



June 28, 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 College's program that provides funding for therapy and counselling for victims of sexual abuse, prescribed sexual acts or prohibited acts of child pornography that have been allegedly perpetrated by members. The recommendations cover two topics: 1) removing the nexus requirement for funding eligibility and 2) aligning supporting regulations with the new funding coverage in the Act for "prescribed sexual acts".

In order to be eligible for funding, the victim must have satisfied a nexus requirement with the member's teaching practice in that they must have been either:

1. **"a student the member supervised or was responsible for in the course of the member's practice"** [s. 58.1(3)(a) of the Act]
- or
2. **"the member's practice facilitated the relationship between the student and the member, or the member's access to the student."** [S. 1 of O. Reg. 439/20 of the Act (Alternative Eligibility Requirements for Therapy or Counselling – "Alternative Requirements Regulation")]

The first eligibility category above includes students who are taught by the member in their class or directly supervised by them in a school-related activity. The second eligibility category includes situations where the member grooms a student in their class, but the sexual abuse occurs after the student is no longer in the member's class.

The teaching practice nexus requirement prevents students from being eligible for funding if there was no direct link to the teaching practice of the member. For example, a student would not be eligible for funding if they were sexually abused by a member who is a stranger or a family member and there was no connection to their teaching practice.

The denial of funding for these students contradicts the definition of "student" for the purposes of the definitions of "sexual abuse" and "sexual misconduct", as set out in the Act. This definition of "student" is extremely broad and has enabled discipline proceedings

against members who sexually abused students with no connection to their teaching practice.

The Funding Policy and the Alternative Requirements Regulation should be amended to remove the member's teaching practice nexus requirement in order to align with the definition of "student" in the Act as well as the public protection mandate of the College. The College's duty to protect the public interest includes the protection of any student, regardless of relationship to the member.

As a result of the introduction of legislative amendments to the Act at the end of 2020, the funding program was broadened to cover claims arising from members committing prescribed sexual acts against students. The Prescribed Sexual Acts Regulation (O. Reg. 615/20) of the Act sets out the Criminal Code offences which can constitute a prescribed sexual act. The Alternative Requirements Regulation and Funding for Therapy and Counselling Regulation (O. Reg. 438/19 – "Funding Regulation") should be amended to include references to prescribed sexual acts to align with the Act.

On June 24, 2021, the Transition Supervisory Officer, acting in his capacity as Council, approved the following recommendations to amend the College's policy that supports the funding program as well as the Funding Regulation and Alternative Requirements Regulation in order to effect the changes noted above (relevant briefing note and appendices enclosed with this letter):

- 1. The Determination of Eligibility for Funding for Therapy and Counselling Policy be amended, as set out in the Funding Policy appendix, in order to:**
 - a) Reflect that a claimant shall be eligible for funding if it is alleged in a complaint or report against a member received by the College that a student, as defined in the Act, was the subject of sexual abuse, a prescribed sexual act or a prohibited act involving child pornography.**
 - b) Include prescribed sexual acts in the types of member misconduct which could give rise to funding claims.**
 - c) Reflect the Alternative Requirements Regulation.**
 - d) Modernize the Funding Policy to reflect a program already underway.**
- 2. Recommend to the Minister of Education that the Funding Regulation be amended to reflect 1 b) above, as set out in Appendix B**
- 3. Recommend to the Minister of Education that the Alternative Requirements Regulation be amended to reflect 1 a) and b) above, as set out in Appendix C.**

The College looks forward to working with the Ministry of Education staff to develop regulatory language for the TSO's consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Boniferno'.

Paul Boniferno
Transition Supervisory Officer

A handwritten signature in blue ink, appearing to read 'Derek Haime'.

Dr. Derek Haime, OCT
Registrar and Chief Executive Officer

Encl: Briefing Note and Appendix B and C

PB/DH/RL/SR/tk-ccs



Briefing Note

Funding for Therapy and Counselling Program – Policy and Regulatory Amendments

Background

The *Ontario College of Teachers Act* (the “Act”) provides for the funding of therapy and counselling for claimants alleging sexual abuse, a prescribed sexual act or a prohibited act of child pornography against a member of the College.

In order to be eligible for funding, the primary claimant must have satisfied a nexus requirement with the member’s teaching practice in that they must have been either:

1. **“a student the member supervised or was responsible for in the course of the member’s practice”¹**

or

2. **“the member’s practice facilitated the relationship between the student and the member, or the member’s access to the student.”²**

The first eligibility category above includes students who are taught by the member in their class or directly supervised by them in a school-related activity. The second eligibility category includes situations where the member grooms a student in their class, but the sexual abuse occurs after the student is no longer in the member’s class.

In December 2019, Council approved a “Determination of Eligibility for Funding for Therapy and Counselling Policy” (attached as Appendix A) (the “Funding Policy”) to support the implementation of the program. Under “Policy Statement” and “General Funding Program Requirements”, the Funding Policy makes clear that the nexus between the student and the member’s teaching practice must exist in order for a student to receive funding.

