the Minister for the purpose of this Section.

(5) Where information required pursuant to clause (2)(a) is not filed as required, the Minister shall determine that Section 8 ceases to apply with respect to the university, the unionized employees and any trade union that is representing those employees, as of the date the determination is made.

(6) Subject to subsection (7), the Minister shall, within 60 days of acknowledging receipt pursuant to subsection (1), determine whether the university had a significant operating deficiency at the time the notice was provided.

(7) The Minister may extend the 60-day period in subsection (6) if necessary to consider additional information

- (a) filed by the university pursuant to subsection (2); or
- (b) provided by a trade union in response to information filed by the university pursuant to subsection (2).

(8) The Minister shall immediately give notice to the university and any trade union that was entitled to receive notice pursuant to subsection 6(3) of a determination made pursuant to subsection (5) or (6). 2015, c. 11, s. 7.

Certain labour activities limited or prohibited while plan considered

8 (1) During the period when this Section applies with respect to a university, its unionized employees and any trade union that is representing those employees,

- (a) the university shall not authorize, declare, cause or continue a lockout of any of its unionized employees;
- (b) the trade union shall not declare, cause or continue a strike by any of the unionized employees against the university; and
- (c) none of the unionized employees shall participate in a strike against the university,

but nothing in this subsection precludes the university and a bargaining agent for the unionized employees from engaging in collective bargaining while this Section applies, to the extent practicable.

(2) During the period when this Section applies with respect to a university, its unionized employees and any trade union that is representing those employees, no person or organization shall

- (a) do anything to prevent or impede a unionized employee's compliance with this Section or aid or abet a unionized employee to not comply with this Section; or
- (b) fail to do anything for the purpose of preventing or impeding a unionized employee's compliance with this Section or for the purpose of aiding or abetting a unionized employee to not comply with this Section.

(3) During the period when this Section applies with respect to a university, its unionized employees and any trade union that is representing those employees, the university may not execute a collective agreement with any bargaining agent that represents any unionized employees of the university.

(4) This Section ceases to apply with respect to a university, its unionized employees and any trade union that is representing those employees upon the occurrence of the earliest of

(a) the determination by the Minister, in accordance with subsection 7(5), that the university has failed to file required information, as required;

(b) the determination by the Minister, in accordance with subsection 7(6), that the university did not have a significant operating deficiency at the time the notice pursuant to subsection 7(1) was provided;

(c) the giving of notice by the Minister pursuant to subsection 14(4); and

(d) the giving of notice by the Minister pursuant to subsection 16(3). 2015, c. 11, s. 8.

Revitalization-plan advisory committee

9 (1) Within 60 days of acknowledging receipt of a notice from a university pursuant to subsection 5(3), the Minister shall establish a revitalization-plan advisory committee for the university composed of between three and eight members appointed by the Minister.

(2) A revitalization-plan advisory committee has the powers and responsibilities set out in this Act and as may be prescribed.

(3) Her Majesty in right of the Province shall pay the members of a revitalization-plan advisory committee such remuneration as is determined by the Minister, together with the members' reasonable expenses. 2015, c. 11, s. 9.

Revitalization facilitator

10 (1) Within 30 days of establishing a revitalization-plan advisory committee for a university, the Minister shall appoint a revitalization facilitator to

(a) provide assistance to the university in conducting consultations with stakeholders;

(b) assist the university in developing a revitalization plan; and

(c) perform such other duties as may be prescribed.

(2) Her Majesty in right of the Province shall pay the revitalization facilitator such remuneration as is determined by the Minister, together with the revitalization facilitator's reasonable expenses. 2015, c. 11, s. 10.

University to consult

11 (1) The university shall, when preparing its revitalization plan, consult with its students, its employees, any trade union that represents any of its unionized employees and any other persons it identifies as stakeholders.

(2) The consultation with a trade union must include

(a) providing the trade union with a copy of each draft of the proposed plan, as prepared, and of the final revitalization plan that is to be submitted to the revitalization-plan advisory committee;

(b) affording the trade union the opportunity to provide submissions to the university with respect to each draft; and

(c) affording the trade union the opportunity to meet and engage in meaningful dialogue with the university with respect to the plan. 2015, c. 11, s. 11.

