

**REVIEW OF THE ONTARIO COLLEGE OF TEACHERS
INTAKE, INVESTIGATION AND DISCIPLINE PROCEDURES
AND OUTCOMES, AND THE DISPUTE RESOLUTION PROGRAM**

THE HONOURABLE PATRICK J. LESAGE, C.M., O.ONT., Q.C.

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FOREWORD

During the course of this Review, I received many e-mails, letters and submissions from members of the public and from participants in the education sector. I am most grateful to all of them.

I met with many who had the challenging task of educating me regarding the work of the College and some of the issues facing teachers, principals, supervisors and Boards of Education. The staff of the Ontario College of Teachers was unstinting in their assistance to help me understand their processes, policies and issues. To all of them I express my sincere thanks.

To the Registrars and senior staff of the College of Nurses of Ontario, the Royal College of Dental Surgeons of Ontario, the College of Physiotherapists of Ontario, The College of Physicians and Surgeons of Ontario, and the CEO and a number of Benchers of The Law Society of Upper Canada, my heartfelt thanks for the time you took to share with me your knowledge, insights and experience, from which I have liberally borrowed for this Review.

A particular thank you to Sarah Nath, Barry Stork and my counsel Lynn Mahoney, of Gowling Lafleur Henderson LLP, for their tremendous efforts to ensure this review became a fait accompli.

I BACKGROUND AND INTRODUCTION

A. Terms of Reference / Scope of Review

In August 2011, I was retained by the Ontario College of Teachers (the “College”), a professional self-regulating body, to review its Intake, Investigation and Discipline Procedures and Outcomes, and its Dispute Resolution Program and consider whether they protect the public interest (the “Review.”)¹

I was also asked, more specifically, to examine and consider issues including communication and publication practices, impartiality and timeliness of adjudication, training and legal support, appropriateness of disciplinary outcomes, confidentiality and the handling of concerns about its Members.

As part of the process of conducting this Review, I undertook discussions with key stakeholder groups and other interested parties² and reviewed relevant reports.

I will examine the issues in the context of the history and evolution of the College and the College Committees responsible for these functions.

¹ Attached as Annex A is a copy of the Terms of Reference.

² Attached as Annex B is a list of review participants.

B. History of the Ontario College of Teachers

Prior to the establishment of the Ontario College of Teachers, the Minister of Education alone had the power to cancel or suspend a teacher's certificate. In doing so, the Minister considered the recommendations made by the Relations and Discipline Committee of the Ontario Teachers' Federation acting pursuant to the *Teaching Profession Act*.

In May 1993, the Ontario government established the Royal Commission on Learning "to ensure that Ontario youth are well-prepared for the challenges of the 21st century."³ In December 1994, after extensive public consultation, the Commission completed its report, *For the Love of Learning*, which recommended the establishment of the Ontario College of Teachers as the professional self-regulatory body for teaching:

The Commission believes that the teaching profession in Ontario must now be considered equal to other established professions. Structures such as the Ontario Teachers Federation and its affiliates are in place to protect the economic interests and workplace rights of teachers. They also respond to some of the professional development needs of teachers, but not to the need to develop the profession of teaching itself.

...

In order to promote teaching to full professional status, we propose that a provincial self-regulatory body, a College of Teachers, be established. The College would be responsible for determining standards of teaching practice, regulating initial and on-going teacher certification, and accrediting teacher education programs, both pre-service preparation and on-going professional development. A majority of members of the College would be professional educators selected by their peers, but there would be substantial representation from the public, that is, non-educators. The fuller details of membership should be determined by the Ministry and education stakeholders, with the aim of achieving a balance between education providers and consumers.

³ Ontario, Royal Commission on Learning, *For the Love of Learning*, online: Ministry of Education <<http://www.edu.gov.on.ca/eng/general/abcs/rcom/full/royalcommission.pdf>> at 1.

...

Having said that professional educators should form the majority of its governing council, we do not see the college as an extension of the teacher federations and associations... Whatever mechanisms are adopted, it is critical that no one interest group have undue influence in the College.⁴

Following on this recommendation, on December 14, 1995, the government introduced Bill 31, and the *Ontario College of Teachers Act, 1996*⁵ (the “Act”), received Royal Assent in June 1996, establishing the Ontario College of Teachers’ authority to regulate and govern the profession of teaching.

Composition of Council

The College’s First Council (May 1, 1997 – November 1, 2000) was composed of 31 persons, 17 of whom were elected by and from members of the College, and 14 of whom were appointed by the Lieutenant Governor in Council. Of the 17 elected members, there were three designated positions: one supervisory officer, one employee of a private school and one employee of a faculty of education.

The election regulation⁶ at that time did not designate a specific position for principals or vice-principals because until April 1, 1998, principals and vice-principals could be members of the Ontario Teachers’ Federation and eligible for election in the broad teacher category. At this time five principals sat on Council. It was not until May 16, 2000, that a regulation came into force

⁴ Ontario, Royal Commission on Learning, *For the Love of Learning*, online: Ministry of Education <<http://www.edu.gov.on.ca/eng/general/abcs/rcom/full/royalcommission.pdf>> at 282-284.

⁵ S.O. 1996, c. 12 (“the *OCTA*”). Attached as Annex C is a copy of the *OCTA*.

⁶ *First Election*, O. Reg 344/96.

adding a fourth designated position, for a principal/vice-principal, since they were no longer part of the Ontario Teachers Federation.

The total elected and appointed individuals on Council remained the same (17 and 14 respectively). There were 13 members of teacher unions, plus the four designated teacher related positions, and 14 appointed positions.

On January 28, 2004, a *Toronto Star* article reported that the government was considering changing the structure of the College so that its governing Council would be “dominated” by teachers’ unions.⁷ Education Minister Gerard Kennedy was reported to have said that “working teachers” should have a majority on the College’s 31-member governing Council. The *Toronto Star* reported that the previous week teacher unions wrote a joint letter to Kennedy calling for 21 seats on the Council to be assigned to “classroom teachers,” up from 13. The *Toronto Star* article stated that Kennedy hoped to “depoliticize” the selection process by discouraging the unions from running “slates” of endorsed candidates for Council.

On March 2, 2006, the government introduced Bill 78 which received Royal Assent on June 1, 2006. The Bill changed the composition of the Council and created the Public Interest Committee, a purely advisory committee to the Council, comprised of public appointees.

As a result, there is a 37 member Council, 23 of whom are elected members of the College, and 14 are appointed by the Lieutenant Governor in Council.⁸ Of the 23 elected members, there are the four designated positions.

⁷ Ian Urquhart, “Teachers college tests Kennedy” *Toronto Star* (28 January 2004) A.13.

⁸ *OCTA*, s. 4(2).

In the current Council, of the 23 elected members, 19 are members of teacher unions, one a member of a principal/vice-principal association, and three employed in other aspects of teaching.

Members who hold senior elected or appointed positions in teacher unions, if elected to Council, are required to resign from these union positions before taking their seat on Council.⁹

Almost 45 years ago, the Honourable James C. McRuer examined professional self-regulation in the Ontario Royal Commission's *Inquiry into Civil Rights*. He explained that the legislative grant of self-regulation to a professional body is conferred for the purpose of the protection of the public:

The granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to the public interest. The power is not conferred to give or reinforce a professional or occupational status... "is self-government necessary for the protection of the public?" No right of self-government should be claimed merely because the term "profession" has been attached to the occupation...¹⁰

The McRuer Report identified the inherent risks of handing over powers of self-regulation:

The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are set and maintained. There is a clear public interest in the creation and observance of such standards. This public interest may have been well served by the respective bodies which have brought to their task an awareness of their responsibility to the public they serve, but there is a real risk that the power may be exercised in the interests of the profession or occupation

⁹ *Election of Council Members*, O. Reg. 293/00, s. 7.1(8) and Sched. 1.

