



September 17, 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 recommendations made by the Transition Supervisory Officer (TSO) to amend the *Ontario College of Teachers Act* and Ontario Regulation 563/21, the General Regulation, to enable the College to obtain information about criminal and other relevant matters involving College members.

As a regulator with a statutory duty to serve and protect the public interest, it is critical that the College's public register reflect pertinent and timely information about its members. In carrying out its regulatory activities, which includes protecting vulnerable students, the College requires access to information about criminal and other matters, such as those that raise child protection issues, and may, for example, be held by a police force or a Children's Aid Society.

This issue was addressed by Mr. Justice LeSage in his 2012 review of the College's intake, investigation and discipline procedures. Specifically, he noted that there was a need to share information with the College about its members and made the following recommendation, which Council at the time endorsed:

There should be a legislated obligation for other public agencies to provide the College with a person's record, if failure to disclose it is likely to cause the person or another person physical or emotional harm and the need for disclosure is urgent

Under s. 47(1) of the College's Act, the College may require specific entities, currently limited to Provincial School Authorities, school boards and other entities designated by the regulations, to provide information, including personal information, in respect of members of the College. Similarly, under s. 47.1, if one of the entities designated under the regulations suspects, on reasonable grounds, that there is a risk that a person is likely to suffer physical or emotional harm inflicted by a member and believes, on reasonable grounds, that urgent disclosure is needed, a report must be made to the College. The entities designated in s. 41 of the regulation include teacher federations and private schools.

On September 15, 2021, the Transition Supervisory Officer, acting in his capacity as Council, approved the following recommendation to amend the College's Act and general regulation as follows:

- (a) The addition of an override provision in the College's legislation to ensure that the Act prevails in the event of a conflict with another Act or regulation preventing the disclosure of such information; and
- (b) The addition of relevant public organizations to s. 41 of the General Regulation, which outlines the list of bodies compellable by the College through s. 47 and s. 47.1 to provide information, including personal information within the meaning of provincial privacy legislation. These additional entities could include the following:
- Police forces
 - School boards
 - Health care professionals
 - Children's Aid Societies
 - Ontario Ministry of the Attorney General
 - Other professional regulators, such as the College of Early Childhood Educators of Ontario and
 - organizations such as administrative authorities responsible for enforcing consumer protection legislation

A supporting briefing note on this topic is enclosed with this letter.

The College looks forward to working with the Ministry of Education staff on the recommended statutory and regulatory language.

Sincerely,



Paul Boniferra
Transition Supervisory Officer



Dr. Derek Haime, OCT
Registrar and Chief Executive Officer

Encl:

- Obtaining Information about Criminal and Other Relevant Matters Involving College Members

PB/DH/JL/tk-ccs



Ontario
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Ordre des enseignantes
et des enseignants
de l'Ontario

Briefing Note

Obtaining Information about Criminal and Other Relevant Matters Involving College Members

Issue

At issue is how the College can obtain information about criminal and other matters such as child protection issues, which may be relevant to the College and involving College members on a timely basis.

Background

This issue was addressed by Mr. Justice LeSage in his 2012 review of the College's intake, investigation and discipline procedures. Specifically, he noted the following [at p. 28 of his report]:

The need for better sharing of information between the College, School Boards, police and Children's Aid Societies has been raised in the course of many meetings that I held.

Formerly proposed section 182 of the Ontario *Child and Family Services Act* provided for the sharing of information. This section was never proclaimed in force and is spent. Section 182 would have permitted a service provider to disclose a person's "record" without any consent, to, inter alia, a peace officer, if the service provider believed on reasonable grounds that failure to disclose the person's record was likely to cause the person or another person physical or emotional harm and the need for disclosure was urgent. It would be useful if such an obligation existed and was extended to agencies such as the College. [Emphasis added.]

He made the following recommendation [No. 8]:

There should be a legislated obligation for other public agencies to provide the College with a person's record, if failure to disclose it is likely to cause the person or another person physical or emotional harm and the need for disclosure is urgent. (See formerly proposed section 182 of the Ontario *Child and Family Services Act*).

The College's Council endorsed this recommendation and recommended to the Minister of Education that the *Ontario College of Teachers Act* (the "Act"). be amended to incorporate the intent of Recommendation 8.

Legislative Context

The information and disclosure provisions contained in the Act were amended in 2016.

Subsection 47(1) provides that in order to carry out its objects, the College may require specific entities, currently limited to Provincial School Authorities, school boards and other entities designated by the regulations, to provide information, including personal information, in respect of members of the College.

The following subsections were added to s. 47:

47(2) If the College requires a person or body to provide information under subsection (1), the person or body shall do so within the time period specified in writing by the College or, if no time period is specified, within 30 days of receiving the request. 2016, c. 24, Sched. 2, s. 28.

(3) For greater certainty, a person or body may be designated by the regulations for the purposes of subsection (1) regardless of whether the person or body is engaged in the provision of education.