Revitalization plan

12 (1) Subject to subsection (3), a university's revitalization plan must include

(a) a strategic assessment of the university's strengths and weaknesses and the opportunities and risks that may affect the university's future, taking into account where the university fits within the national and international university environment and expected future changes in post-secondary education;

(b) a description of the university's long-term strategy for financial sustainability, including present and projected student enrolment and plans for student retention;

(c) a plan to achieve a focus on high-quality, efficient and effective learning through appropriate delivery channels for students;

(d) a plan to achieve access and inclusiveness for students and faculty from a wide range of backgrounds, communities and groups;

(e) an assessment of the potential impact of the proposed revitalization plan on students;

(f) an assessment of the potential impact of the proposed revitalization plan on employees;

(g) goals and objectives for contributing to social and economic development and growth in the Province, including through world-class research and development that is internationally competitive, turning research into business opportunities, fostering a skilled, entrepreneurial and innovative workforce needed for economic growth in the Province and improving the quality and inclusiveness of courses and program offerings and their relevance to students and the wider society and economy;

(h) a plan for the effective exchange of knowledge and innovation with the private sector, including excellent collaboration between the university and industry;

(i) analysis of potential opportunities and cost savings that could be achieved through collaboration with other universities, including by the elimination, consolidation and specialization of faculties, departments and programs;

(j) human resources, financial, capital and operating-expenditure plans designed to achieve long-term competitiveness and sustainability, including outlines of the relevant assumptions and risks;

(k) proposals for partnerships, mergers, affiliations, federations or other arrangements;

(l) anything that the Minister requires to be included; and

(m) a description of any contingent factors that may be necessary to achieve the plan.

(2) Where a university's revitalization plan does not include any of the proposals referred to in clause (1)(k), it must include an analysis of and reasons why it does not.

(3) In preparing a revitalization plan that meets the requirements of subsection (1), a university may consider the academic freedom of the university and faculty. 2015, c. 11, s. 12.

Filing of and response to revitalization plan

13 (1) The university shall provide to the revitalization-plan advisory committee its proposed revitalization plan no later than six months after the Minister acknowledges receipt of the notice pursuant to subsection 5(3).

(2) The revitalization-plan advisory committee shall provide comments to the university within 45 days of receipt of the proposed plan. 2015, c. 11, s. 13.

Final revitalization plan

14 (1) The university shall provide to the revitalization-plan advisory committee its final revitalization plan no later than 10 months after the Minister acknowledges receipt of the notice pursuant to subsection 5(3).

(2) Upon receipt of the university's final revitalization plan, the committee shall prepare a revitalization report to submit to the Minister, which must include

(a) the recommendations, if any, of the committee with respect to each of the proposals in the revitalization plan; and

(b) such other matters as may be prescribed.

(3) Where the university does not provide the university's final revitalization plan to the committee within the 10-month period as required by subsection (1), the committee shall notify the Minister of the university's failure to do so.

(4) Immediately upon receiving notification from the committee pursuant to subsection (3), the Minister shall notify the university and any trade

union that is representing unionized employees of the university that Section 8 no longer applies to the university, its unionized employees and any trade union that is representing those employees. 2015, c. 11, s. 14.

Duty of revitalization-plan advisory committee

15 The revitalization-plan advisory committee must submit to the Minister, within three months of receipt of the university's final revitalization plan,

- (a) the final revitalization plan provided to the committee by the university;
- (b) the committee's revitalization report; and
- (c) such other documents, information or material as may be prescribed. 2015, c. 11, s. 15.

Minister's options regarding grants

16 (1) Subject to Section 17, within three months of receipt of the information and documents described in Section 15, the Minister shall

- (a) decide whether to make a grant pursuant to Section 3, and provide notice to the university of the decision to
 - (i) provide a grant to the university, without terms or conditions,
 - (ii) provide a grant to the university that is conditional in whole or in part upon the performance by the university of specified terms or conditions, or
 - (iii) refuse to provide a grant to the university; or
- (b) provide notice to the university that a final decision whether a grant will be provided to the university is being deferred until the earlier of
 - (i) the expiry of a period specified by the Minister, not to exceed one month, and
 - (ii) receipt by the Minister of a revised final revitalization plan.

(2) Where the Minister has provided notice pursuant to clause (1)(b), the Minister shall make a decision pursuant to clause (1)(a) within one month of the earlier of the expiry of the period specified by the Minister and receipt by the Minister of the revised plan.

(3) Immediately upon making a decision pursuant to clause (1)(a), the Minister shall notify the university and any trade union that is representing unionized employees of the university that Section 8 no longer applies to the university, its unionized employees and any trade union that is representing those employees. 2015, c. 11, s. 16.

