



Memo

Date: September 16, 2019

To: Members of Council

From: Nicole van Woudenberg, OCT
Chair of Council

Subject: Report of the Executive Committee

Committee Meeting Dates

The committee held a special meeting via teleconference on July 12, 2019 and met for a regular meeting on September 16, 2019.

Summary of Discussions

1. Council Agenda Approval

The committee reviewed and approved the agenda for the September 16, 2019 meeting of Council, with a recommendation for preparation time for the meeting at one and one-half days.

2. Committee Vacancies

At the July and September meetings, the committee made the following appointments:

- Discipline and Fitness to Practise – Richard Filion (appointed)
- Editorial Board – Marlène Marwah (appointed)
- Finance – Nicola Powadiuk, OCT (elected)
- Governance – Richard Filion (appointed)
- Quality Assurance – Nancy Saunders, OCT (elected)
- Registration Appeals – Marlène Marwah (appointed) (term appointment)

The committee noted that there continues to be a number of appointed member vacancies on committees, pending the appointment of additional members to Council.

3. Formal Process for Developing Council Agenda

The committee received information on the process followed to develop the agenda for Council meetings. The Registrar confirmed that the information would be included in the orientation sessions for all new members of Council.

4. Cyclical Policy Review

The committee received a summary chart of those Council policies to be reviewed by the Executive Committee prior to Council's consideration. The chart provided information on the date each policy was last reviewed along with a proposed cycle for regular future reviews. In addition to the summary of policies, the committee also reviewed and approved a template for policy reviews and a series of sample questions to be completed as part of the review process.

After reviewing the summary, the committee passed a motion directing that all Council policies within the purview of the Executive Committee be identified as due for review within a maximum of three years. Staff were asked to return to the next regular meeting with a revised policy template and review questionnaire for the committee's consideration. The committee expressed support for other committees to review their respective policies that require Council approval and procedures on a similar cycle, and for sharing their template once approved. The Chair of Council noted that following the Executive Committee's approval, a recommendation would be shared with Council.

5. Professional Development for Chair of Council

The committee received and approved an updated summary of the institutional presence and personal professional development activities of the Chair of Council scheduled to the end of 2019.

6. Referrals

Under its authority under Section 29(2) of the *Ontario College of Teachers Act*, the committee approved one referral from the Discipline Committee to the Fitness to Practise Committee.

7. Professional Advisory on Professional Misconduct of a Sexual Nature

Committee members received an update to a professional advisory that was originally released by the College in 2002. Members of the Executive Committee had been invited to serve as critical readers of the updated advisory.

Motions Referred to Council

The Executive Committee recommends:

That Council approve the revised professional advisory on Professional Misconduct of a Sexual Nature, as outlined in document GC20190926-92, Attachment 1.

Duties/Mandate of the Executive Committee

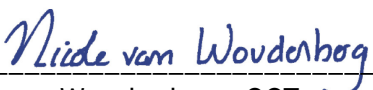
The duties and mandate of the Executive Committee are as outlined in the Appendix to this report.

Future Meeting Date(s)

The committee confirmed November 21, 2019 as the date of the next regular meeting.

Committee Members

Diane Ballantyne, OCT
Irene Dembek, OCT
Susan E. Elliott-Johns, OCT
Tim Gernstein, OCT (Vice-Chair)
John Hamilton, OCT
Jacqueline Karsemeyer, OCT
Colleen Landers
Sara Nouini, OCT
Jonathan Rose
Nicole van Woudenberg, OCT (Chair)



Nicole van Woudenberg, OCT

Executive Committee

Mandate

- To exercise any power or perform any duty of the Council as delegated by the Council, other than the power to make, amend or revoke a regulation or bylaw. (OCTA, s. 16)

Nature of the Executive Committee's work

- The Executive Committee:
 - may direct the Discipline or Fitness to Practise committees to hold hearings to determine allegations of member misconduct, incompetence or incapacity (OCTA, s.29)
 - may make interim orders directing the Registrar to suspend a member's certification if the committee is concerned that a member may expose a student to harm or injury (OCTA, s.29)
 - may make an order to direct the Registrar to issue a certificate to a member or to remove the suspension of a member's certificate (OCTA, s.34)
 - approves the Registrar's appointment of an investigator (OCTA, s.36)
 - may request that Council disqualify or suspend a member of Council for failing to disclose a conflict of interest (Reg. 72/97, s.6)
 - fills vacancies on committees (Reg. 72/97, s.16, Bylaws, s.7)
 - requests that the Public Interest Committee hold a meeting (Reg. 72/97, s.25.1)
 - may hold a hearing for complaints made against a Council member for reasons of conflict of interest or for contravention of the oath (Reg. 72/97, s.30)
 - may request a written reprimand, a suspension or disqualification from Council, or issue a report to the Minister of Education for referral to the Lieutenant Governor (Reg. 72/97, s.31)
 - approves the Council agenda as prepared by the Registrar (Bylaws, s.3.07)
 - names additional signing officers (Bylaws, s.9)
 - acts as the board of directors for the Ontario College of Teachers Foundation (Bylaws, s.37).

