Ontario Protecting Students Act, 2016 Came into Force

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The Ontario College of Teachers' process for punishing teachers involved in sexual offences may soon become stricter – and more public. The recently-passed *Protecting Students Act, 2016* requires Ontario teachers found guilty of professional misconduct to face a mandatory loss of their teaching certificate, a longer waiting period to re-apply for certification, and publication of their names alongside other details of their discipline.

In the past, the *Ontario College of Teachers Act, 1996*[1] gave the Ontario College of Teachers (the "College") discretion to revoke a member's teaching certificate when a Discipline Committee found that member guilty of professional misconduct, which includes sexual abuse of a student and acts involving child pornography. The Act also provided the College with discretion to determine whether such decisions will be viewable to the public — in print, on the College's website or in any other form.

The *Protecting Students Act, 2016*, also known as Bill 37 (the "Act"), removes such discretion — making punishment and publication mandatory in cases where teachers are found guilty of professional misconduct. The Act came into force upon receiving Royal Assent on December 5, 2016.

In light of these new requirements, the Act's first order of business is defining the “professional misconduct” that gives rise to such punishment. According to the Act, such misconduct includes:

- sexual abuse of a student;
- exposing one or more students to "inappropriate behaviour or remarks of a sexual nature" where such remarks could reasonably cause distress, harm students' well-being or create a negative school environment; and
- prohibited acts involving child pornography.

The changes arising from the Act require that a teacher found guilty of such professional misconduct will face mandatory revocation of their teaching certificate, and will be prohibited from applying for a new teaching certificate for five years. This mandatory five-year prohibition period replaces previous provisions allowing the length of the prohibition period to be determined by the College on a case-by-case basis.

In terms of transparency, the Act requires the College to now publish all decisions and resolutions of its Disciplinary Committee on the College's website — including an express requirement for the publication of the names of disciplined teachers. At the same time, however, the Act allows survivors of professional misconduct to have their identifying information removed from such published decisions on request. These provisions on publication reflect recommendations that were set out by the Honourable Justice Patrick LeSage in a 2012 report on the College's disciplinary procedures. According to Justice LeSage, the College had already been in the practice of publishing most of its disciplinary decisions online — using its own internal Redaction Guidelines to ensure removal of information that might identify a survivor of misconduct. In making the publication of disciplinary decisions mandatory, the Act therefore renders the College's existing transparency practices as a standard rather than an option.

The Act also calls for reporting of suspected misconduct — making it a requirement for individuals and bodies to report to the College whenever they have a reasonable suspicion that a person is likely to suffer harm by a teacher and disclosure is urgently needed.

The changes brought about by the Act echo other recent legislative changes that have made important advances in the seriousness with which offences of a sexual nature, particularly against vulnerable people, are addressed in Ontario. Most notably, the passage of Bill 132, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, in 2016 now requires Ontario's Colleges, Universities and Private Career Colleges to put new policies and measures into place to ensure that students who are survivors of sexual violence are (i) respectfully given a voice to report such incidents; and (ii) have their safety and the safety of others assured.

While it represents a step forward toward ensuring students' safety and enhancing the transparency of the College's disciplinary processes, the Act nevertheless leaves room for improvement in line with some of the developments brought about under Bill 132. In particular, the Act could be supplemented by at least three further measures — whether through further legislation or changes to the College's own policies — to better protect students' confidentiality and to promote proactive efforts to help address professional misconduct at the earliest opportunity:

1. The Act's provisions appear unclear on when and how the identities of affected students are protected when it comes to the mandatory publication of disciplinary decisions.

Accordingly, further measures could be adopted to clarify the identities of persons who may request a restriction on the publication — including whether these individuals may be parents and principals in addition to students themselves. Further, the College may also be required to publish its *Redaction Guidelines* so that individuals affected by its disciplinary processes may know the extent to which their confidentiality will be protected — whether this amounts to a removal of only names and personal information from proceedings or whether other potentially identifying details, such as the names of disciplined teachers themselves, may be removed as a matter of ensuring confidentiality for survivors.

2. The Act requires persons or bodies that reasonably suspect harm to report to the College. However, the Act does not provide tools to facilitate such reporting. In other words, it advises that "if you see something, then say something," but does not address the difficulties involved in determining when a suspicion is *reasonable* and therefore worth reporting in any particular instance.

Further measures could be adopted to require the College to develop policies for (i) training its members and others to recognize and address signs of professional misconduct; and (ii) familiarizing these individuals with the disciplinary processes that follow from reporting such offences. Members who know what signs to look for, what questions to ask and the processes to follow will be better prepared to satisfy the Act's reporting requirements at an early stage in cases of misconduct.

3. While providing for discipline against perpetrators of sexual offences, the Act does not provide for support to survivors of such offences and their families.

Accordingly, further measures could be adopted to ensure some degree of communication between the College and the families of survivors in order to provide information about the disciplinary process, its outcomes and resources available to find support where needed. This would ensure that survivors are not left in the dark about the College's disciplinary processes, and are instead provided with the tools needed to move forward.

As indicated by each of these further measures, the Act's provisions for strict punishment and transparency, while a welcome development, leave room for additional steps to be taken toward ensuring the protection of survivors whose lives are affected by professional misconduct. This latter purpose is, after all, the very namesake of the *Protecting Students Act, 2016.*

[1] SO 1996, c 12.

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