



June 7, 2021

The Honourable Stephen Lecce
Minister of Education
438 University Avenue, 5th Floor
Toronto ON M7A 2A5

Dear Minister Lecce,

We are writing to share recommendations made by the Transition Supervisory Officer (TSO) related to the development of a regulation, under the Ontario College of Teachers Act, to specify what information about criminal proceedings involving a member of the teaching profession must appear on the College's public register.

Recent amendments to the College's Act specify that information about "any current or previous criminal proceedings involving a member that are relevant to [their] membership" must appear on the College's public register. The amendments also added a provision to Council's regulation-making authority for the purposes of further defining what information is posted and when.

The TSO, acting in his capacity as Council, has reviewed and approved the attached regulatory intent framework for the development of this regulation.

Maintaining a public register of members that is accurate and current is consistent with the College's mandate as a professional self-regulator to serve and protect the public interest in a transparent and accountable manner. The College looks forward to working with the Ministry of Education staff to develop regulatory language for the TSO's consideration on a priority basis.

Sincerely,

Paul Boniferno
Transition Supervisory Officer

Dr. Derek Haime, OCT
Registrar and Chief Executive Officer

Encl: Regulatory Intent Framework June 3, 2021

PB/DH/TC/tk-ccs

Regulatory Intent Framework – Current or Previous Criminal Proceedings Relevant to Membership on the Public Register

1. General Policy Intent:

1. Recent amendments to s. 23 of the *Ontario College of Teachers Act (OCTA)* specify that information about “any current or previous criminal proceedings involving a member that are relevant to [their] membership” that was provided to the Registrar on or after the commencement date of the *Protecting Students Act* [5 December 2016] must appear on the College’s public register.

Under s. 23(2.5), information about current or previous criminal proceedings in s. 23(2)(d.1) that are “no longer applicable or relevant to the member’s membership” shall be removed from the register “in a timely manner”. The Registrar will make a determination about the relevance of current or previous criminal proceedings to membership.

The amendments also added a provision to Council’s regulation-making authority under s. 40(1) to allow for regulations “governing, for the purposes of clauses 23 (2)(d.1) and 23 (2.5)(c), whether information respecting current or previous criminal proceedings involving a member should be included on the register or removed from the register.”

2. The following falls within the meaning of “criminal proceedings”:

- charges are currently pending
- findings of guilt
- sentencing orders
- orders that impose restrictions or conditions on the member
- orders pertaining to custody, bail or release conditions
- undertakings or peace bonds

3. “Criminal proceedings” should include extra-territorial criminal offences.

4. Registrar should have discretionary authority to determine whether criminal proceedings are relevant to membership based on a reasonable belief. The following factors are a non-exhaustive list that may be taken into account:

- extent of the conduct [how often and when]
- nature of conduct [direct/indirect impact on ability to practise]
- application to practice [e.g., restriction on practice to supervision]
- penalty imposed
- member’s co-operation
- circumstances [member’s age] and motivation [personal gain, personal circumstances]
- conduct out of character
- degree of dishonesty, breach of trust

- rehabilitation and likelihood of reoccurrence
 - conduct since the event
 - evidence from third parties [employer, other regulator, educator, parole officer]
5. Regulatory provisions should be limited to criminal activities/conduct of which the College is aware.
 6. The provisions would apply to current College members, as well as former members and reinstated members. In the case of former members, the intention would be to retain information about current or previous criminal proceedings on former members' public registry profile pages. These proceedings must relate to conduct that occurred while the individual was a member of the College. If a former member successfully applies to the College through the reapplication or reinstatement process, the current or previous criminal proceedings would continue to appear on their public registry page.
 7. There could perhaps be a rare situation where information about a criminal proceeding was determined to be "relevant to his or her membership" despite the fact that a new certificate had been issued. In that situation, the Act and proposed regulation would still permit it to be added.

Proposed Draft Regulatory Language

The new provisions could be captured in a new regulation or through an amendment to the General Regulation, O.Reg. 72/97

Prescribed information

1. (1) The following information, if known to the College, is prescribed information to be contained in a College's register for the purposes of subsection 23 (2)(d.1) of *Ontario College of Teachers Act*

1. If there has been a finding of guilt against a member under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or other equivalent legislation in a country other than Canada and if none of the conditions in subsection (2) have been satisfied,
 - i. a brief summary of the finding,
 - ii. a brief summary of the sentence, and
 - iii. if the finding is under appeal, a notation that it is under appeal until the appeal is finally disposed of.
2. With respect to a member, any currently existing conditions of release following a charge for an offence under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or other equivalent legislation in a country other than

Canada or subsequent to a finding of guilt and pending appeal or any variations to those conditions.

3. If a member has been charged with an offence under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or other equivalent legislation in a country other than Canada and the charge is outstanding,

- i. the fact and content of the charge, and
- ii. the date and place of the charge.

(2) The conditions referred to in paragraph 1 of subsection (1) are the following:

1. The Parole Board of Canada has ordered a record suspension in respect of the conviction.
2. A pardon in respect of the conviction has been obtained.
3. The conviction has been overturned on appeal.