UPDATED PROFESSIONAL ADVISORY – 2019

Professional Misconduct of a Sexual Nature

The Council of the Ontario College of Teachers approved this professional advisory on (date, 2019). It was originally titled “Professional Misconduct Related to Sexual Abuse and Sexual Misconduct” in 2002 and has been updated to reflect amendments to the College’s legislation.

This advisory applies to all Ontario Certified Teachers (OCTs) including teachers, consultants, vice-principals, principals, supervisory officers, directors of education, those working in non-school-board positions, College members in private and independent schools, and those in positions requiring a certificate of qualification.

Read this document in conjunction with College advice on the use of social and electronic media, the duty to report child abuse, bullying, safety in learning environments, and supporting students’ mental health¹.

This advisory helps OCTs to identify the legal, ethical and professional parameters that govern their behaviour and aims to prevent professional misconduct of a sexual nature with students regardless of consent. It clarifies College members’ responsibilities to govern their conduct according to professional standards, provincial law and the *Criminal Code*. The advisory provides guidance and examples. It is not an exhaustive list of unacceptable behaviours.

The *Ontario College of Teachers Act (OCTA)* requires that the College investigate complaints made by a member of the public, a member of the College, the Registrar or the Minister of Education against members about their behaviour, including the alleged sexual abuse of students.

OCTs recognize the trust the public places in them, work to maintain professional relationships with students of any age, and avoid boundary violations.

OCTs are expected to behave professionally at all times. Ignorance of the law or College regulations is not an acceptable excuse for unprofessional behaviour. Engaging in any form of professional misconduct of a sexual nature with students will result in an investigation by the College.

The College’s Investigation and Discipline committees may consider this document when reviewing allegations of professional misconduct. The Discipline Committee determines whether particular behaviour constitutes professional misconduct based

¹ *Use of Electronic Communication and Social Media*: <https://www.oct.ca/resources/advisories/use-of-electronic-communication-and-social-media>; *Duty to Report Child Abuse*: <https://www.oct.ca/resources/advisories/duty-to-report>; *Responding to the Bullying of Students*: <https://www.oct.ca/resources/advisories/bullying>; *Safety in Learning Environments: A Shared Responsibility*: <https://www.oct.ca/resources/advisories/safety>; *Supporting Students’ Mental Health*: <https://www.oct.ca/resources/advisories/mental-health>

on the definitions of sexual abuse/misconduct and other types of professional misconduct contained in the *OCTA* and the Professional Misconduct Regulation².

OCTs should consult their employers' policies to ensure that they know and follow the expectations and obligations in their particular workplaces and communities.

Sexual abuse and sexual misconduct involving a student³

Sexual abuse of a student by a member is defined under the *OCTA* to mean:

- a) sexual intercourse or other forms of physical sexual relations between the member and the student,
- b) touching of a sexual nature, of the student by the member, or
- c) behaviour, remarks or conduct of a sexual nature by the member, in person or electronically (such as texts and social media), towards the student.

Touching, behaviour or remarks of a sexual nature do not include:

- touching or behaviour that is necessary for the purposes of diapering, toileting, washing or dressing a student as part of a teacher's professional responsibilities
- remarks that are pedagogically appropriate (for example, terms commonly used in health classes).

Sexual misconduct is defined under the *OCTA* to mean inappropriate behaviour or remarks of a sexual nature by the member, in person or electronically, where,

- a) one or more students are exposed to the behaviour or remarks, or the member knows or should know that one or more students are likely to be exposed to the behaviour or remarks, and
- b) a reasonable person would expect the behaviour or remarks to
 - cause distress to students exposed to the behaviour or remarks
 - be detrimental to students' physical or mental well-being, or
 - create a negative school environment for students exposed to the behaviour or remarks.

Often, sexual abuse involves behaviour or remarks of a sexual nature directed at a student or students, whereas sexual misconduct involves behaviour or remarks of a sexual nature that are not directed at a particular student or students.

Building on the Ethical Standards and the Standards of Practice

² O. Reg. 437/97; <https://www.ontario.ca/laws/regulation/970437>

³ *OCTA*, s. 1(1) and (2); <https://www.ontario.ca/laws/statute/96o12>

Ontario Certified Teachers hold a unique position of trust and authority and are responsible for maintaining appropriate professional boundaries with students at all times. OCTs' care for and commitment to students requires that they act in students' best interests.