¹⁰ Ontario, Royal Commission, *Inquiry into Civil Rights*, Report No. 1, Vol. 3 (Toronto: Queen's Printer, 1968-1971). The Honourable James C. McRuer, Commissioner at 1162.

rather than in that of the public. This risk requires adequate safeguards to ensure that injury to the public interest does not arise.¹¹

C. Objectives of the College

The objectives of the College¹² may be summarized as follows:

- to regulate the profession of teaching and to govern its members;
- to develop, establish and maintain qualifications for membership in the College;
- to accredit professional teacher education programs and ongoing education programs offered by post-secondary educational institutions and other bodies;
- to issue, renew, amend, suspend, cancel, revoke and reinstate certificates of qualification and registration, including additional certificates for supervisory officers;
- to provide for the ongoing education of members of the College;
- to establish and enforce professional standards and ethical standards applicable to members of the College;
- to receive and investigate complaints against members of the College and to deal with discipline and fitness to practise issues;
- to communicate with the public on behalf of the members of the College.

D. Council Committees

Four of the Council Committees are: the Investigation Committee which investigates complaints about Members; the Discipline Committee which adjudicates complaints against Members; the Fitness to Practise Committee, which addresses fitness to teach; and, the external Public Interest

¹¹ Ontario, Royal Commission, *Inquiry into Civil Rights*, Report No. 1, Vol. 3 (Toronto: Queen's Printer, 1968-1971). The Honourable James C. McRuer, Commissioner at 1166.

¹² *OCTA*, s. 3(1).

Committee which is an advisory committee to Council.¹³

i. Investigation Committee

The Council of the College appoints at least seven of its members to the Investigation Committee.¹⁴ At least two of those members must be appointees of the Lieutenant Governor in Council.¹⁵ No person who is a member of the Discipline Committee or the Fitness to Practise Committee can be a member of the Investigation Committee.¹⁶ The Chair of the Investigation Committee appoints the Chair of the panel who must be a member of the Committee.¹⁷

ii. Discipline Committee

The Council appoints at least 11 of its members to the Discipline Committee¹⁸ of which at least four must be appointees of the Lieutenant Governor in Council.¹⁹ The Council appoints one of the members as Chair.²⁰

Section 17 of the Act provides that a Discipline panel must consist of at least three persons,²¹ a majority of which must be members of the Committee.²² The panel must include at least one

¹³ The College also has the following committees: executive, accreditation, accreditation appeal, editorial board, election, finance, human resources, nomination, quality assurance, registration appeals, standards of practice and education and steering.

¹⁴ *OCTA*, s. 25(1).

¹⁵ *OCTA*, s. 25(2).

¹⁶ *OCTA*, s. 25(3).

¹⁷ *General*, O. Reg. 72/97, s. 21(2).

¹⁸ *OCTA*, s. 27(1).

¹⁹ *OCTA*, s. 27(2).

²⁰ *OCTA*, s. 27(3).

²¹ *OCTA*, s. 17(2)(#1).

²² *OCTA*, s. 17(2)(#2).

elected member of the Committee and at least one Lieutenant Governor in Council appointee.²³ There may also be a panel member from a roster of eligible panellists.²⁴ The Chair of the Discipline Committee appoints the Chair of the panel who must be a member of the Committee.²⁵

The “roster of panellists” must be current or former members of Council or a person appointed by the Lieutenant Governor in Council.²⁶ The Registrar must develop procedures for maintaining a list of members of the roster.²⁷ The Council appoints one of its employees as the Registrar and can appoint one or more deputy registrars.²⁸ The Registrar serves as secretary to the Council and is the chief executive officer of the College.²⁹

iii. Fitness to Practise Committee

Council appoints at least five of its members to the Fitness to Practise Committee.³⁰ At least one of the members must be a Lieutenant Governor in Council appointee.³¹ Council appoints the Chair.³²

²³ *OCTA*, s. 17(2)(#3).

²⁴ *OCTA*, s. 17(2)(#4). Pursuant to this section one can be a Member of a Discipline Committee panel without being a Member of the Discipline Committee. Pursuant to s. 17(3) of the *OCTA*, the Council may establish a roster of eligible panellists for a committee consisting of such persons as the Council considers qualified to serve as Members of a panel of the committee. Section 17(4) of the *OCTA* also permits the Lieutenant Governor in Council to appoint such persons to a roster of panellists as he or she considers appropriate. Section 33 of the College by-laws provides additional rules re: roster of panellists.

²⁵ *General*, O. Reg. 72/97, s. 22(2).

²⁶ College by-laws, s. 33.01. Attached as Annex D are selected excerpts of College by-laws.

²⁷ College by-laws, s. 33.02.

²⁸ *OCTA*, s. 9(2).

²⁹ *OCTA*, s. 4(3) and s. 9(3).

³⁰ *OCTA*, s. 28(1).

³¹ *OCTA*, s. 28(2).

³² *OCTA*, s. 28(3).

Council or the Executive Committee may direct the Fitness to Practise Committee to hold a hearing and determine any allegation of incapacity of a Member of the College.³³ The Fitness to Practise Committee must also hear and determine matters directed or referred to it by the Investigation Committee or by the Registrar.³⁴ Matters directed or referred to this Committee are heard by a three person panel selected pursuant to s. 17 of the Act.³⁵

iv. Public Interest Committee

The Minister of Education appoints at least three, and no more than five persons, who are not Members of the College to the Public Interest Committee, and designates one as Chair.³⁶ This Committee is to advise the Council with respect to the duty of the members of Council and staff, to serve and protect the public interest in carrying out the College's objectives and to perform such other duties as may be prescribed by the regulations.³⁷

Duty to Serve and Protect the Public Interest

Section 3(2) of the Act states the College has a “duty to serve and protect the public interest” in carrying out its objectives. The Act does not define “public interest.”

Since 2006, the Public Interest Committee has advised Council regarding public interest issues.

The following comments of the Public Interest Committee in its report “Finding the Meaning in

³³ *OCTA*, s. 29(2).

³⁴ *OCTA*, s. 31(1)(a).

³⁵ *General*, O. Reg. 72/97, s. 25(1).

³⁶ *OCTA*, s. 17.1(2) and (3).

³⁷ *OCTA*, s. 17.1(6).

the Public Interest” are insightful:

The College is an integral part of the society that it serves. Educators are both leaders and members of the community. As a regulatory body responsible for one of society’s most cherished responsibilities – preparing our young people to play a meaningful role in society – the College must be driven by the statutory imperative to act in the public interest, despite the lack of legislative clarity as to what that means.³⁸

A former Registrar of the College, Joe Atkinson, formulated the College’s mandate in the following manner:

My wish... is for the College to guarantee to the public that there is a certified, qualified teacher in every classroom, that they are competent, and that students are safe in the charge of those people...³⁹

The issues in this Review are considered in the context of the College’s mandate and the framework set out above.

³⁸ “Ontario College of Teachers Defining the Public Interest – Summary Report”, online: Ontario College of Teachers <http://www.oct.ca/publications/PDF/public_interest_summary_e.pdf>.

³⁹ Ontario College of Teachers, News Release, “‘Teachers’ Teacher’ Joe Atkinson Retires as College Registrar”, online: Ontario College of Teachers <http://www.oct.ca/media/news_releases/atkinsontribute.aspx?lang=en-CA>.

II DESCRIPTION OF EXISTING PRACTICES AND PROCEDURES

A. Intake

All queries made to the College are directed to the Intake Unit of the Investigations & Hearings department to be addressed. Queries consist of inquiries from members of the public, including Members of the College and School Boards.

When a query is received it is often not entirely clear whether the matter: (a) is within the College's jurisdiction; (b) relates directly to professional misconduct, incompetence or incapacity; or (c) is an "employability" issue that would more appropriately be resolved by the school or employer. In 2011, the College received approximately 1,200 queries and approximately 1,000 queries in each of the five preceding years. The majority of these queries do not result in the opening of an Intake file. Many are related to matters not within the mandate of the College, e.g. teachers employed at private schools who are not members of the College or curriculum matters that are redirected to the Ministry of Education, etc.

