



May 10, 2021

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

Dear Minister Lecce,

We are writing to share proposed amendments to the Ontario College of Teachers Act (OCTA) made by the Transition Supervisory Officer (TSO) acting as Council.

The significant amendments made to the College's Act in 2020 effect ground-breaking change with new measures to protect the well-being of students in Ontario and modernizing the governance structure of Ontario's largest regulatory body. This is an opportunity to lead among regulators – an opportunity that requires that we get it right. This is why we are coming back to you with a request for additional legislative amendments to the OCTA.

The list of legislative changes approved by the TSO is attached to this letter and was shared with staff at the Ministry of Education on April 29, 2021. These amendments focus on three main areas:

- 1) Further improvements to the College's governance structure and a renaming of the organization to better reflect the College's mandate.
- 2) A series of red tape initiatives to streamline services to Ontario Certified Teachers and the general public
- 3) A compendium of historical legislative requests from the College that are also designed to enhance the College's role in the protection of the public interest.

We wish to stress that the timing of the changes related to the implementation of the new governance structure is critical. This is particularly relevant to the request to reduce the size of the Council to twelve members from the current eighteen. In order for a new Council to be in place by the end of the transition period, currently scheduled to end February 1, 2022, the final Council size needs to be in place by the end of the current calendar year.

College staff are committed to working with staff in the Ministry and your office to prioritize the introduction of these legislative amendments.

As we are sure you are aware, we have asked for a meeting with you to discuss these amendments further. We look forward to meeting with you in the very near future.

Thank you in advance for your consideration of these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Bonifero'.

Paul Bonifero
Transition Supervisory Officer

A handwritten signature in blue ink, appearing to read 'Derek Haime'.

Dr. Derek Haime, OCT
Registrar and Chief Executive Officer

Encl:

- Legislative Amendments to OCTA

PB/DH/TC/RL/tk-ccs

Proposed Legislative Amendments
Ontario College of Teachers Act
May 10, 2021

For tracking only

New Requests

1. College established
2. Composition of Council
3. Registrar and Deputy Registrar
4. Committee panels

Historical Legislative Requests

5. Professional Designation
6. Stay Pending Appeal
7. Inactive/Non-practising status
8. Employer Reporting Requirements (also on red tape)
9. Spousal Exemption
10. School Board as Complainant
11. Notations Removed for Withdrawn/Not Guilty

Red Tape

12. Registrar's Discretion not to Investigate
13. IC Direct referral
14. IC Outcomes
15. Additional Qualifications
16. Administrative Revocation
17. Mandatory Penalties during Transition

College established

Current:

2 (1) The College is established under the name Ontario College of Teachers in English and Ordre des enseignantes et des enseignants de l'Ontario in French.

Proposed:

2 (1) The College is continued under the name Ontario Teaching Regulator (OTR) in English and Organisme de réglementation de la profession enseignante de l'Ontario (ORPEO) in French.

*** consequential amendment to name of legislation required.*

Composition of Council

Current:

- 4 (2) The Council shall be composed of,
- (a) nine persons who are members of the College and who are appointed by the Council in accordance with the regulations from among the list of nominees prepared under clause 15.2 (4) (a) by the Selection and Nominating Subcommittee; and
 - (b) nine persons who are not members of the College and who are appointed by the Lieutenant Governor in Council in accordance with the regulations.

Proposed:

- 4 (2) The Council shall be composed of,
- (a) six persons who are members of the College and who are appointed by the Council in accordance with the regulations from among the list of nominees prepared under clause 15.2 (4) (a) by the Selection and Nominating Subcommittee; and
 - (b) six persons who are not members of the College and who are appointed by the Lieutenant Governor in Council in accordance with the regulations.

Registrar and Deputy Registrar

Current:

9 (2) The Council shall appoint one of its employees as the Registrar and may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act.

(4) The Council shall ensure that either the Registrar or a deputy registrar is fluent in English and French.

Proposed:

9 (2) The Council shall appoint one of its employees as the Registrar and the Registrar may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act.

(4) ~~The Council shall ensure that~~ Either the Registrar or a deputy registrar ~~must be~~ fluent in English and French.

Committee panels

Current:

17 (1) The powers and duties of a committee established under subsection 15 (1) may be exercised by a panel that satisfies the following rules and any requirements set out in the regulations:

1. The panel must consist of at least three persons, at least one of whom must be selected from the roster of eligible panellists for the committee established under subsection (4) and the rest of whom must be members of the committee.
2. A majority of the persons on the panel must be members of the committee.
3. Among the persons who are members of the committee, there must be an equal number of members of the College and non-members.