There is a distinction between the professional and private life of a teacher. OCTs have private lives; however, their off-duty conduct⁴ matters and sound judgment and due care must be exercised in accordance with the Ethical Standards and the Standards of Practice For the Teaching Profession.

There are certain behaviours that may not be considered acts of professional misconduct on their own, but combined or repeated may lead to allegations of professional misconduct of a sexual nature. For example, simple texts about homework or assignments that become longer, personal discussions may show a progression of behaviour that is later judged as professional misconduct. Showing favouritism to a particular student by singling them out or by spending time alone with them or buying them gifts might also be perceived as playing on the student's vulnerability to lay the groundwork for a personal or sexual relationship. A series of seemingly innocent acts may be recognized later as a prelude or intended prelude to sexual abuse or sexual misconduct. This is sometimes referred to as grooming. These types of boundary violations should be avoided.

OCTs should not treat students as friends or peers, engage them in any kind of sexualized manner or attempt to initiate an inappropriate relationship.

OCTs have a responsibility to avoid activities that may reasonably raise concerns as to their propriety. Keeping this in mind can help members protect students by paying attention to interactions with students and noticing when relationships appear to be inappropriate. Early recognition and intervention may prevent complaints to employers or the College.

Duty to Report

Members must take a student's disclosure of abuse or exploitation seriously. By law, OCTs have an ongoing duty to report immediately to a children's aid society if they suspect abuse.⁵ Failure to report can constitute professional misconduct. Reporting only to administrators is not enough. Reports must be made directly to a children's aid society.

⁴ *Ross v. New Brunswick School District No. 15*, 1996 CanLII 237 (SCC); <https://www.canlii.org/en/ca/scc/doc/1996/1996canlii237/1996canlii237.html>; *R. v. Audet*, 1996 CanLII 198 (SCC); <https://www.canlii.org/en/ca/scc/doc/1996/1996canlii198/1996canlii198.html>; *Toronto Board of Education v. OSSTF, District 15*, 1997 CanLII 378 (SCC); <https://www.canlii.org/en/ca/scc/doc/1997/1997canlii378/1997canlii378.html>

⁵ *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1, s. 125; <https://www.ontario.ca/laws/statute/17c14>; O.Reg. 437/97, s. 1, para. 27

Adverse report exceptions

An OCT, subject to the *Teaching Profession Act*, who makes an adverse report concerning suspected sexual abuse of a student by another OCT need not provide that member with a copy or any information about the report.⁶

Ontario Certified Teachers shall not threaten or engage in reprisals against anyone who discloses, reports, or otherwise provides information with respect to alleged or suspected professional misconduct of a sexual nature. Engaging in this behaviour can constitute professional misconduct.

Mandatory penalty provisions

Changes to the OCTA have broadened the types of conduct that result in the mandatory revocation of an OCT's certificate of qualification and registration. By law, a panel of the Discipline Committee must revoke a member's certificate once it has found the member guilty of professional misconduct for engaging in the sexual abuse of a student, a prohibited act of child pornography (accessing, possessing, making, transmitting, distributing or making available), or a prescribed sexual act⁷. Such conduct may also result in criminal consequences. OCTs should be aware of these legislative changes and of the serious consequences for engaging in any form of sexual abuse of a student. There is zero tolerance for the sexual abuse of a student by an OCT.

Sexual abuse and the use of social media

Electronic communication encompasses social media and other messaging forms that enable users to interact, create, share and communicate information online. Used thoughtfully and appropriately, new technologies enable OCTs to model digital citizenship for students and deliver curriculum in innovative and engaging ways.

Digital communication can be used to extend and enhance education – or as easily lead to crossed professional boundaries⁸. For example, the immediacy and simplicity of a text message may lead to longer, informal conversations that become personal and intimate. Accordingly, OCTs are urged to keep their online interactions as professional as they would in a classroom.

Inappropriate use of electronic communication and social media can result in criminal charges, conviction and/or civil action. Misuse can also have professional disciplinary consequences. For example, making sexual remarks to a student via social media or sharing sexual content with students online would give rise to the mandatory revocation of an OCT's certificate of qualification and registration. Similarly, taking pictures or videos of a student that may be judged sexual in nature might result in allegations of sexual abuse.⁹

⁶ *Teaching Profession Act*, R.S.O. 1990, c. T.2, s. 12(2); <https://www.ontario.ca/laws/statute/90t02>

⁷ OCTA, s. 30.2(1) and (2). "Prescribed sexual act" is defined in s. 1(1) to mean "an act of a sexual nature that is prohibited under the *Criminal Code*...and is prescribed by a regulation made" by the government; <https://www.ontario.ca/laws/statute/96o12>

⁸ <https://www.oct.ca/resources/advisories/use-of-electronic-communication-and-social-media>

⁹ *R. v. Jarvis*, 2019 SCC 10 (CanLII); <https://www.canlii.org/en/ca/scc/doc/2019/2019scc10/2019scc10.html>

Employer responsibilities to the College

Employers have mandatory reporting obligations to the College, including when a member has been charged with or convicted of a sexual offence involving students.¹⁰

A framework for self-reflection

Knowing professional limits and responsibilities

Members need to use their professional judgment and consider the implications and appearance of an action or event thoroughly beforehand. This can be difficult when certain acts seem innocent, but may be determined later as a prelude to sexual abuse or sexual misconduct.