In 1998, 117 Intake files were opened; a peak of 272 were opened in 2009; and 242 were opened in 2011.

In a typical year, over 50% of the Intake files opened are the result of Registrar's complaints, which include notifications from School Boards.

Local Resolution

Where there is a link to professional misconduct, incompetence or incapacity, the matter is immediately transferred to the Investigation Department. Where appropriate, having regard to the overriding concern for the protection of the public interest, “local” or informal resolution may be attempted. Informal resolution strategies will not be contemplated if a student is at risk of harm or injury.⁴⁰ Possible strategies used in informal, local resolution may include referring potential complainants to the teacher, principal or superintendent.

If a public complainant is not agreeable to informal resolution, Intake staff will send the complainant a package including brochures about the process, and a Complaint Intake Form, to assist in filing a formal complaint with the College.

College by-laws require a complaint to be in writing, to include the name of the Member who is the subject of the complaint and a description of the conduct or actions of the Member about which the complaint is being made. In addition, where the complaint comes from a member of the public or a Member of the College, the complaint must contain the full name, address and telephone number of the person making the complaint.⁴¹

When a formal written complaint is received by the College, Intake staff may still attempt informal resolution if the complainant agrees. If there is no resolution, the formal written complaint is transferred to the Investigation stage, and thereafter, only the Investigation Committee is authorized to determine how a complaint will be addressed.

⁴⁰ Information provided to the Review from College staff.

⁴¹ College by-laws, s. 28.01.

Employer/Board Reports

The Act requires a Member's employer (School Board) to report to the College certain criminal offences and when members are terminated or restricted in their duties as a teacher. The Act mandates certain employer reports be made within 30 days.⁴² Employers can be penalized for contravening these requirements.⁴³ When the College receives such an employer notification, the Registrar may proceed with a formal complaint as the complainant.

Length of Stay at Intake

The average length of time a matter remains at the College's Intake stage is 42 business days.

Longer timelines occur when, for example, the complainant does not respond to the Intake staff. Delays can also result when employers or public complainants are unsure or are following other leads to deal with the matter and/or, in the College's view, it is a matter that could be best resolved elsewhere. Some of these files are "abandoned" subject to the Registrar exercising his/her option to proceed with the matter.

Delay at Intake will also occur if the employer reports or complaint forms contain insufficient detail and require follow up and clarification.

Another circumstance which contributes to delay in commencing an investigation occurs when the College learns of questionable conduct by a Member through, for example, an external

⁴² *OCTA*, s. 43.2(1).

⁴³ *OCTA*, s. 48.1.

source such as the media. The College normally waits for the employer to report the incident before proceeding. However, if a report is not received, and the College has independent knowledge of probable misconduct or incapacity, the Registrar would normally lodge the complaint.

Staffing constraints have contributed to slower turnaround during times of high volume and competing responsibilities.

B. Investigation

In some circumstances, at a very early stage, an investigator may utilize a Request for Direction. This allows the Investigation Committee to review the file and determine whether investigation is necessary and whether the matter should proceed. This is a worthwhile procedure for matters where there exists a substantial question, whether the issue is within the College's mandate or whether it is "frivolous, vexatious or an abuse of process."

In the usual circumstances, the staff investigator assigned to the complaint will prepare a summary of the allegations and request confirmation from the complainant that the summary is an accurate reflection of the complaint. The investigator will often ask the complainant for further information regarding the allegations and attempt to collect all relevant information. The Member is then notified of the complaint and advised that they have at least 30 days in which to submit in writing any explanations or representations concerning the matter.⁴⁴ This notice must include reasonable information about any allegations contained in the complaint, which can

⁴⁴ *OCTA*, s. 26(3)(b).

include information from the complainant, witnesses, employers and other agencies.⁴⁵ The investigation report and the Member's response (if there is one) are then submitted to a three person panel of the Investigation Committee. Neither the Member nor the complainant is present at the meeting of the Investigation Committee.

The Committee panel has many options as to how to dispose of a complaint. Based on the information it receives, the panel may decide to dismiss the complaint,⁴⁶ caution or admonish the Member⁴⁷ (if issues need to be addressed but do not warrant a disciplinary hearing), refer the matter in whole, or in part, to the Discipline Committee for a hearing if the information suggests incompetence or professional misconduct⁴⁸ or refer the matter to the Fitness to Practise Committee for a hearing if the information suggests the Member may be incapacitated.⁴⁹ The Investigation Committee may also take such other action as it considers appropriate in the circumstances provided that action is not inconsistent with the Act, the regulations or the by-laws.⁵⁰

The Investigation Committee may also consider, reject, modify or ratify a Memorandum of Agreement that has been voluntarily reached by the parties through Dispute Resolution.

The Investigation Committee is mandated by section 26(9) of the Act to use its best efforts to dispose of a complaint within 120 days of it being filed with the Registrar. This timeline commences once the complainant has signed and returned the Request to Initiate Investigation

⁴⁵ *OCTA*, s. 26(4).

⁴⁶ *OCTA*, s. 26(5)(b).

⁴⁷ *OCTA*, s. 26(5)(c).

⁴⁸ *OCTA*, s. 26(5)(a).

⁴⁹ *OCTA*, s. 26(5)(a).

⁵⁰ *OCTA*, s. 26(5)(d).

(RII) to the investigator.

The mandatory language of section 26(9) of the Act requires the Investigation Committee to consider and investigate complaints regardless of whether the conduct or actions of the Member are being considered by another agency or body. However, if there is a parallel criminal investigation the College often utilizes a “hiatus process” which puts the matter on hold pending the completion of the criminal investigation.

C. **Dispute Resolution**

“Suitability” Considerations

In order to promote the resolution of complaints, the College has developed a procedure referred to as the Dispute Resolution Process. To be suitable for Dispute Resolution, a complaint must be one that may be resolved in the public interest, without a full investigation or hearing. Mitigating and aggravating factors in the particular case are used to assess suitability for Dispute Resolution.

The College believes certain matters may not be suitable for Dispute Resolution, such as:

- the Discipline Committee has not previously dealt with a similar issue;
- the member has demonstrated an ongoing pattern of inappropriate conduct;
- criminal proceedings are ongoing;
- there are incapacity issues;
- there are highly contentious issues that impact school communities;

- the Member denies the essence of the complaint.⁵¹

The College currently does not use the Dispute Resolution Process for complaints that relate to sexual misconduct by a teacher. This has not always been the case.

A matter can enter the Dispute Resolution Process at any stage in the complaint process. If the matter appears to be one that the Investigation Committee would typically not refer to the Discipline Committee for a hearing, attempts at Dispute Resolution occur at the Investigation stage. In addition, matters referred to the Discipline Committee may be assessed for Dispute Resolution suitability at that stage.

At the Investigation stage, the Dispute Resolution Officer conducts an assessment review and prepares a report to the investigator, advising whether or not the matter in their view is suitable for Dispute Resolution. The investigator sends the Dispute Resolution assessment to the Registrar for approval.

A complainant and Member must both agree to the Dispute Resolution Process. If there is no mutual agreement to engage in the process, the matter proceeds through the usual investigation and/or hearing process.

As the Dispute Resolution Process is voluntary, the complainant or the Member may withdraw from the process at any time. In addition, the College representative may stop the process if it is not consistent with the public interest.

⁵¹ Information provided to the Review from College staff.