The teaching practice nexus requirement prevents students from being eligible for funding if there was no direct link to the teaching practice of the member. For example, a student would not be eligible for funding if they were sexually abused by a member who is a stranger or a family member and there was no connection to their teaching practice.

The denial of funding for these students contradicts the definition of “student” in the Act for the purposes of the definitions of “sexual abuse” and “sexual misconduct”, as set out in Appendix 1 - Definitions of the Funding Policy (see end of Appendix A). This definition of “student” is extremely broad and has enabled discipline proceedings against members who sexually abused students with no connection to their teaching practice.

¹ S. 58.1 (3)(a) of the Act

² S. 1 of O. Reg. 439/20 of the Act (Alternative Eligibility Requirements for Therapy or Counselling)

As a result of the introduction of legislative amendments to the Act at the end of 2020, the funding program was broadened to cover claims arising from members committing prescribed sexual acts against students. The Prescribed Sexual Acts Regulation (O. Reg. 615/20) of the Act sets out the Criminal Code offences which can constitute a prescribed sexual act.

In January 2020, the Funding for Therapy and Counselling Regulation (O. Reg. 438/19 – “Funding Regulation”), was introduced in order to provide implementation details (e.g. funding caps, purposes for funding, payment requirements) to support the introduction of the funding for therapy and counselling program (attached as Appendix B).

In September 2020, the Alternative Eligibility Requirements for Therapy or Counselling Regulation (O. Reg. 493/20 – “Alternative Requirements Regulation”) was enacted (attached as Appendix C). The regulation introduced the second teaching practice nexus requirement noted previously. The regulation also established that funding would cease should the student, or their parent/guardian, withdraw the relevant allegation against the member.

However, as the Funding Policy was adopted in 2019, it does not reflect the recent inclusion of prescribed sexual acts in the funding program or the Alternative Requirements Regulation. The Alternative Requirements Regulation and Funding Regulation also do not reflect the recent inclusion of prescribed sexual acts in the funding program.

Recommendation

The Funding Policy and the Alternative Requirements Regulation should be amended to remove the member’s teaching practice nexus requirement in order to align with the definition of “student” in the Act as well as

the public protection mandate of the College. The College’s duty to protect the public interest includes the protection of any student, regardless of relationship to the member.

The lack of funding claims to date may indicate that broadening the funding eligibility beyond the legislative requirements would not lead to a significant financial risk to the College. The College should also request a corresponding regulatory change to the Alternative Requirements Regulation to remove the nexus requirement. Without this change, the College may be unable to seek cost recovery from members to reimburse funding program claims, or make use of other Act or regulatory requirements for the program, as the foundation of the program is in legislation.

The Funding Policy, should also be amended to align with the Act and include the new category of prescribed sexual acts that could give rise to funding claims as well as the new Alternative Requirements Regulation. The Funding Policy should also be modernized to reflect a program underway. The Alternative Requirements Regulation and Funding Regulation should be amended to include references to prescribed sexual acts to align with the Act.

All of the Funding Policy amendments noted above, as well as previous changes approved by the Transition Supervisory Officer, are set out in track changes in the Funding Policy attached as Appendix A. The required regulatory amendments noted above are included in track changes in Appendix B, for the Funding Regulation and Appendix C, for the Alternative Requirements Regulation.

It is recommended that the Transition Supervisory Officer, acting in his capacity as Council, approve the following motion:

1. The Determination of Eligibility for Funding for Therapy and Counselling

Policy be amended, as set out in the Funding Policy appendix, in order to:

- a) Reflect that a claimant shall be eligible for funding if it is alleged in a complaint or report against a member received by the College that a student, as defined in the Act, was the subject of sexual abuse, a prescribed sexual act or a prohibited act involving child pornography.
 - b) Include prescribed sexual acts in the types of member misconduct which could give rise to funding claims.
 - c) Reflect the Alternative Requirements Regulation.
 - d) Modernize the Funding Policy to reflect a program already underway.
2. Recommend to the Minister of Education that the Funding Regulation be amended to reflect 1 b) above, as set out in Appendix B
 3. Recommend to the Minister of Education that the Alternative Requirements Regulation be amended to reflect 1 a) and b) above, as set out in Appendix C.
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Next Steps

Upon approval of these recommendations, the College would update the policy and make corresponding changes to the funding application and communication materials. The College would also work with the Ministry to make the necessary legislative amendments.

Prepared by:

Policy and Research Unit

Date:

May 12, 2021

Appendix B

Ontario College of Teachers Act, 1996

ONTARIO REGULATION 438/19

FUNDING FOR THERAPY AND COUNSELLING

Consolidation Period: From January 1, 2020 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

Additional purposes

1. (1) The following are prescribed for the purposes of subsection 58.1 (1) of the Act as additional purposes for which funding may be provided under the program established in that subsection:

1. Therapy or counselling for a parent, guardian or sibling of the student who was the subject of the alleged sexual abuse, [prescribed sexual act](#) or prohibited act involving child pornography, provided that the purpose of the therapy or counselling is to allow the parent, guardian or sibling to support the student.

