



Council Decision Note

Item: Bylaw Amendment – Proposed Legislative Amendments – Enhancing Public Protection and Improving Operational Efficiency

Public Interest Rationale: These amendments will enhance the College’s mandate to protect the public interest.

Strategic Alignment: The amendments align with goal 4 of the College’s strategic plan: A clear and independent role in the education system.

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Background

A series of amendments were made to the *Ontario College of Teachers Act, 1996*, (the “Act”) following the passage of the *Better Schools and Student Outcomes Act, 2023* (the “Better Schools Act”). College staff have noted a number of areas where amendments to the Act would enhance public protection as well as operational efficiencies. These proposed amendments, and the reasoning behind them, are set out below.

The proposed amendments have been grouped in two broad categories: 1) Student Safety and Public Protection and 2) Streamlining of Processes. College recommends that Council request that the Minister of Education introduce the following amendments to the Act.

Risks and Mitigating Factors

The key risk in not approving the proposed amendments is that the College will miss an opportunity to enhance student safety and public protection. Additionally, several operational efficiencies will not be achieved, thereby prolonging various processes that could otherwise be performed more effectively and expeditiously in the public interest and to ensure procedural fairness.

Committee Briefings

Staff provided an update to the relevant committee chairs and committees that will be impacted by the proposed changes. Committees were supportive of the proposed Act amendments.

Proposed Amendments – Student Safety and Public Protection

1. Updating the Act to Require Members to Advise the College When They have been "found guilty of" an Offence

The Act has a number of dispositions that reference a member being charged with or convicted of a criminal offence. However, in the relevant sections of the Act identified by



the College, this language does not always include “has been found guilty of an offence” or words to that effect, and that certain criminal infractions that lead to findings of guilt but not convictions, such as an absolute or conditional discharge, for example, would not be covered for a mandatory report. The issue is present in subsections 33(4.2), 43.3(1.1) and 43.3(1.2)(b) of the Act. The issue also appears in subsections 48(4), 48.1, 49.1 50, 51(1) and 51(2) but in these, the legislature may have intended to specifically use “conviction.”

Rationale

The proposed amendment will better align some sections of the Act with the College’s public protection mandate and ensure that the College is aware of ongoing criminal matters involving members.

2. Remove the Requirement for Adjudicative Body of Chairs Authorization in Registrar Investigator Appointments

The College has the authority to appoint an investigator pursuant to section 36 of the Act that allows the investigator to serve a Summons on third parties, such as police or the Children’s Aid Society. However, the appointment requires that staff prepare materials for the Registrar’s review and seek the consideration and approval of the Adjudicative Body of Chairs (the “ABC”). The ABC has eight panelists who must convene to consider the request. The appointment process is not an efficient means of obtaining information relating to criminal charges or relevant release conditions. Once appointed, the investigator would then have to serve a Summons on the police force in question. The police would then have to satisfy themselves that they are obligated to disclose the requested information. These considerations are generally made through the police force’s freedom of information unit and could take several weeks before the College would receive the requisite documents.

While there are existing mechanisms through which the College can obtain substantiating documents that permit it to post criminal charges and release conditions to the public register, the existing mechanisms often lead to unnecessary delay. If the Act required police to collaborate with the College and provide information relating to criminal charges against members in a timely fashion then the need to go through the section 36 process, serve a Summons and wait for the police to consider complying with the Summons would no longer apply and would result in more timely posting of criminal charges to the public register.

Rationale

Such legislation is in the public interest as it would allow the College to alert the public more quickly about members who face criminal charges, thereby reducing the risk to student safety.



3. Grant the Registrar Authority to Administratively Revoke a member's Certificate of Qualification and Registration ("CQR") in Cases Involving the Sexual Abuse of a student, a Prescribed Sexual Act or a Prohibited Act Involving Child Pornography stemming from a criminal finding of guilt and/or conviction.

This amendment, granting authority to the Registrar to revoke a member's CQR in cases involving a sexual abuse of a student stemming from a criminal finding of guilt and/or conviction, was previously proposed by Council, but when the amendment came into force with the passage of the *Safe Schools Act* and pursuant to subsection 30.2(8) of the Act, the Discipline Committee (and not the Registrar) was given this authority. As a result, rather than employing a purely administrative (and efficient) revocation process in cases where a member was found guilty of or convicted of a criminal offence that would constitute sexual abuse of a student, a prescribed sexual act and/or a prohibited act involving child pornography, and would face mandatory revocation through the College's discipline process, a discipline panel must be convened to essentially hold a written proceeding to determine such matters.