Proposed:

17 (1) The powers and duties of a committee established under subsection 15 (1) may be exercised by a panel that satisfies the following rules and any requirements set out in the regulations:

1. The panel must consist of at least three persons, selected from the committee and/or from the roster of eligible panellists for the committee established under subsection (4).
2. Among the persons who are members of the panel, there must be at least one College member and one non-College member chosen from either the committee or the roster of eligible panellists for the committee established under subsection (4).

Use of Designation

Current:

n/a

Proposed:

14. (1.1) An individual shall not use the designation “Ontario Certified Teacher” or the French title “Enseignante agréée de l’Ontario” or “Enseignant agréé de l’Ontario” or an abbreviation of any of those designations, unless he or she is a member of the College in good standing.

Offence: engaging in practice, use of designation, etc.

51.1 (1) Every person who contravenes subsection 14. (1.1) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and not more than \$10,000 for a subsequent offence.

No Stay of Certain Orders Pending Appeal

Current:

35 (5) The following orders directing the Registrar to revoke, suspend or impose terms, conditions or limitations on a member's certificate take effect immediately despite any appeal:

1. An order made by the Discipline Committee on the grounds of incompetence.
2. An order made by the Discipline Committee under subsection 30.2 (1).
3. An order made by the Fitness to Practise Committee on the grounds of incapacity.

Proposed:

35 (5) The following orders directing the Registrar to revoke, suspend or impose terms, conditions or limitations on a member's certificate take effect immediately despite any appeal:

1. An order made by the Discipline Committee on the grounds of incompetence.
2. An order made by the Discipline Committee on the grounds of professional misconduct. *[** Note: this includes revocation, suspension and TCLs]*
3. An order made by the Fitness to Practise Committee on the grounds of incapacity.

Suspension: failure to pay fees, provide information

Current:

24 (1) The Registrar may suspend a member's certificate of qualification and registration for,

- (a) failure to pay a fee or penalty prescribed by the by-laws; or
- (b) failure to provide information required by the by-laws.

Proposed:

24 (1) The Registrar may suspend a member's certificate of qualification and registration for,

- (a) failure to pay a fee or penalty prescribed by the by-laws; or
- (b) failure to provide information required by the by-laws, and

(2) The suspension shall be recorded as Inactive/Non-Practising on the register.

*** and other consequential amendments as required.*

Offence: failure to report

Current:

48.1 Every employer who contravenes subsection 43.2 (1), (2) or (3) or subsection 43.3 (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 2002, c. 7, s. 6.

Proposed:

48.1 Every employer who contravenes subsection 43.2 (1), (2) or (3), (3.1) or (3.2) or subsection 43.3 (1), (1.1), (1.2), (1.3) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 [**** Note: additional subclauses include subsequent requests for information relevant to the matter.**]

Spousal Exemption

Current:

1 (4) For the purposes of the definitions of “sexual abuse” and “sexual misconduct” in subsection (1), a reference to a student does not include a person who was the member’s spouse at the time of the sexual abuse or sexual misconduct.

(5) For the purposes of subsection (4), unless otherwise defined in the regulations, “spouse”, in relation to a member, means,

(a) a person who is the member’s spouse as defined in section 1 of the *Family Law Act*, or

(b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years.

Proposed:

Delete the spousal exemption section 1 (4) and (5).

Employer Report Deemed to be Complaint

Current:

43.3.1 Where the Registrar refers an employer’s report filed under section 43.2 or 43.3 to the Adjudicative Body of Chairs or a committee established under section 15, then for the purposes of Parts IV and V,

(a) the report is deemed to be a complaint that was filed on the day the Registrar referred the report; and

(b) the employer is deemed to be a complainant.

Proposed:

Delete section 43.3.1

Notations for Withdrawn/Not Guilty

Current:

23 (b.5) a notation of every decision of the Discipline Committee following a proceeding, together with a link to the decision as published on the College's website;

Proposed:

23 (b.5) a notation of every decision of the Discipline Committee following a proceeding, together with a link to the decision as published on the College's website, except where a member has been found not guilty of professional misconduct or has been found not to be incompetent or incapacitated, or the Notice of Hearing has been withdrawn, unless upon request of member;

Registrar's Discretion not to Investigate

Current:

26 (1) The Investigation Committee shall consider and investigate complaints regarding the conduct or actions of a member of the College, including complaints made by,

- (a) a member of the public;
- (b) a member of the College;
- (c) the Registrar;
- (d) the Minister.

