

A presentation  
to the Standing Committee on Finance and  
Economic Affairs

Bill 37,  
*The Protecting Students Act*

Angela De Palma, OCT, Chair  
Michael Salvatori, OCT, CEO and Registrar

Ontario College of Teachers

Thursday, October 27, 2016

Check Against Delivery

**Angela De Palma:**

Good day. We want to publicly thank the government for moving to re-introduce this important legislation and thank you publicly for the opportunity to address it today.

Our support for the spirit of the proposed bill is aligned to our belief in -- and continuing commitment to -- transparency and accountability. We are confident that will become explicit over the next few minutes.

We'd like to start by saying that professional misconduct in Ontario is rare. There are 243,000 Ontario Certified Teachers and in any given year fewer than 20 lose their licences to teach. The attention teacher misconduct receives is significantly out of proportion to the ongoing examples lived by our members every day in this province.

The vast majority are exemplary professionals who demonstrate the high ethical and practice standards expected of Ontario educators. Every day they care for children, oversee their safety and nurture their growth and achievement.

That said, we treat every concern, every complaint, every investigation and every hearing with utmost seriousness. We act with the highest respect for student safety, for the fair, open, and timely treatment of our members, and in appreciation of the public's right to know.

The Ontario College of Teachers licences teachers to work in publicly funded Ontario schools. It accredits the programs and courses that enable people to become teachers and to remain vital and current in their practice. We have established the ethical standards for the profession and the standards of practice for teaching. And, going on 20 years now, we have been enforcing Ontario law with respect to matters of professional misconduct, incompetence and fitness to practise involving our members.

According to the *Education Act*, to be a teacher is to be a member of the Ontario College of Teachers.

We are the profession's regulator and we operate in the public interest.

We are the organization responsible for commissioning an independent report on our disciplinary processes in 2011 by former Ontario Justice Patrick LeSage. Our Council adopted his report in its entirety. Of his 49 recommendations to improve our disciplinary processes and actions, we acted immediately on 23, that is, everything within our power to act on.

*The Protecting Students Act*, 2016, addresses the remaining recommendations, with the exception of two changes, which require regulation.

While Bill 37 as proposed addresses the spirit of the recommendations, it can be improved.

### **Michael Salvatori:**

Our thoughts and concerns are addressed in a briefing document that we will leave behind for your review. For now, we would like to draw your attention to three issues:

1. The posting of decisions on our website for public information
2. Withholding sensitive medical information, and
3. Language that would exempt spouses from allegations of sexual abuse and sexual misconduct

### **Posting decisions**

We believe that decisions that come out of publicly held hearings should always be public.

If Bill 37 is enacted as is, discipline decisions dealing with suspensions, cancellations, revocations, withdrawals and not guilty verdicts would be the only decisions that would remain on the College's website indefinitely.

Other decisions imposing terms, conditions or limitations on a member's certificate would be removed from the website. Consequently, they would no longer be available to the public – despite findings of professional misconduct.

Clearly, this is a misrepresentation of transparency.

Our disciplinary hearings are open to the public. Justice LeSage recommended that those decisions must be published and available on our website with the name of the member. Further, he extended his recommendation about transparency to agreements arising from our complaint resolution process, a practise that is already common to other professional regulators in Ontario, notably those in health care.

The College now posts all decisions to its website and shares the information with Quicklaw and CanLII, legal search engines. Of the 834 decisions available in the College's online library, 376 would have to be removed from all three websites if the proposed legislation passes as is.

While we strongly believe that disciplinary decisions should be made public, there are situations in which notations or links to these decisions on our public register are not appropriate.

### **Withholding medical information**

For example, unlike decisions from Discipline Committee hearings, decisions from Fitness to Practise hearings or summaries from those hearings are confidential under the existing legislation.

We believe they should stay that way.

These hearings are closed to the public. Typically, they consider confidential medical issues relating to the member's capacity to practice.

We do not place explicit details on a member's public register profile when they are health-related or highly personal. We do, however, include a notation on the member's public register profile to indicate that terms, conditions and limitations have been placed on the member's certificate as a result of a College committee decision.

Bill 37 would force us to make all the terms and conditions publicly available. Such terms could relate to specific medical treatments that the member would be required to undertake. Furthermore, the direction would also appear to be retroactive, affecting Fitness to Practise orders that have already been placed on the College's register but not on its website.

Our democratic interpretation of justice includes the notion of rehabilitation when considering a member's capacity to practice, wherever and whenever possible. Publishing detailed medical information is unnecessarily punitive and raises issues about privacy. An amendment is called for and warranted.

### **Removing the spousal exemption**

The Supreme Court of Canada says that teachers are teachers all the time. By virtue of their authority and the public trust placed in them, it follows that they should not develop personal relationships with students at any age, and particularly students under 18 or with special needs.

If someone is accused of sexual assault, they should not be exempted from the College's disciplinary process. They aren't in criminal courts.

We say this knowing that the reintroduced legislation attempts to exempt those who are married at the time of an alleged misconduct as opposed to spouses at the time of the hearing.

However, we believe that the spousal exemption in the bill should be deleted. Failing that, the exemption should be limited to situations in which the student is an adult and the member is an instructor in adult education.

**Angela De Palma:**

### **In conclusion**

We are grateful for the government action on these important changes to Ontario law. We support the re-introduction of the legislation. However, we also note that it can be improved with a handful of small, but important amendments.

The future of our regulatory authority over the disciplinary processes affecting Ontario teachers rests in your hands. We trust – and the people of Ontario trust – that your decisions to amend and pass this legislation will be in everyone's best interests.

We would be pleased to answer any questions or provide further clarification.