Rationale

Giving authority to the Registrar to revoke a member's CQR in the above-described circumstances rather than the Discipline Committee would be more efficient, expeditious, and achieve the same ends. Additionally, the requirement to staff a written proceeding, schedule the hearing panelists, and the preparation of documents by College counsel can delay the revocation of a member's CQR.

4. Allow the College to publicly confirm whether it is investigating a member, if there is a compelling public interest in the disclosure of that information

The proposed amendment would align the Act with other Ontario regulators, who have a similar provision, such as in the *Regulated Health Professionals Act, 1991* (the "RHPA") and recently passed legislation in Bill 188. At present, the College is not permitted to share information concerning members who are the subject of an investigation with, for example, other agencies such as Children's Aid Societies or their employers.

Should this amendment be passed, the College would develop and abide by strict criteria before making such a disclosure including but not limited to:

- The investigation would have to be duly authorized;
- The member would have had to have been notified of the investigation;
- The College's Policy and Investigations and Professional Conduct departments would first have to be consulted prior to disclosure and would themselves, follow strict criteria established by the College in the consideration of the disclosure of an ongoing investigation to an outside party including the public.



Rationale

The proposed amendment aligns with the College's strategic priorities of having a profession accountable to the public. It also aligns with the practices of other self-regulatory bodies.

Proposed Amendments – Streamlining of Processes

5. Subsection 26.1(1)(a) of the Act be amended to grant authority to the Registrar to refer a matter to the Investigation Committee – Complaint Resolution where it would be appropriate to order remedial coursework

In the Better Schools Act, subsection 26.1(1)(a) of the Act (available Complaint Resolution outcomes) was not updated to mirror powers granted to the Investigation Committee to impose remedial coursework (pursuant to subsection 26(5)(d)(ii) of the Act). Given the Investigation Committee's new authority to impose remedial coursework, the Registrar should be granted the authority to consider referral to the Investigation Committee (Complaint Resolution) of a matter where remedial coursework is a possible outcome for the matter being referred.

Rationale

Remedial coursework is an important outcome that can be more effective at addressing certain types of allegations. The Complaint Resolution process is intended to mirror the Investigation process in its outcomes, and enabling the Registrar to refer complaints to the Investigation Committee through the Complaint Resolution process, where a likely outcome for the complaint would be the imposition of coursework, would align the two processes' outcomes.

6. Board Disclosure to a Member Who is the Subject of a Complaint

The Act currently requires that an employer that makes a report to the College must provide the member who is the subject of the report with a copy of all information provided to the College. The consequence of this requirement is that some employers refuse to provide information, such as student names and contact information in cases involving sexual abuse/misconduct allegations and serious boundary violations, to the College. The Act places employers at risk of either exposing alleged victims to further risk or being the subject of a fine. It also delays College investigations because College investigations often cannot proceed when student names and/or their contact information are not provided to the College. Similarly, employers should not be required to provide full disclosure to the member in cases involving workplace harassment (e.g., sexual harassment or bullying) by a member of the profession toward another member or cases involving domestic/intimate partner violence/harassment. The Act should be amended to remove the requirement under subsections 43.2(3.3) and 43.3(1.4) of the Act



that an employer has to provide a member who is the subject of a complaint with a copy of all information provided to the College.

Rationale

The College is already mandated to provide the Member with disclosure – the dual obligation to disclose is therefore redundant.

7. Referral at the Disciplinary Stage to the Complaint Resolution Process

While historically a necessity, subsection 30.1(1) of the Act has been operationally and functionally replaced with resolution discussions between the College and members. This has been a matter of operational practice for several years now and the College always approaches matters with a view to resolve them, rather than proceeding on a contested basis. The College enters resolution discussions with the Member (or their counsel) as part of its default approach to resolve matters in a timely, efficient and resource-effective way. The existence of subsection 30.1 has become an administrative burden requiring both parties to file motion materials and be considered by a panel, rather than the common practice of entering into resolution discussions.

Rationale

Given the College's longstanding operational practice of always entering into resolution discussions with members, section 30.1 should be removed from the Act. The operational practice is consistent with the intent of section 30.1.