(2.2) The following rules apply to a complaint made by a secretary of a school board under section 277.40 or 277.40.5 of the *Education Act*:

1. Despite subsection (1), the Investigation Committee is not required to consider and investigate the complaint if the Registrar determines in accordance with any regulations, and advises the Committee, that the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member.

Proposed:

26 (1) The Investigation Committee shall consider and investigate complaints regarding the conduct or actions of a member of the College, including complaints made by,

- (a) a member of the public;
- (b) a member of the College;
- (c) the Registrar;
- (d) the Minister.

(2.2) The following rules apply to a complaint made by a secretary of a school board under section 277.40 or 277.40.5 of the *Education Act*:

1. Despite subsection (1), the Investigation Committee is not required to consider and investigate the complaint if the Registrar determines in accordance with any regulations, and advises the Committee, that the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member.

(2.2.1) The following rules apply to a complaint made by a member of the public:

1. Despite subsection (1), the Investigation Committee is not required to consider and investigate the complaint if the Registrar, using his or her discretion, decides not to investigate where investigation is not in the public interest.

IC Direct Referral

Current:

26 (9) If a member has been convicted or found guilty of an offence under the *Criminal Code* (Canada) for the same conduct or action that is the subject matter of a complaint, the member and the Investigation Committee may agree in writing that the matter be referred, in whole or in part, to the Discipline Committee and, in that case, subsections (1) to (8) cease to apply and the Registrar shall notify the complainant of the agreement.

Proposed:

26 (9) If a member has been convicted or found guilty of an offence under the *Criminal Code* (Canada) for the same conduct or action that is the subject matter of a complaint, the member and the Investigation Committee may ~~agree in writing that the matter be referred~~ refer, in whole or in part, to the Discipline Committee and, in that case, subsections (1) to (8) cease to apply and the Registrar shall notify the complainant of the referral.

IC Outcomes

Current:

26 (5) The Investigation Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or the Fitness to Practise Committee;
- (b) direct that the matter not be referred under clause (a);
- (c) require the person complained against to appear before the Investigation Committee to be cautioned or admonished; or
- (d) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws, including issuing a caution, reminder, advice or admonishment.

Proposed:

26 (5) The Investigation Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or the Fitness to Practise Committee;
- (b) direct that the matter not be referred under clause (a);
- (c) require the person complained against to appear before the Investigation Committee to be admonished; or

(d) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws, including issuing a caution, reminder, advice or admonishment and/or require the person being complained against to undertake remedial training or education.

Additional Qualifications

Current:

Regulations made by Council

40 (1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations:

22. respecting the development, provision and accreditation of educational programs leading to qualifications of members additional to those required for a certificate of qualification and registration, including but not limited to additional qualifications as a supervisory officer;

Proposed:

41(1). By-laws made by Council

41 (1). The Council may make by-laws relating to the administrative and domestic affairs of the College including but not limited to by-laws,

22. respecting the development, provision and accreditation of educational programs leading to qualifications of members additional to those required for a certificate of qualification and registration, including but not limited to additional qualifications as a supervisory officer;

Administrative Revocation

Current:

n/a

Proposed:

26 (9.1) If a member has been convicted or found guilty of an offence under the *Criminal Code* (Canada) for a prescribed sexual act or a prohibited act involving child pornography that is the subject matter of a complaint, and where no appeal of the conviction or guilty finding has been made and the time for an appeal has expired, or where an appeal was dismissed or abandoned and no further appeal is available, the Registrar shall revoke a member's certificate of qualification and registration and subsections (1) to (9) cease to apply.

Mandatory Penalties during Transition

Current:

Transition: *Safe and Supportive Classrooms Act, 2019*

Sexual abuse

63.2 Section 30.2, as amended by section 14 of Schedule 3 to the *Safe and Supportive Classrooms Act, 2019*, applies to an act of professional misconduct that consists of or includes sexual abuse of a student that occurred before the day section 23 of that Schedule came into force if no order has been made in respect of the matter under subsection 30 (4) of this Act before that day. 2019, c. 3, Sched. 3, s. 22.

Proposed:

Transition: *Safe and Supportive Classrooms Act, 2019*

Sexual abuse

63.2 Section 30.2, as amended by section 14 of Schedule 3 to the *Safe and Supportive Classrooms Act, 2019*, applies to an act of professional misconduct that consists of or includes sexual abuse of a student, a prohibited act involving child pornography or a prescribed sexual act that occurred before the day section 23 of that Schedule came into force if no order has been made in respect of the matter under subsection 30 (4) of this Act before that day. 2019, c. 3, Sched. 3, s. 22.