

# **Bill 31, Schedule 19 – Additional Amendments to the *Ontario College Teachers Act***

## **Submission by the Ontario College of Teachers to the Standing Committee on Finance and Economic Affairs**

Angela De Palma, OCT, Chair of Council

Michael Salvatori, OCT, Chief Executive Officer and Registrar

April 26, 2018

Ontario  
College of  
Teachers  
Ordre des  
enseignantes et  
des enseignants  
de l'Ontario

## **Bill 31, Schedule 19 – Additional Amendments to the *Ontario College of Teachers Act***

### **Submission by the Ontario College of Teachers re: Amendments to the *Ontario College of Teachers Act* to the Standing Committee on Finance and Economic Affairs**

The Ontario College of Teachers licenses more than 243,000 teachers to work in publicly funded Ontario schools. It establishes the ethical standards for the profession, the standards of practice for teaching and a professional learning framework. It accredits the programs and courses that enable people to become teachers and to remain vital and current in their practice. As the teaching profession's regulator, the College carries out its regulatory activities with an overarching duty to serve and protect the public interest.

Key to protecting the public interest is the College's responsibility to enforce Ontario law with respect to matters of professional misconduct, incompetence and fitness to practise involving teachers. Accordingly, the College protects some of the more vulnerable members of society – the province's elementary and secondary school students.

The amendments, contained in Schedule 19 of Bill 31, would strengthen and expand the definition of "sexual abuse" in the *Ontario College of Teachers Act* [OCTA]. The draft legislation would also provide for additional regulation-making authority to prescribe acts of abuse of a sexual nature that would result in a mandatory revocation or suspension. As well, it includes the authority to impose interim suspensions in matters where a penalty hearing is pending and a finding of professional misconduct leading to mandatory revocation would result.

The College strongly supports these measures.

The College also supports the addition of new authority, allowing the Investigation Committee to order that a member undergo a medical assessment. This new authority will ensure that matters considered by the Investigation Committee will be properly referred to the appropriate hearing committee, where a referral is warranted.

The College is also supportive of the proposal under which the College would administer a program that would provide victims of sexual abuse with therapy and counselling. We look forward to working with Ministry representatives on the development of regulation to further clarify the process by which these funds would be distributed to students and costs recovered from those found guilty of sexual abuse.

The College has identified two areas that the Bill does not address and strongly believes that the following amendments are required to enable the College to fulfill its statutory obligation to protect the public interest generally and the interests of Ontario students specifically.

### **1. Expanded List of Acts/Conduct Constituting Sexual Abuse Resulting in Mandatory Revocation**

Under the *OCTA*, a Discipline Committee panel, which has found a member guilty of professional misconduct, may impose a penalty ranging from a reprimand to a revocation of the member's teaching licence. Where the misconduct involves the sexual abuse of a student, the panel must revoke the member's teaching licence only if the abuse consisted of one or more of five specific acts of abuse. Those specific instances are described in s. 30.2(2), para. 1 of the *OCTA* as follows:

- i. Sexual intercourse
- ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact
- iii. Masturbation of the member by, or in the presence of, the student
- iv. Masturbation of the student by the member
- v. Encouragement of the student by the member to masturbate in the presence of the member.

The legislation also provides for mandatory revocation of a teacher's teaching certificate if the conduct involved engaging in acts involving child pornography that are prohibited under s. 163.1 of the *Criminal Code*.

While a Discipline Committee is not precluded from imposing a revocation where the sexual abuse does not fall within these categories, it need not do so.

The proposed Bill would add the following additional prohibited ground of sexual abuse for which mandatory revocation of a teacher's teaching licence would be imposed: touching of a sexual nature of the student's genitals, anus, breasts or buttocks.

The College welcomes and supports this additional amendment. However, it believes that by restricting acts of sexual abuse warranting revocation to those that involve a specifically identified part of the anatomy, it would not cover other conduct constituting sexual abuse that might merit revocation.

For that reason, the College proposes adding two clauses to the mandatory revocation provision. Neither amendment is tied to a part of the anatomy, but both would address acts of sexual abuse of a student by a teacher.

First, the College recommends adding "forms of physical sexual relations between the member and the student, other than sexual intercourse." This particular provision could address activities such as "spooning".

Second, the College proposes adding “touching of a sexual nature of the student by the member”, such as a member rubbing his groin against a student or a member rubbing her breasts against a student’s back.

This recommendation was endorsed by College Council at its March 1-2, 2018 meeting.

**Legislative Reference – Bill 31, Schedule 19 – Amend by addition**

30.2 (2) The acts of professional misconduct referred to in subsection (1) are the following:

1. Sexual abuse of a student, if the sexual abuse consisted of, or included, any of the following:

- i. Sexual intercourse.
- ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact.
- iii. Masturbation of the member by, or in the presence of, the student.
- iv. Masturbation of the student by the member.
- v. Encouragement of the student by the member to masturbate in the presence of the member.
- vi. Touching of a sexual nature of the student’s genitals, anus, breasts or buttocks
- vii Forms of physical sexual relations between the member and the student, other than sexual intercourse**
- viii Touching of a sexual nature of the student by the member**
- ix Other conduct of a sexual nature including, without limitation, sexual abuse prescribed in regulations made under s. 40(1), para. 32

**2. Amendments to s. 48.1 of the *Ontario College of Teachers Act* – Employer’s Reporting Requirements**

Under the College’s Act, employers must report to the College in specific circumstances, for example, where an employer terminates, suspends or restricts the duties of a member for reasons of professional misconduct. Employers must also report to the College when a member, one of their employees, has been charged with or convicted of criminal sexual conduct involving minors. These reports must be provided within a particular period of time.

Section 48.1 creates an offence punishable by a maximum fine of \$25,000 where an employer breaches the timelines related to the employer's initial report.

Since the introduction of previous amending legislation, the Act also requires that employers provide additional information related to the initial report, within specified timelines of 15 and 30 days. However, the additional requirements are not tied to the penalty provisions. In some cases, employers do not meet those requirements, which poses challenges for the College and creates difficulties in resolving matters in a timely fashion.

The College believes that the penalty provisions directly affect compliance with the initial reporting timelines. It would be reasonable to believe that if employers have a duty to make an initial report to the College in a timely manner, subject to the penalty provisions, the same penalty provisions should apply to any additional information the employers are required to provide to the College.

Former Ontario Justice Patrick LeSage identified this issue in his 2011 independent external review of the College's investigation and disciplinary processes. He recommended the introduction of defined, tight timeframes within which employers would be required to provide all relevant information to the College.

To address these ongoing challenges, the College believes that the penalty provisions contained in s. 48.1 of the College's Act should be amended to include additional information that the College requires from employers in addition to the employer's initial reports.

This recommendation was endorsed by College Council at its March 1-2, 2018 meeting.

#### **Legislative Reference – Bill 31, Schedule 19 - Amend by addition**

48.1 Every employer who contravenes subsection 43.2 (1), (2), (3), **(3.1) or (3.2)** or subsection 43.3 (1), **(1.1), (1.2), (1.3)** or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

#### **Conclusion**

The College appreciates the opportunity to appear before the Standing Committee on **April 26, 2018** to share its concerns about Bill 31.

The College supports the changes contained in Bill 31, which will strengthen the College's regulatory authority over investigation and discipline processes.

Should Standing Committee members or staff who support the committee's work have questions or require further clarification, the following College staff would be pleased to provide assistance:

Michael Salvatori OCT, Phd  
Chief Executive Officer and  
Registrar of the Ontario College  
of Teachers

Angela De Palma OCT, MA  
Chair, College Council