New Legislation Provides For Strict And Fast Responses To Professional Misconduct By Teachers

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The amendments in Bill 31 provide for a wider range of misconduct and stronger sanctions within the Ontario College of Teachers Act, 1996.

As one of the final acts of Ontario's outgoing provincial government, An Act to implement Budget measures and to enact and amend various statutes (Bill 31) was introduced on March 28, 2018, and rapidly progressed to Royal Assent on May 8, 2018.

Among the various pieces of legislation affected by Bill 31 was the Ontario College of Teachers Act, 1996 (the Act), particularly its provisions dealing with repercussions for professional misconduct by teachers; including sexual abuse of students and prohibited acts involving child pornography. Broadly speaking, these amendments result in a wider range of misconduct being captured by the Act and for more significant sanctions for these acts, while also providing for remedial measures designed to assist and support pupils who are survivors of such misconduct.

These changes follow other recent amendments to the Act that previously came into force on December 5, 2016 with the passage of the Protecting Students Act, 2016 (also known as "Bill 37"). Those changes had removed the discretion previously afforded to the Ontario College of Teachers (the College) in determining whether to revoke a member's teaching certificate for professional misconduct and whether to publish Discipline Committee decisions finding the College's members guilty of misconduct. The changes under Bill 37 made the revocation of teaching certificates for misconduct and the publication of such decisions mandatory.

The College has long-established processes for addressing professional misconduct by teachers who are members of the College. Under the Act's Regulation 437/97, professional misconduct by a teacher includes acts such as providing false information to the College regarding one's qualifications, releasing students' information without authorization, and various acts of abuse toward students including verbal, physical, psychological, emotional, and sexual. Where a complaint of professional misconduct is made against a teacher who is a member of the College, pertinent material concerning the complaint is gathered and investigated by a College Investigation Committee. In circumstances where the matter is not resolved informally, the Investigation Committee

conducts an extensive investigation and a Discipline Committee may be convened to hold a public hearing and determine whether the accused member is guilty of professional misconduct. On average, approximately 90 College members face such a public hearing in any given year.[1]

The amendments under Bill 31 come into force in two phases: (i) a series of amendments to the Act that came into force as of May 8, 2018; and (ii) further amendments to the Act that have been passed, but will not come into force until a later date yet to be proclaimed.

The amendments that fall under the first phase and are already in force include:

The Council, which is the College's governing body, or its Executive Committee may now immediately – and without a hearing – impose an interim suspension on the teaching certificate of any member where a complaint of professional misconduct is referred by an Investigation Committee and the Council or Executive Committee is of the opinion that the member's actions or conduct will likely expose a student to harm or injury. Such an interim suspension would remain in effect for the duration of the corresponding investigation into the misconduct complaint;
Mandatory revocation of a member's teaching certificate now applies where an Investigation Committee finds the member guilty of various acts of professional misconduct involving the sexual abuse of students or prohibited acts involving child pornography; and
A wider range of acts of professional misconduct (including touching of a sexual nature) will now fall into the category of sexual abuse giving rise to such a mandatory revocation of a member's teaching certificate.
Teachers found guilty of acts of professional misconduct involving the sexual abuse of students and prohibited acts involving child pornography would, however, continue to be able to apply for re-certification following five years after the revocation of their certificate – as this feature of the Act remains unchanged by Bill 31.

Additional changes to the Act that fall under the second phase noted above, and which will come into force on a future date to be determined, include:

The College will be required to establish a program to fund therapy and counselling for students who are survivors of sexual abuse by teachers, or survivors of acts of misconduct involving child pornography by teachers;
Where a member has been found guilty by the College's Discipline Committee of misconduct involving sexual abuse or prohibited acts involving child pornography toward students, the College may order the member to reimburse the costs of any therapy and counselling required to be provided as a result of such acts; and
A College Investigation Committee may require members to submit to mental and physical examinations, on penalty of suspension for refusal, where the Investigation Committee has reason to believe that the member is incapacitated.
These further measures, which attempt to balance discipline of teachers with efforts to support survivors of such misconduct, address BLG's previous commentary regarding Bill 37's more punishment-focused approach. Such commentary was previously set out in our January 2017 bulletin and in oral submissions made before the Ontario legislature's Standing Committee on Finance and Economic Affairs by the author in fall 2016. The new supports built into the Act by Bill 31 are therefore welcome developments toward ensuring that survivors of abuse are considered as part of the College's response to such misconduct.

As highlighted by reports such as the recently released Prevention and Response: Recommendations for Independent School Leaders from the Independent School Task Force on Educator Sexual Misconduct published by the National Association of Independent Schools in the United States, misconduct by teachers involving the sexual abuse of students unfortunately remains a common occurrence, especially where school systems are not prepared to deal quickly with complaints of such misconduct. As evidenced by published research cited in that report, false reports of educator sexual misconduct are rare. Rather, it is more common for children to minimize or dismiss abuse or misconduct that they have actually experienced rather than exaggerate or fabricate such experiences.

The new measures already brought into force by Bill 31 and the further measures yet to come into force provide the College with important additional tools to respond quickly and strictly against professional misconduct by teachers while providing survivors with the tools needed to recover from such incidents of abuse. If effective in achieving these goals, Bill 31 will help to ensure that Ontario's schools provide the care and safety that all pupils are entitled to expect.

1 Ontario College of Teachers, Complaints and Discipline

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