



Setting the Standard for Great Teaching
Fixer la norme pour un enseignement de qualité

June 9, 2020

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RE: Discipline Committee Register Notations

Dear President Brady, President Venne and President Varano,

I would like to acknowledge receipt of your June 1, 2020 correspondence in which you request that the College change the way it manages discipline information on the public register. I appreciate you sharing your perspective on the College's approach to discipline and transparency.

One of Council's Strategic Priorities is to strengthen transparency and accountability, particularly in the discipline process. An important example of the College's pursuit of transparency in the discipline process is the placement of discipline information on the public register, such as notations of penalties, terms, conditions and limitations (TCLs) and hyperlinks to Discipline Committee decisions on the College website.

In 2011, the College commissioned former Ontario Justice Patrick LeSage to conduct an independent review of our disciplinary processes and practices. In 2012, our Council adopted Justice LeSage's report and 49 recommendations, which were focused on two key themes: efficiency and transparency. In 2016, the *Protecting Students Act* was introduced and made amendments to the *Ontario College of Teachers Act* (the Act) that reflect LeSage report recommendations, including the placement and removal of discipline information on the public register. In 2017, our Council amended the College bylaws in order to align them with these recently introduced legislative amendments.

The Act provides requirements for the placement and removal of discipline information on the public register. The bylaws developed by Council flow from these requirements and they provide clear direction that notations of discipline can be removed if there has been a penalty limited to only a reprimand, counselling, admonishment or fine or a penalty limited to only a term, condition, or limitation. The College has followed these requirements in removing discipline information from the public register, but in 2019, the College's approach was challenged in court. However, the College presented the court with its efforts to adhere to the previously mentioned requirements in order to ensure fairness for the member while protecting the public. The Ontario Superior Court of Justice unanimously upheld the College's interpretation of the Act and its bylaws.


In accordance with the Act, the College also removes Discipline Committee decisions from our website when the corresponding notation of discipline on the public register is also removed. To permanently remove from public view notations and decisions that involve extremely serious misconduct, would be inconsistent with the College's legislated mandate and its bylaws. The public must have access to information about such serious misconduct if the public is to have confidence in the College's ability to protect Ontario's students.

In order to provide fairness to members and recognize their efforts at rehabilitation, the College continues to remove discipline information from the public register and decisions from the website pursuant to our Act and bylaws. This approach is aligned with Council's Strategic Priority regarding transparency and accountability as well as the practices of the regulatory sector, where there has been a general trend towards greater, and not less, transparency in the discipline process.

Finally, I would like to note that the College and its Council appreciate the vital and challenging role of principals, vice-principals and other administration personnel in the education system. The College makes the public aware that the vast majority of members, including administration personnel, hold themselves to the highest standards of the profession and the very few members who neglected to uphold these standards face appropriate discipline.

I hope that this response provides some perspective on the College's approach to transparency in the discipline process.

Sincerely,

A handwritten signature in black ink that reads "Nicole van Woudenberg". The signature is written in a cursive, flowing style.

Nicole van Woudenberg, OCT
Chair of Council

Copy: Chantal Bélisle, OCT, Deputy Registrar

NvW/RL/cl-ccs



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June 1, 2020

Nicole van Woudenberg, Chair of Council
Ontario College of Teachers
101 Bloor Street West
Toronto, ON
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Dear Chair van Woudenberg:

Re: Discipline Committee Register Notations

We are writing to you with concerns regarding the apparent permanency of Discipline Committee decisions on OCT members' Register pages, and the lack of any meaningful mechanism to remove these links after a period of time. We hope that you – together with your colleagues on Council – will work to amend the College's by-laws to ensure that members are not permanently disadvantaged by Discipline Committee orders in cases of minor misconduct.

OCT Decisions

Recently, the College has adopted the position that the vast majority of Discipline Committee decisions must be hyperlinked on the member's Register page indefinitely and asserted this position in an application for judicial review. Section 26 of the College's by-laws allows the removal of a decision after three years, if the penalty imposed was limited to a reprimand, admonishment, counselling or a fine or terms. Similarly, if terms, conditions or limitations were imposed on a member's certificate, those may be removed once those terms, conditions or limitations are fulfilled. In the application for judicial review, the court upheld an interpretation advanced by legal counsel for the College to refuse to remove the hyperlink in cases where more than one order (among those listed in the by-law) was made against a member. However, this represents a troubling shift in the interpretation of the by-law. When it was drafted, and for many years, the by-law served effectively as the authority to remove notations from the Register, including in

cases where a combination of the listed penalties was ordered.¹ By contrast, notations were not removed where the penalty was suspension or revocation. It is unclear why the College has abandoned its earlier interpretation of the by-law and asserted a new one.