The Process

If a matter has been assessed as suitable for Dispute Resolution and the parties have agreed to participate, it is assigned to a Dispute Resolution Officer for attempted resolution. The Dispute Resolution Officer provides the Registrar a memorandum outlining proposed outcomes for his/her comment. If the Dispute Resolution Officer receives the “go ahead” from the Registrar, the Dispute Resolution Officer commences the process of negotiating a resolution with the parties or their lawyers. If an agreement is reached, a draft Memorandum of Agreement (“MOA”) is created. The terms of the MOA ought to reflect how an Investigation Committee would likely dispose of similar matters.

When the Secretary of a School Board reports a matter involving “incompetence” to the College,⁵² the Secretary must be a signatory to any MOA (e.g. unsuccessful Teacher Performance Appraisals).

When the parties have signed the MOA, it is forwarded to the Registrar for consideration and, if approved, signature. It is then forwarded to the Investigation Committee for its consideration.

For the MOA to become final and binding, the appropriate committee of the College, typically, the Investigation Committee, must ratify the MOA. The Committee may also reject the MOA entirely or propose changes. If either the complainant or the Member does not accept the proposed changes, the complaint proceeds as if Dispute Resolution had not taken place.

⁵² *Education Act*, R.S.O. 1990, c. E.2, s. 277.40(1) and 277.40.5(1).

Similar procedures are followed for Dispute Resolution at the Discipline Committee stage.

All discussions during the Dispute Resolution Process are confidential and without prejudice to the parties. If the matter is not resolved during the Dispute Resolution Process, or if the MOA is not ratified, members of the panel that rejected the MOA will not take part in subsequent consideration of the complaint.

Where a Dispute Resolution MOA includes conditions to be satisfied by the Member, a file is opened by the Dispute Resolution Officer to ensure the Member complies with those conditions. Dispute Resolution Officers also prepare summaries of Dispute Resolution decisions for *Professionally Speaking/Pour parler profession* (the official publication of the College) and complete public register forms to ensure that notations are placed on and removed from the public register as appropriate.

D. Discipline

If the Investigation Committee refers a matter to Discipline for a hearing, the file is (as earlier mentioned) assessed for Dispute Resolution suitability. If not considered suitable, it is forwarded to external prosecutors to issue the Notice of Hearing, make full disclosure and take all necessary steps to effectively and efficiently move the matter to a hearing before the Discipline Committee.

A Notice of Hearing summarizes the allegations against the Member. A summary of the allegations and the date of the hearing is available on the College's website 10 days before the hearing date.

A pre-hearing is normally scheduled at the earliest reasonable time. There is no set timeframe for a pre-hearing.

Disclosure of the College's case to the Member is governed by the Act. Prior to a hearing the Member must be given the opportunity to examine "documents that will be given in evidence at the hearing."⁵³

The Hearing

Hearings are formal, quasi-judicial proceedings and occur before a three-person panel of the Discipline Committee (or the Fitness to Practise Committee). The panels function independently from the College and receive legal advice from independent legal counsel.

Hearings of the Discipline Committee are open to the public but the Discipline panel may make an order that the public be excluded from a hearing, or any part of a hearing, if satisfied that:

- matters involving public security may be disclosed;
- financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of acceding to the request of the person who is alleged to be incapacitated;
- a person involved in a civil or criminal proceeding may be prejudiced;
- the safety of a person may be jeopardized.⁵⁴

⁵³ *OCTA*, s. 32(3).

⁵⁴ *OCTA*, s. 32(9).

Powers of Discipline Committee

There are 30 acts defined as “professional misconduct.”⁵⁵

The Discipline Committee may find a Member “incompetent” if:

...the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of a student of a nature or extent that demonstrates that the member is unfit to continue to carry out his or her professional responsibilities or that a certificate held by the member under this Act should be made subject to terms, conditions or limitations.⁵⁶

If the Discipline Committee, after a hearing, finds a Member guilty of professional misconduct or incompetence it may direct one or more of the following:

- the Registrar to revoke any certificate held by the Member under the Act;
- the Registrar to suspend any certificate held by the Member under the Act for a stated period, not exceeding 24 months;
- the Registrar to impose specified terms, conditions or limitations on any certificate held by the Member under the Act;
- the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period.⁵⁷

For Members found guilty of professional misconduct, the Discipline Committee may also order one or more of the following:

- that the Member be reprimanded, admonished or counselled by the Committee or its delegate and, if considered warranted, direct that the fact of the reprimand,

⁵⁵ *Professional Misconduct*, O. Reg. 437/97, s. 1. Attached as Annex E is a copy of the Professional Misconduct regulation.

⁵⁶ *OCTA*, s. 30(3).

⁵⁷ *OCTA*, s. 30(4).

admonishment or counselling be recorded on the register for a specified or unlimited period;

- a fine in an amount that the Committee considers appropriate, to a maximum of \$5,000;
- the finding and the order of the Committee be published, in detail or in summary, with or without the name of the Member, in the official publication of the College and in any other manner or medium that the Committee considers appropriate in the particular case;
- fixed costs to be paid by the Member to the College.⁵⁸

When the Discipline Committee concludes that an allegation of professional misconduct or incompetence was not proven, the Member can request this determination be published in the official publication of the College.⁵⁹

The Discipline Committee must serve its decision, with reasons, on the parties and the complainant.⁶⁰ Where the hearing was closed, it may serve its decision on the complainant without reasons.⁶¹

A party to a proceeding before the Discipline Committee may appeal to the Divisional Court.⁶²

E. Fitness to Practise

Fitness to Practise Committee panels hear and determine matters related to incapacity of Members. The panel determines whether the Member is unfit to carry out his or her professional responsibilities. The Fitness to Practise Committee panel may revoke the Member's teaching

⁵⁸ *OCTA*, s. 30(5).

⁵⁹ *OCTA*, s. 30(8).

⁶⁰ *OCTA*, s. 32(13).

⁶¹ *OCTA*, s. 32(14).

⁶² *OCTA*, s. 35(1).

certificate,⁶³ suspend the Member's teaching certificate for up to 24 months⁶⁴ and/or impose specific terms, conditions or limitations on a certificate.⁶⁵ Such terms may include requiring the production of evidence satisfactory to the Committee that any physical or mental condition or disorder in respect of which the penalty was imposed has been resolved.⁶⁶

Fitness to Practise Committee hearings take place in the same manner as Discipline Committee hearings, except they are generally not open to the public.⁶⁷

Having described the structures, processes and procedures at the College of Teachers, I will now highlight some of the issues that have been raised and recommend some solutions.

⁶³ *OCTA*, s. 31(3)(#1).

⁶⁴ *OCTA*, s. 31(3)(#2).

⁶⁵ *OCTA*, s. 31(3)(#3).

⁶⁶ *OCTA*, s. 31(4).

⁶⁷ *OCTA*, s. 32(8).

III DISCUSSION OF ISSUES

It has become clear to me that two primary challenges face the College. Transparency and efficiency. Many of the issues raised with me during the consultations which I will address in this Report can largely be resolved if transparency and efficiency become a focus of the College. In addition, I will make specific recommendations relating to procedural and legislative changes that I believe will better serve the mandated “public interest.”

A. Improved Communication with the Public

It surprised me how little is known of the role of the College, even amongst members of the teaching profession. The College should better explain its role to its membership as well as the public. This would include explaining the scope of the College’s mandate and the distinction between its responsibility and the responsibility of School Boards. Both the College and the School Boards must be clear in their dialogue with the public as to the role each plays in overseeing teachers’ professional responsibilities. There needs to be a delineation of matters that should be reported to the College, matters that should be reported to the Board and matters that may properly be reported to either.

Communication will assist with the goal of transparency. The Public Interest Committee in 2010 recommended conducting research into the general public’s awareness of the College and its mandate. Council did not act on this recommendation. It is clear from my consultations, however, that Council must develop a communications strategy so that its role is clear and available to all.