Members must maintain a sense of professionalism at all times – in their personal and professional lives.

When interacting with students, avoid behaviours such as:

- becoming involved in their private lives or allowing them to become involved in your personal life
- seeing them in private situations. Ensure classroom and office doors are open, that the student is not physically isolated from others, and that your interactions can be observed
- engaging in favouritism or behaviour that might be perceived as such¹¹
- exchanging notes, comments, emails of a personal or intimate nature¹²
- following them on social media or allowing students to follow you¹³
- making telephone calls of a personal nature/providing students with personal contact information/encouraging them to call or video chat¹⁴
- texting students directly, unless approved by their parents¹⁵ and your employer

¹⁰ OCTA, s. 43.3; <https://www.ontario.ca/laws/statute/96o12>

¹³ A member allowed a female student to listen to music and eat food, privileges not given to other students

¹² A member sent a student text messages in which he discussed his wife and daughter and sent photos of what he was doing while his wife was away

¹³ In one case, a member opened a social media account, accepted student followers, and then posted an inappropriate joke, which was seen by one of the student's parents

¹⁴ For example, a member in one case exchanged cell phone numbers with a student to text and call each other

¹⁵ In this advisory, 'parent' means the student's parent, legally appointed guardian, or any person in a custodial role such as adoptive parent, step-parent, or foster parent.

- engaging in personal communications outside school hours or frequently
- exchanging personal photographs via social media or otherwise¹⁶
- asking students to keep certain things secret from their parents or other staff
- exchanging money or personal gifts¹⁷
- using terms of endearment or pet names¹⁸
- meeting outside of school for non-related school events and/or unapproved purposes
- hiring students for babysitting, building and agricultural work or similar activities unless approved by parents and consistent with employer policies
- tutoring or providing lessons (for example, music, dance) outside school unless approved by the student’s parents and consistent with employer policies
- making sexually suggestive comments
- commenting on physical appearance¹⁹
- making comments that suggest a future romantic relationship²⁰
- inviting individual students to your home²¹
- dating students
- sharing sexually explicit texts or images, including those of children
- making physical contact of a sexual nature or contact that might be perceived as sexual or intimate (for example, tickling, rough housing, kissing, hugging and/or massaging).

¹⁶ For example, a member sent a student naked images and videos of himself and asked the student to send him sexually explicit photos

¹⁷ For example, a member gave his student a scarf, a shirt, a watch, and a birthday card with chocolate

¹⁸ In a 2014 case, a member called his student “hon” or “cutie pie”

¹⁹ In another case, a member told a student she was “going to do fine [on an exam], just like you look, fine”, used a rating scale to describe her appearance and said she looked “beautiful”

²⁰ In one instance, a member told a student, “I can’t wait to get alone with you” and “oh the things I would do to you”. In another case, the member suggested to the student that they marry, build a house and move to a country with a lower legal marriage age

²¹ For example, a member invited students to his home for popsicles and to carve pumpkins

Ask yourself:

1. Is your conduct in the best interests of the student and connected to your professional duties?
2. Are your activities known to and/or approved by supervisors and/or parents?
3. Are you using board/employer approved communication platforms and following approved policies?
4. Are you working with students in areas that can be observed by others (that is, not behind closed doors)? Is a third party present or aware of the meeting?
5. Do I know what my employer's policy is with respect to getting help for vulnerable students and am I mindful of the need to respect professional boundaries?
6. Are you transporting students in emergency circumstances only?
7. Would your actions contribute to their level of discomfort or pose a risk to the personal integrity or security of a student?
8. Can your actions reasonably be regarded as conduct that maintains your professional relationship with your students?

Conclusion

Sexual innuendoes, comments, touching or sexual relations with students are prohibited and subject to professional discipline and criminal consequences. Know your employer's policies, protocols and expectations. When in doubt, consult your direct supervisor.

OCTs are professionals who understand, value and protect the trust that exists with students and who always maintain appropriate professional boundaries.

Therapy and Counselling

As of January 1, 2020, the College will provide funding for therapy and counselling for student victims of sexual abuse. For more information, contact ***.