8. Regulatory “cleanup” of subsection 26(5), removing potential interpretations that are incompatible with established practice, clarifying viability of multiple outcomes, clarifying that outcome plus coursework is possible, and bringing French wording of coursework provision in line with English version so that courses other than Prescribed Professional Learning courses can be imposed by Investigation Committee

These amendments are necessary to better align the French wording of subsection 26(5) of the Act with the English version:

- 1) The addition of “and/or” and “et/ou” throughout clarifies that the Investigation Committee can dispose of a matter, allegation by allegation, if need be, with distinct outcomes for each allegation.
- 2) The modification of subsection 26(5)(b) would explicitly enable the Investigation Committee not to refer part of a matter (i.e. some allegations). The proposed language mirrors that at subsection 26(5)(a)
- 3) The reordering of outcomes at subsection 26(5)(d)(i) is in response to feedback from defence counsel, who have noted that the OCTA doesn't specify the degree of



seriousness of each outcome. Reordering them this way, from least onerous to most onerous, would offer a degree of clarification.

- 4) The addition of “and/or” at the end of subsection 26(5)(d)(i) would explicitly confer the Investigation Committee with the express authority to impose an outcome AND coursework, instead of forcing them to choose between the two.
- 5) The reformulation of the course description in the French version of subsection 26(5)(d)(ii) brings it in line with the more general and desirable English disposition. We want the Investigation Committee to be able to impose various types of courses, not just Prescribed Professional Learning courses.

Subsection 26(5) (English) provides that:

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- (5) The Investigation Committee in accordance with the information it receives may,
 - (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or the Fitness to Practise Committee; **and/or**
 - (b) direct that the matter, **in whole or in part**, not be referred under clause (a); **and/or**
 - (c) require the person complained against to appear before the Investigation Committee to be cautioned **and/or** admonished; **and/or**
 - (d) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws, including **but not limited to**,
 - (i) issuing a **reminder, advice**, caution, **and/or** admonishment to the person complained against, **and/or**
 - (ii) requiring the member to complete remedial training **and/or** education.

Rationale

The Proposed Amendment would close several potential loopholes and align with current Investigation Committee practice.

9. Amend Panel selection and composition provisions at subsection 17(1) of the Act and subsection 21(1) of the General Regulation for greater clarity and to ensure fairness in panel selection process

Under the previous governance model (when General Regulation 72/97 applied), Committee Chairs were required to appoint panel Chairs. During the recent governance



transition, however, the government removed this panel selection authority from Committee Chairs and now requires staff to select panels/panel Chairs (pursuant to section 21 of General Regulation 563/21).

These changes were implemented, in part, to ensure fairness in the panel selection process and to reduce the possibility that Committee Chairs, who were previously responsible for panel selection, could be placed in a conflict of interest by having the authority to select panelists (themselves included), potentially causing tension among, or claims of unfairness from, other Committee or Roster members.

In response to this legislative amendment, Council issued a directive whereby it directs staff to appoint panels in such a way that ensures an equitable workload amongst Committee and Roster members.

The drafting of subsection 21(1), however, lacks clarity. It provides the Registrar with the authority to establish panels, but confusingly states that the Chair must direct the Registrar to establish panels. Subsection 21(2) more clearly states that the Registrar shall appoint a panel Chair.

It is recommended that subsection 21(1) of the General Regulation be amended to clarify that the Registrar establishes panels referred to in section 17 of the Act, and not the Committee Chair.

Subsection 17(1) at paragraph 3 of the Act sets out panel composition requirements. It includes now outdated language with respect to panel composition that stems from the previous governance structure, requiring that at least one member of the panel shall be a member of the committee (not roster) unless the chair of the committee directs otherwise. Under the current governance structure, Committee and Roster members perform identical functions on panels – either can Chair a panel, and they have identical decision-making authority and responsibilities. Requiring one panelist to be a committee member is undesirable as it creates a potential scheduling bottleneck and differentiates between committee and roster members for no principled reason. As committees have a small number of members in the new governance structure, requiring one committee member would make it practically impossible to form as many panels are as required to carry out the high volume of work for the various statutory committees. The Chairs routinely direct that this requirement does not apply; but it would be more efficient to remove this requirement from the legislation altogether; rather than requiring staff to repeatedly seek the Committee Chair's permission.

Rationale

The change to subsection 21(1) would clarify the legislative intent and align with the language of subsection 21(2) of the Act, where the Registrar has clearly been given the authority to appoint the Chair of a panel.