B. Form of the Complaint

The College's by-laws require a complaint filed pursuant to s. 26 of the Act to be in writing.⁶⁸ The *Health Professions Procedural Code*⁶⁹ ("HPPC") provides for a "recorded" complaint.⁷⁰ I believe the College's public mandate would be better fulfilled if its by-law was changed to permit, as does the HPPC, a "recorded" complaint. I recommend the by-law be changed so as not to exclude or reject complaints made in a form other than writing.

C. Employer Reports to College

Legislation governing mandatory reporting of certain conduct to the College by employers (generally School Boards) is far from clear and results in confusion.

There is a lack of clarity between the College and the employer regarding the "triggers" for the reporting, the timeframe and the information to be provided. The Act requires an employer to report to the College within 30 days the termination of a Member or "restrictions on the member's duties."⁷¹ The Act provides an employer must "promptly" report to the College when it becomes aware of certain specified criminal charges or conduct.⁷²

School Boards across the province differ in their understanding of the scope of their reporting obligation. The College needs to better define, for the School Boards, the meaning of terms such

⁶⁸ College by-laws, s. 28.01.

⁶⁹ Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18. Attached as Annex F are selected excerpts of the HPPC.

⁷⁰ HPPC, s. 25(4).

⁷¹ OCTA, s. 43.2.

⁷² OCTA, s. 43.3.

as “restrictions on the member’s duties,” for consistency across the province.

The College on occasion learns of misconduct from a media report rather than from a School Board. School Boards must be mindful of their obligation to report misconduct to the College to assist it in carrying out its mandate.

School Boards frequently do not provide all relevant material related to a complaint and fail to provide material in a timely manner. The Act clearly requires the School Board and others designated by the regulations to provide the College with information including “personal information” in respect of Members of the College.⁷³

It would be helpful if legislation provided a fairly tight timeframe within which the School Board is to provide the information. Legislation should also require that all relevant information be provided. It would include all relevant information which relates directly or indirectly to the matters being investigated.

We have also been advised that there is not always timely notification to the Member of a complaint. I suggest School Boards provide a copy of their reporting letter to the Member. With “public” complaints, I see no reason why the College would not advise the Member as soon as practicable of the complaint. The Member should be kept apprised of the status of the complaint. The Member should be provided with, at the very least, a summary of all the information known to the College and be updated so the Member is able to make a meaningful response to the investigators and the Investigation Committee.

⁷³ *OCTA*, s. 47(1).

D. The Investigation

It is important that members of a self-regulating profession respond to a complaint in a timely fashion. This problem is not unique to the Ontario College of Teachers. Other self-regulating bodies face similar problems, see *Law Society of Upper Canada v. Fleming*:

The failure of the member to respond to the Society's inquiries is a serious matter. A self-regulating profession cannot operate if its members do not respond to its inquiries. Nor can a self-regulating profession have the confidence of the public if its members do not demonstrate that they will co-operate in a system of self-governance which has been given in trust by the public to that organization.⁷⁴

The College should not grant Members indeterminate time to reply. The Act should be amended to permit a maximum of 60 days to reply. The College should proceed if there is no response within the prescribed period.

The complexities of the relationship between the College, School Boards, Children's Aid Societies and police was addressed by the Honourable Sydney L. Robins in his Report *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools*.⁷⁵ Mr. Robins noted the interplay between all these bodies in serving the public interest by protecting students:

There appears to be a level of suspicion between some teachers' unions and children's aid societies that is inconsistent with the ability of each to perform their respective jobs to their fullest potential. This level of suspicion is not confined to the relationship between teachers' lawyers and children's aid societies but may represent a broader level of distrust between children's aid investigators and the defence bar generally. Some of this tension is inevitable, given their respective

⁷⁴ *Law Society of Upper Canada v. Fleming*, 2005 ONLSP 30, [2005] L.S.D.D. No. 74 at para. 9.

⁷⁵ The Honourable Sydney L. Robins, *Protecting Our Students: A Review to Identify & Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General – Queen's Printer for Ontario, 2000).

responsibilities. However, there is much room for improvement. Everyone involved in our educational system has an interest in protecting students.⁷⁶

As mentioned earlier, the College has a “hiatus” process if there is a concurrent criminal investigation. If a Member is the subject of multiple investigations, including a College investigation, I recommend the College should only in exceptional circumstances place an investigation in hiatus pending criminal or Children’s Aid Societies investigations. There may be instances when it is expedient and efficient to place a College investigation on hold, or if the police or Children’s Aid Societies request the College to do so.

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*⁷⁷ 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”⁷⁸ 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.

Section 48 of the *Ontario College of Teachers Act* provides that every person engaged in the administration of this Act shall preserve secrecy with respect to all matters that come to his or

⁷⁶ The Honourable Sydney L. Robins, *Protecting Our Students: A Review to Identify & Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General – Queen’s Printer for Ontario, 2000) at 283.

⁷⁷ R.S.O. 1990, c. C.11.

⁷⁸ “record” ... means all recorded information... that (a) relates to the person; (b) is recorded in connection with the provision of an approved service, or a service purchased by an approved agency, to the person or a member of the person’s family, and (c) is under the control of a service provider.

her knowledge in the course of his or her duties and shall not communicate any of those matters to any other person except: (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceeding under this Act or the regulations or by-laws; (b) to his or her counsel; (c) with the consent of the person to whom the information relates; or (d) to the extent that the information is available to the public under this Act.

The *Regulated Health Professions Act, 1991*⁷⁹ (“*RHPA*”) provides for broader exceptions to the non-disclosure of what would otherwise be confidential information, including “to a body that governs a profession inside or outside of Ontario”⁸⁰ and “to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.”⁸¹ I understand the College of Physicians and Surgeons of Ontario has recently requested further exceptions to this duty of confidentiality to recognize the importance of sharing necessary information among others in the medical field so as to better protect the public.

The College of Teachers’ Public Interest Committee indicated⁸² that an expansion of the exceptions to the statutory duty of confidentiality would be consistent with a number of vehicles through which the College currently collects or discloses information that would otherwise be confidential. For example, the College may now collect, use and disclose confidential information with other entities having the same designation as an “investigative body” under federal privacy legislation. Also, the College may require entities, such as private schools, to disclose information that is “personal information” within the meaning of provincial privacy

⁷⁹ S.O. 1991, c. 18.

⁸⁰ *RHPA*, s. 36(1)(c).

⁸¹ *RHPA*, s. 36(1)(e).

⁸² Public Interest Committee Workplan for the 5th Council.

legislation (see s. 47(1) of the Act). As a result, the Public Interest Committee believed that an expansion of the exceptions to the statutory duty of confidentiality to the following entities would be appropriate, a recommendation with which I agree:

- a body that governs a profession inside or outside of Ontario;
- a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

In addition, I recommend that there be much greater sharing of information between the College and School Boards, in both directions. I encourage the College and the Ministry to implement such changes.

The College has requested section 48 of the Act be amended to allow the College to provide a Member's response to a complainant. Although teacher and principal concerns about this were raised in October 2010, Council passed a motion to request amendment to the legislation.⁸³

In my view, the Member's response should be provided to the complainant except where the response would unnecessarily exacerbate the tension between the Member and the complainant.

In which case, a summary of the response may be provided.

⁸³ The motion passed read as follows:

That Council request an amendment to the introductory paragraph of s. 48(1) of the *Ontario College of Teachers Act* as well as to s. 48(1)(a) that is similar to that contained in s. 36(1)(b) of the *Regulated Health Professions Act*, with the following recommended language:

48.(1) Every person employed, retained or appointed for the purposes of administration of this Act and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

(a) in connection with the administration of this Act including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members' incapacity, incompetence or acts of professional misconduct or the governing of the profession;

Another suggestion made by the Public Interest Committee which promotes expediency and the public interest is to allow the Registrar, in an emergency situation, to appoint an investigator if the Registrar believes the Member's conduct is likely to expose a student to harm or injury, and there is no time to seek the approval of the Executive Committee.⁸⁴

This is similar to the power contained in s. 75(2) of the *HPPC*.⁸⁵ I recommend that such authority be given to the Registrar.