You will know from a review of published Discipline Committee decisions that the Committee rarely makes a single order. Rather, if it orders a reprimand, it virtually always orders the person to take a course as well. We believe that ordering courses is consistent with the sentencing principle of remediation; it's appropriate for the College to ensure that its members learn from their experience and grow as educators. Unfortunately, what this means is that virtually every decision of the Discipline Committee will remain on the member's Register page indefinitely.

The Ontario Principals' Council, the Catholic Principals' Council and the Association des directions et directions adjointes des écoles franco-ontariennes recognize the importance of reporting Discipline Committee decisions publicly as a measure to protect the public interest. We understand the obligation of the College to inform the public and College members of its proceedings, as this builds confidence in the process and serves as a measure of accountability. However, the College also has a duty to consider the impact on members of permanently profiling Discipline Committee decisions on their Register pages, particularly in circumstances where the misconduct in question is at the lower end of the spectrum.

Maintaining a hyperlink on the Register page to a Discipline Committee decision forever significantly prejudices individuals and can have negative impacts on employment and professional reputation, as well as health and wellbeing. We have had situations where our Members have been denied promotions, by reason only of the fear of negative parent reaction to a linked decision related to conduct from many years prior. Members have been denied opportunities abroad due to misconduct that attracted only a reprimand and a course, because of a linked decision. Members have been harassed and defamed, targeted because of decisions linked to their Register pages, even though the misconduct was at the low end of the spectrum. These impacts are disproportionate to the misconduct in question - in cases of minor misconduct, it's clear that the College is being used not as a shield to protect the public, but instead as a weapon against its members.

While it can be beneficial to all parties to reach a settlement and avoid a fully contested hearing, the OCT's position on reporting makes the option of settlement much less attractive. Penalties proposed by OCT and their legal counsel typically include more than one of the above noted penalties, meaning there is currently no practical way to negotiate an outcome that would allow the link to the decision to be removed from the Register after three years.

¹ Mr. Justice LeSage, at pages 59-60 of his Report entitled "Review of the Ontario College of Teachers Intake, Investigations and Review Procedures and Outcomes, and the Dispute Resolution Program," confirms this understanding of the operation of the By-Law at that time.

Other Professional Colleges

There are numerous professional colleges in Ontario tasked with regulating a wide range of professions in the public interest. Many of those regulatory bodies allow for the removal of register information, including disciplinary decisions. The *Regulated Health Professions Act* and the *Health Professions Procedural Code* apply to 17 colleges that regulate healthcare professionals in Ontario. This includes physicians, psychologists and nurses; those who, arguably, work with the most vulnerable members of the public. The *Health Professions Procedural Code* permits the Registrar to withhold information from the register when they have reasonable grounds to believe that the disclosure may jeopardize the safety of an individual. In addition, the Registrar of these colleges may remove information that is obsolete and no longer relevant to the member's suitability to practice. In exercising this discretion, the College of Physicians and Surgeons of Ontario considers a variety of factors, including the following:

- How recent is the information?
- How relevant is the information currently?
- What is the severity/seriousness of the information?
- How does the information relate to the member's suitability to practice?
- Has there been a material change in the member's circumstances?

The OCT currently has no such mechanism in place and refuses to consider important extenuating circumstances in their decisions around publication of information.

The *Ontario College of Teachers Act* requires the Registrar to maintain a Register and include a notation of Discipline Committee decisions. It does not specify that that information must stay on a Member's Register page indefinitely. The *Act* also allows for the removal of Discipline Committee decisions after three years have passed. The ability to remove a Discipline Committee decision rests entirely with the OCT and the applicable by-laws. As such, we respectfully request that the OCT amend their by-laws to make it clear that the following information shall be removed from a member's Register page after three years have elapsed:

- A hyperlink to Discipline Committee decisions;
- Any terms, conditions or limitations imposed that are no longer applicable;
- Any notation of a decision or resolution that required a reprimand, an admonishment, counselling or a fine.

Thank you for taking the time to review our request. We are available to speak with you if you would like to discuss this matter more fully. Please feel free to contact us directly.

Yours truly,



Patrick Venne
President, ADFO



Annalisa Varano
President, CPO



Nancy Brady
President, OPC