2. A drug, as defined in the *Drug and Pharmacies Regulation Act*, prescribed for a person by a health professional who is authorized to prescribe the drug, or any other medicinal substance recommended for a person by a health professional, Indigenous healer or Indigenous Elder provided that,

i. the drug or other medicinal substance would address symptoms relating to the alleged sexual abuse, [prescribed sexual act](#) or prohibited act involving child pornography, and

ii. the person is in receipt of therapy or counselling that is funded under paragraph 1 of subsection 58.1 (1) of the Act or paragraph 1 of this subsection,

whether or not the drug or other medicinal substance is prescribed or recommended by the person who provides the therapy or counselling.

3. Any of the following services that are reasonably necessary to facilitate a person's access to therapy or counselling for which the person receives funding under paragraph 1 of subsection 58.1 (1) of the Act or paragraph 1 of this subsection:

i. Transportation.

ii. Accommodation.

iii. Child care.

iv. Translation services.

(2) Funding for the purpose described in paragraph 2 of subsection (1) shall only be provided for amounts that are not covered by public drug programs or a private insurer.

(3) For greater certainty, therapy and counselling includes any such services provided by an Indigenous healer or Indigenous Elder.

(4) In this section,

“health professional” means a member of a health profession within the meaning of the *Regulated Health Professions Act, 1991*.

Amount of funding

2. (1) The maximum amount of funding that may be provided under the program established in subsection 58.1 (1) of the Act in respect of an allegation against a member of sexual abuse, a prescribed sexual act or a prohibited act involving child pornography shall be, in respect of each student who was a subject of the allegation, the amount that the Ontario Health Insurance Plan would pay for 200 half-hour sessions of individual out-patient psychotherapy with a psychiatrist on the day the student becomes eligible for funding pursuant to subsection 58.1 (3) of the Act.

(2) The maximum amount referred to in subsection (1) applies in respect of all purposes for which funding may be provided in respect of the allegation, including the additional purposes prescribed in section 1.

Period of funding

3. (1) Funding under the program established in subsection 58.1 (1) of the Act in respect of an allegation against a member of sexual abuse, a prescribed sexual act or a prohibited act involving child pornography may be provided, in respect of each student who was a subject of the allegation, for any expenses incurred during the period that starts on the earlier of,

(a) the first day that a person receives therapy or counselling for which funding is provided under paragraph 1 of subsection 58.1 (1) of the Act or paragraph 1 of subsection 1 (1) of this Regulation; and

(b) the day that the student who was the subject of the allegation becomes eligible for funding pursuant to subsection 58.1 (3) of the Act.

(2) The period mentioned in subsection (1) ends on the later of,

(a) the 10th anniversary of the day determined under subsection (1); and

(b) the day that the student who was the subject of the allegation turns 22 years old.

(3) The period described in subsections (1) and (2) applies in respect of all purposes for which funding may be provided in respect of the allegation, including the additional purposes prescribed in section 1.

Payment of funding

4. The following are prescribed for the purposes of subsection 58.1 (9) of the Act as other persons to whom funding may be paid under the program established in subsection 58.1 (1) of the Act:

1. The person who receives the therapy or counselling or, where the person is a minor, the minor’s parent or guardian.

2. Where a drug or other medicinal substance is prescribed or recommended as described in paragraph 2 of subsection 1 (1),

i. the person for whom the drug or other medicinal substance is prescribed or recommended or, where the person is a minor, the minor's parent or guardian, and

ii. the person who sells the drug or other medicinal substance.

3. Where a service is provided as described in paragraph 3 of subsection 1 (1),

i. the person to whom the service is provided or, where the person is a minor, the minor's parent or guardian, and

ii. the person who provides the service.

5. Omitted (provides for coming into force of provisions of this Regulation).

Appendix C

Ontario College of Teachers Act, 1996

ONTARIO REGULATION 493/20

ALTERNATIVE ELIGIBILITY REQUIREMENTS FOR THERAPY OR COUNSELLING

Consolidation Period: From September 3, 2020 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

Alternative eligibility requirements

1. The following are prescribed for the purposes of clause 58.1 (3) (b) of the Act as alternative eligibility requirements for receiving funding under the program established under subsection 58.1 (1) of the Act:

1. A person is eligible for funding if it is alleged in a complaint or a report against a member received by the College that the student was the subject of sexual abuse, [a prescribed sexual act](#) or of a prohibited act involving child pornography and, in the opinion of the College, the student was not, at the time of the alleged sexual abuse, [prescribed sexual act](#) or prohibited act involving child pornography, a student the member supervised or was responsible for in the course of the member's practice, ~~but the member's practice facilitated the relationship between the student and the member, or the member's access to the student.~~

Withdrawal of allegation

2. For the purposes of subsection 58.1 (6) of the Act, a person's eligibility to receive funding ceases upon the withdrawal by the student, or in the case of a minor, the student's parent or guardian, of the allegation of sexual abuse, [a prescribed sexual act](#) or prohibited act involving child pornography.

3. Omitted (provides for coming into force of provisions of this Regulation).