Section 47.1 was also added to the Act. It provides as follows:

47.1 (1) If a person or body designated by the regulations suspects, on reasonable grounds, that there is a risk that a person is likely to suffer physical or emotional harm inflicted by a member and believes, on reasonable grounds, that urgent disclosure is needed, the person or body shall immediately report the suspicion and the information on which it is based to the College.

(2) A person or body may disclose such personal information, within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act* and section 28 of the *Municipal Freedom of Information and Protection of Privacy Act*, as is reasonably necessary for the purpose of complying with subsection (1).

For the purposes of section 47, specific entities were named in s. 41 of the College's general regulation [O.Reg. 563/21]. That list includes federations, private schools, etc. The list did not include police forces, child and family services organizations, or other organizations which may have information relevant to a College investigation. No entities have been prescribed by regulation for the purposes of s. 47.1.

Considerations/Analysis

There are two options to consider:

(i) Legislative Amendment

The Minister of Education could amend the legislation governing other public agencies in a manner similar to former section 182 of the *Child and Family Services Act* to include the College as an organization to which records of an individual could be disclosed without penalty. Such public agencies could include: Children's Aid Societies, police forces, school boards, other regulatory colleges and other entities having relevant information. Section 182 has been added to an appendix.

(ii) Legislative and Regulatory Amendment

The Minister of Education could amend the College's legislation in the following manner:

- (a) The addition of an override provision in the College's legislation to ensure that the Act prevails in the event of a conflict with another Act or regulation preventing the disclosure of such information; and
- (b) The addition of relevant public organizations to s. 41 of O.Reg. 563/21, which outlines the list of bodies compellable by the College through s. 47 and s. 47.1 to provide information, including personal information within the meaning of provincial privacy legislation. These additional entities could include the following:

- Police forces
- School boards
- Health care professionals
- Children's Aid Societies
- Ontario Ministry of the Attorney General
- Other professional regulators, such as the College of Early Childhood Educators of Ontario and organizations such as administrative authorities responsible for enforcing consumer protection legislation

Note that in either case, it appears that the College could rely on s. 49 of the *Act*, which allows the College to obtain a court order compelling a person to comply with the *Act*.

Recommendation

The second option may be more likely to succeed, particularly if the amendment were restricted to the College's general regulation alone. However, it may be the

case that an amendment to the list of entities in regulation must also be accompanied by an override provision in the *Act*.

Council Motion

Link to Strategic Initiatives

This proposal would strengthen transparency in how the College carries out its regulatory activities and the accountability with which it does so by obtaining relevant information on a timely basis about members' involvement in criminal on the public register. It would also give the College additional information about child protective matters relevant to any investigation into a complaint made against a member.

Prepared by:
Policy and Research Unit

Date:
September 2021

Appendix

Child and Family Services Act, ss. 180-182

Repealed. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the Legislation Act, 2006 – December 31, 2011.

Disclosure without consent

182. (1)A service provider may disclose a person's record without any consent referred to in section 181,

- (a) to persons who provide approved services as employees or agents of the service provider;
- (b) to a foster parent, if the person is a child who is in the foster parent's care;
- (c) to employees, officers and professional advisors of the service provider who require access to the person's record for the performance of their duties;
- (d) to a society, if the person is a child who is in the society's care under,
 - (i) an order made under Part III (Child Protection), or
 - (ii) a temporary care agreement or special needs agreement made under Part II (Voluntary Access to Services), unless the agreement provides otherwise;
- (e) to a peace officer, if the service provider believes on reasonable grounds that,
 - (i) failure to disclose the person's record is likely to cause the person or another person physical or emotional harm, and
 - (ii) the need for disclosure is urgent;
- (f) to a person who is providing medical treatment to the person whose record is concerned, if the service provider believes on reasonable grounds that,
 - (i) failure to disclose the record is likely to cause the person whose record is concerned physical or emotional harm, and
 - (ii) the need for disclosure is urgent; or
- (g) to a review team for the purposes of section 73 of Part III (Child Protection).

Idem: research

(2)A service provider may, with a Director's written approval obtained in accordance with the regulations, disclose a person's record to a person engaged in research, but that person shall not,

- (a) use or communicate information from the record for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any information that may have the effect of identifying a person whose record is disclosed.

Mandatory disclosure

(3)A service provider shall disclose a person's record without any consent referred to in section 181,

(a) to a program supervisor; or

(b) to a Director,

who requests its disclosure.

Prohibition

(4) A program supervisor or Director shall not use or communicate information from a person's record obtained under subsection (3) for any purpose outside the scope of his or her duties.

Notice of disclosure without consent

(5) A service provider who discloses a person's record under clause (1) (e) or (f) shall promptly give written notice of the disclosure to the person whose record was disclosed.

Proclamation

(6) This section shall come into force on a day to be named by proclamation of the Lieutenant Governor. R.S.O. 1990, c. C.11, s. 182.

Service provider was defined in s. 3(1) of the *CFSA* to mean the following:

(a) the Minister,

(b) an approved agency,

(c) a society,

(d) a licensee, or

(e) a person who provides an approved service or provides a service purchased by the Minister or an approved agency,

but does not include a foster parent;