E. Dispute Resolution at Investigation Committee

The College has 18 policies and procedures related to Dispute Resolution, but there are currently no legislative provisions related to the process. The College has suggested that clear legislative authority and direction regarding the use of the Dispute Resolution Process would be of assistance. I agree.

Dispute Resolution policies provide that protection of the public interest is the central focus of all Dispute Resolution activity.⁸⁶ The policies outline procedures to ensure the public interest is protected:

- The Registrar only enters into agreements that, in his or her view, protect the public interest and are similar in scope and nature to the result expected following a full

⁸⁴ September 27, 2011 Report of the Public Interest Committee.

⁸⁵ *HPPC*, s. 75(2).

The Registrar may appoint an investigator if,

- (a) the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately; and

- (b) there is not time to seek approval from the Inquiries, Complaints and Reports Committee.

⁸⁶ Information provided to the Review from College staff.

investigation or contested hearing

- The College Committee considering Dispute Resolution matters only ratifies those agreements that, in its view, protect the public interest

However, notwithstanding the College policies and procedures, the public perception is that matters are dealt with behind the “Dispute Resolution screen.” A major problem facing the Dispute Resolution Process is that of transparency. I believe, consistent with long-standing practices in Civil, Criminal and Family law, as well as at many self-regulating Colleges, it is important that there be a Dispute Resolution Program at the College. However, the Dispute Resolution Program must be clear in its scope. The Program, its policies and procedures must be readily available to the public on the College’s website. A Committee considering such a resolution must be totally transparent as to the existence of the agreement and the reasons why the Committee accepts it.

If the complaint, if proven, would likely result in the Member receiving a caution or admonishment by the Investigation Committee, that matter should be in the Dispute Resolution stream. Such decisions should not, in the normal course, be publicized nor should the information be entered on the register. The complainant, however, should be notified of both the process and the result. Other matters should not be resolved by way of Dispute Resolution at the Investigation Committee stage.

To promote efficiency, a single member of the Investigation Committee should have authority to dispose of such matters. The single member model is currently provided for in the College’s

Rules of Procedure for pre-hearings.⁸⁷ I recommend a similar procedure be authorized and available for Memorandum of Agreement resolutions.

The Dispute Resolution Officer should take all reasonable steps to consult with the School Board, or complainant who is a member of the public, before reaching an agreement with a Member regarding a complaint. However, it should be clear that the final decision to place an agreement before the Investigation Committee rests with the College.

Notwithstanding the above comments, where the allegation relates to sexual abuse or sexual misconduct, it should not be eligible for Dispute Resolution at the Investigation stage. These matters must be dealt with in the public forum of a Discipline Committee hearing, after referral by the Investigation Committee.

Fast Track Process

If there has been a criminal conviction for the same conduct that is before the College, and the Member wishes to plead guilty or for any reason the Member is not contesting the allegation, the complaint should be “fast tracked” directly to the Discipline Committee, thus avoiding unnecessary delay of further investigation.

I recommend legislation be amended to permit, on consent of all parties, a matter be sent directly to the Discipline Committee.

⁸⁷ Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee, Rule 6.01(2).

F. Investigation Committee Process

The range of authority of an investigation committee has been aptly described by the Superior Court (Ont.) in *McKee v. Health Professions Appeal and Review Board*:

The nature of the powers conferred upon the ... Committee is indicative of its role in the statutory scheme: it has no power to make determinations or findings of fact concerning incompetence, incapacity, failure to meet standards or professional misconduct. Rather, its role is to screen complaints and to stream them. By reason of its composition and the ambit of its jurisdiction, the ... Committee is a specialized body having particular sensitivity and experience with issues that arise in complaints concerning members of the College. As well, it is apparent from the powers conferred by the legislation that the ... Committee is vested with the discretion as to where and how to allocate the College's resources in dealing with complaints it receives.⁸⁸

The College's Investigation Committee dealt with 70 matters in 1998, 220 matters in 2009 and 172 matters in 2011.⁸⁹ Of these, between 1998 and 2009, the Investigation Committee referred 26% - 47% to either the Discipline Committee or the Fitness to Practise Committee. A higher proportion, almost 50%, were referred in 2011.⁹⁰

i. Complaints not Forwarded for Investigation

The Investigation Committee considers and investigates complaints regarding the conduct or actions of a Member of the College made by: (a) a member of the public; (b) a Member of the College; (c) the Registrar; or (d) the Minister.⁹¹ However, the Investigation Committee shall refuse to consider and investigate a complaint if, in its opinion: (a) the complaint does not relate

⁸⁸ *McKee v. Health Professions Appeal and Review Board*, [2009] O.J. No. 4112 at para. 13 (Div. Ct.).

⁸⁹ These statistics do not include withdrawn or abandoned matters.

⁹⁰ Of those not referred, some were issued cautions or admonishments and some were resolved through Dispute Resolution.

⁹¹ *OCTA*, s. 26(1).

to professional misconduct, incompetence or incapacity on the part of a Member; or (b) the complaint is frivolous, vexatious or an abuse of process.⁹²

“Frivolous, Vexatious or an Abuse of Process”

There has been a significant decrease in the number of complaints found not to relate to professional misconduct, incompetence or incapacity, or found to be frivolous, vexatious or an abuse of process. The number of complaints that were not investigated were 55 (2008), 55 (2009), 5 (2010) and 7 (2011).⁹³

Since January 2010, the Investigation Committee has received training from legal counsel in the interpretation of “frivolous, vexatious or an abuse of process.” I have reviewed some of the training materials and find they explain well the appropriate criteria.

Should the test of “frivolous, vexatious or an abuse process” be reconstructed? What type of complaints do not require a full investigation?

In a case involving the *Police Services Act*, the Ontario Court of Appeal held, when considering whether a complaint is “frivolous or vexatious,” the Committee should be satisfied there is a reasonable basis or an “air of reality” to the evidence before proceeding to the next stage.⁹⁴

The test used for assessing whether complaints to the Canadian Judicial Council are “frivolous

⁹² *OCTA*, s. 26(2).

⁹³ Information provided to the Review from College staff.

⁹⁴ *Corp. of the Canadian Civil Liberties Assn. v. Ontario (Civilian Commission on Police Services)*, [2002] O.J. No. 3737 at para. 67 (C.A.).

and vexatious” includes: “... trivial, vexatious, made for an improper purpose, manifestly without substance, or does not warrant further consideration...”⁹⁵

Some suggest where the subject matter of a complaint has already been investigated in another forum (e.g at the School Board) and found not to be substantiated, the College should exercise its discretion to treat the complaint as frivolous and vexatious, unless the complainant has new relevant information that could not have been known at the time that the prior investigations were completed, or evidence to suggest that the prior investigations failed to consider relevant information that was available at the time.

To ensure the College is not a duplicative adjudicator, to conserve resources and to meet its statutory obligation for the timely disposal of complaints, particularly for employer reports, the Investigation Committee should ask themselves: (1) has the School Board made findings of fact with respect to the complaint; (2) if so, has the School Board dealt with the matter in a manner that adequately protects the public interest; and (3) has the complainant been advised of the nature of the School Board’s decision. If so, the Committee should give serious consideration to whether it should further investigate and/or refer the matter to the Discipline Committee or the Fitness to Practise Committee.

To enable the Investigation Committee to be more effective in screening complaints which ought not proceed, language should be added to s. 26(2) of the Act, that the Investigation Committee shall decline to investigate if “it was made for an improper purpose, manifestly without

⁹⁵ Canadian Judicial Council, “Procedures for Dealing with Complaints made to the Canadian Judicial Council about Federally Appointed Judges”, s. 3.5(a)(i), online: Canadian Judicial Council <<http://www.cjc-ccm.gc.ca/cmslib/general/CJC-CCM-Procedures-2010.pdf>>.

substance, does not warrant further consideration, or is not in the public interest to further investigate.”