Amendment to revitalization plan

17 (1) A university may notify the Minister that it wishes to amend its revitalization plan.

- (2) Upon receiving notice pursuant to subsection (1), the Minister
- (a) may provide directions to the university and the revitalization-plan advisory committee and revitalization facilitator for the university with respect to the process to amend the plan; and
 - (b) shall, upon receipt of the amendment to the plan,
 - (i) decide whether to make a grant to the university pursuant to Section 3, and, if so, whether the grant will be made with or without terms or conditions, and provide notice of the decision to the university, or
 - (ii) provide notice to the university that a final decision whether a grant will be provided to the university is being deferred until the earlier of
 - (A) the expiry of a period specified by the Minister, not to exceed one month, and
 - (B) receipt by the Minister of a revised amendment.

(3) Where the Minister has provided notice pursuant to subclause (2)(b)(ii), the Minister shall make a decision pursuant to subclause (2)(b)(i) within one month of the earlier of the expiry of the period specified by the Minister and receipt by the Minister of the revised amendment. 2015, c. 11, s. 17.

Terms and conditions

18 Where the Minister decides pursuant to clause 16(1)(a) or subclause 17(2)(b)(i) that a grant to the university is subject to terms or conditions, the grant must not be paid before the terms or conditions specified by the Minister are accepted by the university, in writing. 2015, c. 11, s. 18.

OUTCOMES AGREEMENTS

Parties to and contents of outcomes agreement

19 (1) The Minister may enter into an outcomes agreement with a university for the purpose of establishing the expectations of the Minister with respect to the measures that will be taken by the university with respect to the university's long-term strategy and sustainability in return for the significant public investment in universities made by the Government.

(2) An outcomes agreement between the Minister and a university must establish the strategic connection between the social and economic priorities of the Government and the university's funding decisions that enables and encourages the delivery of learning, research and knowledge, and must include

- (a) a statement establishing the outcomes, as agreed between the university and the Minister, that support the social and economic priorities of the Government;
- (b) the university's plan to achieve the identified outcomes and to demonstrate the financial sustainability of the university, including the sustainability of its existing and proposed programs; and

(c) any additional matters that may be prescribed.

(3) Notwithstanding Section 20, the Minister may enter into an outcomes agreement without the approval of the Governor in Council. 2015, c. 11, s. 19.

GENERAL

Minister may make agreements

20 With the approval of the Governor in Council, the Minister may enter into and execute such agreements and instruments as are necessary to carry out any provision of this Act. 2015, c. 11, s. 20.

Lockout or strike and Trade Union Act

21 (1) Any lockout or strike between a university and a trade union that is representing employees of the university that is taking place at a time when Section 8 is made to apply to the university, its unionized employees and any trade union that is representing those employees must cease until Section 8 no longer applies.

(2) Where, at a time when Section 8 is made to apply to a university, its unionized employees and any trade union that is representing those employees, a conciliation officer has filed a report pursuant to subsection 38(1) of the *Trade Union Act* and the 14-day period provided for in subsection 47(1) of the *Trade Union Act* has begun, no further time of that period elapses until Section 8 no longer applies. 2015, c. 11, s. 21.

Offence and penalty

22 A person who contravenes Section 8 is guilty of an offence and is liable on summary conviction

(a) in the case of an offence committed by a university or trade union, or by a person acting on behalf of a university or trade union, to a fine of not more than \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence continues; and

(b) in the case of an offence committed by any person or organization other than a university or trade union, to a fine of not more than \$1,000 and, in the case of a continuing offence, to a further fine of \$200 for each day on which the offence continues. 2015, c. 11, s. 22.

Governor in Council regulations

23 (1) The Governor in Council may make regulations

(a) defining any word or expression used but not defined in this Act;

(b) further defining any word or expression defined in this Act;

(c) respecting any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2015, c. 11, s. 23.

Ministerial regulations

24 (1) The Minister may make regulations

- (a) designating institutions or organizations as universities;
- (b) prescribing information that must accompany a notice provided to the Minister pursuant to subsection 6(1);
- (c) prescribing additional powers and responsibilities of revitalization-plan advisory committees and the information that such committees must submit to the Minister;
- (d) prescribing additional powers and responsibilities of revitalization facilitators;
- (e) prescribing information that must be included in an outcomes agreement.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2015, c. 11, s. 24.

Universities Assistance Act repealed

25 Chapter 13 of the Acts of 1994, the *Universities Assistance Act*, is repealed. 2015, c. 11, s. 25.