The striking out of paragraph 3 of section 17(1) of the Act would remove the requirement to include a committee member on every panel. This would have the effect of treating all adjudicators - committee or roster members - interchangeably for their adjudication work.

Decision Sought

That Council request that the Minister of Education make the following amendments to the Act:

Public Protection and Student Safety

1. Amend subsections 33(4.2), 43.3(1.1), 43.3(1.2)(b), 48(4), 48.1, 49.1, 50, 51(1) and 51(2) of the Act to include a reference to “have been found guilty of an [criminal] offence”, or words to that effect;
2. Amend subsections 36(2), 36(2.1) and 36(2.2) of the Act to remove the requirement that the Registrar requires the approval of the Adjudicative Body of Chairs to make an investigator appointment pursuant to subsection 36(1) of the Act, as well as remove the requirement that the Registrar report to the Adjudicative Body of Chairs when an emergency investigator appointment is made pursuant to subsection 36(2.1);
3. Amend subsection 30.2(8) of the Act to grant the power to the Registrar to revoke a member's Certificate of Qualification and Registration if the member’s conduct involves or includes the sexual abuse of a student, a prohibited act involving child pornography and/or a prescribed sexual act, and (1) the member has been convicted or found guilty of an offence under the *Criminal Code* (Canada) for the same conduct or action that is the subject of the matter, (2) the time for an appeal has expired, and (3) an appeal was dismissed or abandoned, and no further appeal is available;
4. Amend Subsection 48(1) of the Act to allow the College to confirm whether the College is investigating an Ontario certified teacher if there is a compelling public interest in the disclosure of that information;

Streamlining of Processes to be in Alignment with Our Work

5. Amend subsection 26.1(1)(a) of the Act to grant authority to the Registrar to refer a matter to the Investigation Committee – Complaint Resolution where it would be appropriate to order remedial coursework;
6. Amend subsections 43.2(3.3) and 43.3(1.4) of the Act to remove the requirement that an employer must provide a member who is the subject of a complaint with a copy of all information provided to the College;



7. Remove section 30.1 of the Act and all provisions pertaining to or referring to the Disciplinary stage complaint resolution process (Sections 1(1), 30.1(1), 30.1(12), 32.1(2), 32.1(3)c, 32.1(4), 40(1)14.7 (only the parts pertaining to the DC stage complaint resolution process, not the parts pertaining to the IC stage complaint resolution process);
8. Amend subsection 26(5) (French) of the Act to better align with the language expressed in the English version of the Act as well as amend the English version of the Act, as follows:

(English)

26 [...]

- (5) The Investigation Committee in accordance with the information it receives may,
- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or the Fitness to Practise Committee; and/or
 - (b) direct that the matter, in whole or in part, not be referred under clause (a); and/or
 - (c) require the person complained against to appear before the Investigation Committee to be cautioned and/or admonished; and/or
 - (d) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws, including but not limited to,
 - (i) issuing a reminder, advice, caution, and/or admonishment to the person complained against, and/or
 - (ii) requiring the member to complete remedial training and/or education.

(French)

26(5) À la lumière des renseignements qu'il reçoit, le comité d'enquête peut, selon le cas :

- a) ordonner que la question soit renvoyée, en tout ou en partie, au comité de discipline ou au comité d'aptitude professionnelle; et/ou
- b) ordonner que la question, en tout ou en partie, ne soit pas renvoyée aux termes de l'alinéa a); et/ou



- c) exiger de la personne qui fait l'objet de la plainte qu'elle se présente devant lui pour recevoir un avertissement et/ou une admonestation; et/ou
- d) prendre les mesures qu'il juge appropriées dans les circonstances et qui ne sont pas incompatibles avec la présente loi, les règlements ou les règlements administratifs y compris, mais sans s'y limiter :
 - (i) donner un rappel, un avis, un avertissement, ~~un rappel, un avis~~ et/ou une admonestation à la personne qui fait l'objet de la plainte; et/ou
 - (ii) exiger que le membre suive des cours de formation et/ou d'éducation.

9. Amend subsection 21(1) of the General Regulation to clarify that the Registrar shall establish panels referred to in accordance with section 17 of the Act, and not the Committee Chair and amend section 17(1) of the Act to remove the requirement that at least one Committee member must serve on a panel.

Next Steps

Should Council approve the request for amendments, a letter will be sent on behalf of Council requesting that Minister of Education staff work with College staff to draft legislative amendments.