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Ontario's Teaching Regulator  
L'organisme de réglementation  
de l'enseignement en Ontario

January 26, 2022

The Honourable Stephen Lecce  
Minister of Education  
438 University Avenue, 5th Floor  
Toronto ON M7A 2A5

Dear Minister Lecce,

We are writing to you about directions approved by the Transition Supervisory Officer relating to the Anti-Black Racism Additional Qualification (AQ) teacher education course and the College's program to fund therapy or counselling for student victims of sexual abuse, prohibited acts of child pornography and prescribed sexual acts.

### **Anti-Black Racism AQ**

A name change to the Anti-Black Racism AQ was proposed to the Transition Supervisory Officer in order to reflect input the College has received from educators, scholars, and experts in the field who recommend that the AQ be called: *Addressing Anti-Black Racism to Change Pedagogy and Practice*. The new name will reflect the current education landscape and the needs of the community.

The name change will also remove any suggestion that the purpose of the AQ is to teach anti-Black racism to teachers or aspiring teachers. For example, the AQ course titled *Mathematics* provides instruction on how to teach mathematics. Likewise, an AQ course titled *Anti-Black Racism* may erroneously be perceived to be a course on how to teach, foster or effect anti-Black racism.

Finally, the revised title being proposed reflects course content that focuses on deepening professional knowledge on the challenges faced by children and youth who identify as members of Black communities.

On January 20, 2022, the Transition Supervisory Officer approved the following change to the Teachers' Qualifications regulation (O.Reg. 176/10):

***That the renaming of Anti-Black Racism Additional Qualification (AQ) to *Addressing Anti-Black Racism to Change Pedagogy and Practice / Pédagogie et pratique contre le racisme envers les personnes noires* in Schedule D of the *Teachers' Qualifications regulation* be expedited.***

We are looking forward to working with the Ministry to make this change to the regulation.

## Funding for Therapy/Counselling Program

We are also writing to reiterate our request to you made on June 28, 2021 with respect to the College's funding program under which victims of sexual abuse, prescribed sexual acts or prohibited acts of child pornography may be eligible to receive funding for therapy and counselling. The program was created under s. 58.1 of the *Ontario College of Teachers Act, 1996* (the Act) and is supported by two regulations. A copy of the earlier letter is attached for your reference.

In that letter, the Transition Supervisory Officer (TSO) made two recommendations:

- 1) remove the nexus requirement for funding eligibility; and
- 2) align supporting regulations with the new funding coverage in the Act for "prescribed sexual acts".

In order to be eligible for funding under the regulations, the victim must satisfy a nexus requirement with the member's teaching practice, in that:

1. the victim must have been "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 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, prohibited act of child pornography or prescribed sexual act occurs after the student is no longer in the member's class.

The 'teaching practice nexus requirement' prevents students from being eligible for funding for therapy or counselling 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 the member's teaching practice.

The denial of funding for these student-age children is contrary to the definition of "student" for the purposes of "sexual abuse" and "sexual misconduct" set out in the Act.

This definition of “student” was designed to be broad enough to enable College discipline proceedings against members who sexually abuse any student, irrespective of whether there was an actual student-teacher relationship or nexus to the member’s teaching practice. In these sexual abuse cases, the Act prescribes a mandatory penalty of revocation. However, under the current framework, the College faces the absurdity of being *required* to revoke members for sexual abuse of a student (as defined in the Act), but can only provide funding for therapy or counselling if there was a *nexus* to the member’s teaching practice.

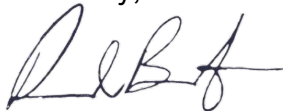
The College has been working with Ministry staff over the past few months to amend the Alternative Requirements regulation (O.Reg. 493/20) to remove the teaching practice nexus requirement in order to align with the definition of “student” in the Act. However, during those discussions, it was suggested that the removal of the nexus requirement would more appropriately be achieved by amending the Act, not the regulation.

Consequently, the College is requesting that the Act be amended to remove the nexus requirement to align with the College’s clear duty to protect the public interest, a duty that includes the protection of any student, regardless of relationship to the member. This request aligns with previous TSO direction as noted above.

In addition to an amendment to the Act, the TSO is also reiterating his request for two regulation amendments. 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) made under the Act sets out the *Criminal Code* offences that constitute prescribed sexual acts. The Alternative Requirements regulation and the Funding for Therapy and Counselling regulation (O. Reg. 438/19) should be amended to include references to *prescribed sexual acts* to align with the Act. An amendment to these two regulations is critical to ensure that all eligible victims have access to funding for counselling or therapy.

Sincerely,



Paul Boniferra  
Transition Supervisory Officer

PB/DH/JB/JL/SR/kb-pol



Dr. Derek Haime, OCT  
Registrar and Chief Executive Officer

Encl. June 28, 2021 Letter re Funding for Therapy/Counselling Program



June 28, 2021

The Honourable Stephen Lecce  
Minister of Education  
438 University Avenue, 5<sup>th</sup> 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,

Handwritten signature of Paul Boniferno in black ink.

Paul Boniferno  
Transition Supervisory Officer

Handwritten signature of Dr. Derek Haime in blue ink.

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”<sup>1</sup>**

or

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

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.

<sup>1</sup> S. 58.1 (3)(a) of the Act

<sup>2</sup> 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.

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## **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.

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**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).