Prosecutorial Viability Assessment

The Investigation Committee, when considering referring a matter to the Discipline Committee, should, in most cases, obtain a prosecutorial viability assessment from the College’s external counsel. This should assist in reducing the number of matters that are ultimately withdrawn at the Discipline Committee hearing stage.

ii. Delays

As of September 23, 2011, there were 308 open investigations, 79 of which were in Dispute Resolution.⁹⁶ Of the 308, 26 (just over 8%) were beyond the 120 days since the Request to Initiate Investigation was signed. Of the 26 cases, eight were delayed because the Member’s response had not been received, six were delayed awaiting information from the employer, police services, courts, Children’s Aid Societies or requested medical information, two were delayed awaiting witness responses and one was delayed because of difficulty reaching the Member for notification.

Although it appears there is a reasonable explanation for these delays, it is important that all the participants, from College staff, to School Boards, to Members, make a concerted, focused effort to ensure these matters move forward in a timely fashion.

⁹⁶ Information provided to the Review from College staff.

The Act provides the Investigation Committee “shall use its best efforts” to dispose of a complaint within 120 days of it being filed with the Registrar.⁹⁷ College policy outlines investigation timelines and expectations.

The *Health Professions Procedural Code* provides for a series of steps that must be taken if the panel has not disposed of a complaint within 150 days, including providing the member and complainant with written notice and reasons for the delay as well as the new expected date of disposition.⁹⁸

I recommend similar provisions in the *Ontario College of Teachers Act* to provide a consistent approach for delayed matters and allow more transparency to the reasons for the delay.

iii. Disclosure

The College is mandated to provide reasonable information about any allegations contained in the complaint to the Member.⁹⁹ The Member must also be given the opportunity to examine, before the hearing, any documents that will be given in evidence at the hearing.¹⁰⁰ The issue arises as to when that disclosure should be made.

Disclosure should occur as soon as possible, beginning at the Investigation stage and continuing throughout so the Member or, as is usually the case, Member’s counsel is made aware as soon as practicable what the Member is facing or potentially facing. The earlier in the process full

⁹⁷ *OCTA*, s. 26(9).

⁹⁸ *HPPC*, s. 28(3) and s. 28(4).

⁹⁹ *OCTA*, s. 26(4).

¹⁰⁰ *OCTA*, s. 32(3).

disclosure is made, the greater the likelihood that the matter will, in the public interest, proceed in an expedient and fair manner.

iv. Consideration of Prior Decisions

The Act does not contain provisions requiring the Investigation Committee to consider prior Investigation, Discipline and Fitness to Practise decisions involving the Member.

The Public Interest Committee recommended the Investigation Committee consider previous decisions involving a Member made by the Investigation Committee, Discipline Committee or Fitness to Practise Committee, unless the earlier decision did not relate to professional misconduct, incompetence or incapacity on the part of the Member.¹⁰¹

After considering the recommendation, the Investigation Committee directed staff to develop guidelines which were adopted by the Investigation Committee.¹⁰²

The *HPPC* specifically provides that their Investigation Committee “when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including... all available prior decisions involving the member of the Discipline Committee [and] the Fitness to Practise Committee... unless the decision was to take no further action...”¹⁰³

I recommend guidelines similar to the *HPPC* be embodied in regulation or legislation.

¹⁰¹ Public Interest Committee Workplan for the 5th Council.

¹⁰² Information provided to the Review from College staff.

¹⁰³ *HPPC*, s. 26(2).

v. Reporting to School Board

The sufficiency of the provisions in the Act governing the College reporting back to the School Boards about the decisions of the Investigation Committee was raised with me.¹⁰⁴ The nature of what is reported determines whether the current and/or former employers get notified, and of what they get notified.

There should be no distinction.

The Act should be amended such that the requirements are the same for the College reporting back to notifying and current employers.

G. Discipline Committee Process

The Honourable James C. McRuer in the Ontario Royal Commission's *Inquiry into Civil Rights* described the authority to discipline members of a self-regulating profession:

The most obvious feature of the power of a self-governing body to discipline its members is that it is clearly a judicial power within the meaning we have given to that term, i.e., it consists of the independent and impartial application of pre-determined rules and standards; no element of policy should be present in the exercise of this power. It is a power whose exercise may have the most far-reaching effects upon the individual who is disciplined. The sanction imposed upon one who has been found guilty of professional misconduct may be anything from a reprimand to expulsion from the profession... it is vital that procedural safeguards to ensure fairness be clearly established and rigorously observed.¹⁰⁵

¹⁰⁴ *OCTA*, s. 43.2(4) and s. 43.4(1).

¹⁰⁵ Ontario, Royal Commission, *Inquiry into Civil Rights*, Report No. 1, Vol. 3 (Toronto: Queen's Printer, 1968-1971). The Honourable James C. McRuer, Commissioner at 1181.

When reviewing the Discipline Committee process, issues relating to efficiency and transparency are apparent. There are concerns about the timeliness of the entire process. The impact of these delays can be significant. If the discipline process does not quickly and appropriately deal with matters of professional misconduct and incompetence, the public interest is not being served. Furthermore, if its decisions are not accessible and widely disseminated, the public cannot have confidence that the public interest is being protected.

School Boards have expressed concerns about outstanding complaints. When decisions remain pending for a lengthy period, significant costs are incurred. The teacher is placed on administrative leave. The School Board must pay a supply teacher. The delay in the communication of decisions can be a distractor in the work of schools and School Boards. Additionally, teachers who are under investigation, and who choose to move to another school district, create difficult situations for School Boards during the reference checking process. While recognizing the complexity of the process, timely information is critical. Like the School Board, the Member who is the subject of the discipline proceeding deserves an early conclusion to outstanding allegations.

The number of matters dealt with by the Discipline Committee has decreased steadily over the last few years - from 61 in 2009 to 37 in 2011.¹⁰⁶ The large majority of discipline hearings proceed with an agreed statement of facts and joint submission on penalty. Since 2005, there have only been 46 fully contested discipline hearings. Of these 46 hearings, 34 were heard over one or two days. Only three contested discipline hearings took longer than five days to complete

¹⁰⁶ Note: These include matters where there was a withdrawal of the Notice of Hearing. Sometimes multiple matters involving one Member may be combined, for example, if the College receives a parent complaint and School Board complaint at or near the same time.

(lasting 10 days, 15 days and 29 days).¹⁰⁷

When the Investigation Committee has referred a matter to the Discipline or Fitness to Practise Committee, the file is transferred to external prosecutors for carriage. They review the file and prepare a Notice of Hearing. The Notice of Hearing focuses on the allegations referred by the Investigation Committee and categorizes them as professional misconduct,¹⁰⁸ incompetence¹⁰⁹ and/or incapacity.¹¹⁰

The Notice of Hearing is sent to College staff to review for accuracy and then forwarded to the Registrar for signature. It is returned to the external prosecutors to serve on the Member. I am advised that there can be some period of delay in this process. This should not be a time consuming process.

I recommend timelines be set for the drafting, reviewing, signing and serving of the Notice of Hearing.

i. Composition of Discipline Panels

I have been advised delay is often occasioned by difficulty in scheduling a panel. Since January 2005, 49 individuals appointed to the Discipline Committee have served as panel members. Nine members who were appointed to the Discipline Committee never sat on a panel.¹¹¹ One former chair of Discipline sat on a high percentage of all matters that came to the Committee.

¹⁰⁷ Information provided to the Review from College staff.

¹⁰⁸ *Professional Misconduct*, O. Reg. 437/97, s. 1.

¹⁰⁹ *OCTA*, s. 30(3).

¹¹⁰ *OCTA*, s. 31(2).

¹¹¹ Information provided to the Review from College staff.

All Committee members should share equally in the work of the Committee. A range of experience of members brings different and valuable perspectives to the adjudication process.

In most self-regulated professions, a Hearings Co-ordinator identifies members of the Committee who are available and have no conflict. Because there has not, in the past, been as broad a rotation on the panels as there ought to be, I recommend the Hearings Co-ordinator provide a draft list of available panellists to the Chair of the Discipline Committee. The Chair should review the list and ensure that the selection of a panel be varied and balanced. The College and the public must be satisfied that all Committee members are selected for hearings and not a select few.

Peer Review

The College is specifically empowered to provide peer review for teachers, principals and vice-principals. In 2006, amendments to the Act included section 40(1) which specifically provided the Council [of the College] may make regulations:

14.2 requiring that a panel established to hear or review a matter relating to a principal or vice-principal must include a principal or vice-principal.

This amendment was also specifically referred to in the Minister's comments to the legislature, when the Bill was before the House in 2006.

Shortly after the Bill received Royal Assent, the College wrote the Minister of Education. They advised her "...the Council does not wish to exercise its authority at this time." They also advised the Minister of the Motion passed by College Council which affirmed their position that

peer review does not require regulations that would mandate peer review for one segment of their membership; and, that such a practice would open the door for other segments of the College's membership to request the same.

That position has apparently not changed in the ensuing five and a half years.

Although there may be some merit in the College's position, I do not accept its rationale. Teachers correctly assert one of the values of self-regulation is peer review, yet they deny principals/vice-principals this right. A principal facing an allegation of misconduct or incompetence will be adjudicated by teacher union members, even when the allegation may have come from a teacher and/or the conduct being complained of is a managerial issue. In my view, principals could not but come to the conclusion that there exists a reasonably founded apprehension of bias when their conduct, particularly in cases where teachers are the complainants, and/or the conduct in issue flows from a managerial action by the principal, is being adjudicated without a principal/vice-principal perspective.

I recommend that legislation be amended to require that a panel established to hear or review a matter relating to a principal or vice-principal must include a principal or vice-principal or retired principal or vice-principal.

Roster

The Act and College by-laws provide for the establishment and maintenance of a roster of

panellists for the statutory committees, which includes the Discipline Committee.¹¹²

Currently, there are only three roster panellists for the Discipline Committee. This is clearly inadequate. There must be sufficient French language representation so that these hearings are not delayed, which I understand is sometimes the situation. Striking a panel should rarely, if ever, be a cause for delay. On its face the Committee appears to have adequate members. However, the roster, particularly if expanded, will be available where required.

I recommend the government exercise its authority to appoint additional members to the roster,¹¹³ including persons who have no teaching background. Processes should be established to ensure an adequate number of bilingual and principal/vice-principal members.

ii. Scheduling Issues Resulting in Delay

We were advised that unavailability of counsel is the source of much delay. It is imperative that as soon as a Notice of Hearing has been served, a “scheduling hearing” be agreed upon or fixed, no later than 30 days from the date the Notice of Hearing was served. If required, a single member of the Discipline Committee should be authorized to conduct such hearing at which the parties or counsel attend, in person or by phone, to fix a pre-hearing date, dates for any required pre-hearing motions and hearing date(s). The pre-hearing date should be no later than 60 days after the scheduling hearing. The hearing date(s) should be within 60 days thereafter.

When setting hearing dates it is important that the parties be realistic in their time estimates, and

¹¹² *OCTA*, s.17(3) and s. 17(4) and College by-laws, s. 33.

¹¹³ *OCTA*, s. 17(4).

be expected to stay within them. It is unacceptable to have cases run beyond the scheduled times then be adjourned for weeks or months for continuation. To have hearings spread over months is not only terribly inefficient for the witnesses, the lawyers and the adjudicators, it also causes unnecessary stress to the Member and the adjudicators who have the obligation to write the decision.

iii. The Notice of Hearing

Currently, the hearing date and a summary of the allegations are posted 10 business days prior to a hearing. This is not sufficient. Interested parties, including the public, can only be informed as to when a matter will be heard if they check the website every single day. The Notice of Hearing must be posted when served on the Member and the website must disclose each step of the process and be updated with every scheduling change.

An issue has arisen regarding the content of the Notice of Hearing. The College's Rules of Procedure provide what must be contained in the Notice.¹¹⁴ The jurisprudence sets out the extent of the particularity required. It must be remembered that, like a pleading, the Notice of Hearing must contain a concise statement of the material facts and allegations, but not the evidence. The evidence is to be presented in a public forum where it will be heard and weighed by a trier of fact. The College must be mindful that these Notices of Hearing are publicly-available documents. Fairness to the Member and to the process dictates that care and consideration be given to its drafting.

¹¹⁴ Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee, Rule 4.01(1).

The issue of posting a Notice of Hearing containing lengthy and specific allegations, which are later withdrawn or on which the Member is found not guilty, troubles me. It is important that there be a public record of the Discipline Committee and the matters that are dealt with. It is equally important, in my view, that a Member, who has been either found not guilty or has had allegations withdrawn, should not be required to continuously face a public record of allegations on which he/she has been cleared. I do not have an easy solution to the conundrum. Some Members would say – there was a “public record” of the allegations against me – there should also be a public record of the allegations having been withdrawn or dismissed by the Discipline Committee. There is also the problem, if no mention of the results is posted on the register, the public may continuously remain aware only of the allegations and not know the result or if the matter is still outstanding.

I suggest this issue be resolved by discussions between counsel for the unions/association, who normally represent teachers/principals/vice-principals, and the College.

In recent years a significant number of matters brought to the Discipline Committee have been withdrawn. From 1999 until 2001 only one Notice of Hearing was withdrawn at the Discipline Committee stage. The increase in the number of Notice of Hearing withdrawals occurring after 2001 may, at least in part, be attributed to changes in the *Education Act* requiring failed Teacher Performance Appraisals to be reported to the College. Often there has been insufficient evidence to prove that this constituted “incompetence.”¹¹⁵ In 2011, almost 30% of all matters dealt with by the Discipline Committee resulted in Notice of Hearing withdrawals.

¹¹⁵ Many of these matters resulted in Notice of Hearing withdrawals as there was not enough evidence present for the College to prove incompetence.

In 2008, 81 matters were referred to Discipline or Fitness to Practise. In the same year, 33 were concluded by having the Notice of Hearing withdrawn. Twenty were withdrawn because there was no reasonable prospect of a finding of professional misconduct. They were not viable for prosecution for many reasons - witnesses would not testify, insufficient factual evidence, etc. I reiterate, prosecutorial viability opinions are often crucial when the Investigation Committee is considering whether or not to refer a matter to Discipline or Fitness to Practise. Such opinions should reduce the number of withdrawals and also make the publication of the Notice of Hearing a more measured step.

iv. *In Camera* Hearings

Section 32(7) of the Act outlines when disciplinary hearings can be closed to the public: (i) where matters involving public security may be disclosed; (ii) financial or personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; (iii) a person involved in a civil or criminal proceeding may be prejudiced; or (iv) the safety of a person may be jeopardized.¹¹⁶ I find this definition to be far too broad and general.

Courts, be they Family, Civil or Criminal, deal with very sensitive issues each and every day, yet it is extremely rare that they are closed for that reason. Regulatory hearings should be governed by those same principles. The overriding principle must be transparency and openness. All hearings must be open unless there are exceptional circumstances which require otherwise.

¹¹⁶ Very similar provisions are found in s. 45(2) and s. 45(3) of the *HPPC*.

v. Publication Bans

There is no provision in the *Ontario College of Teachers Act* that permits the Discipline Committee to order a publication ban.

Section 45(3) of the *HPPC* provides that if the panel orders the public excluded from a hearing, it may make necessary consequential orders to prevent public disclosure, including orders banning the publication or broadcasting of those matters. Such an order does not prevent the publication of anything contained on the register and available to the public.¹¹⁷

A legislative change was recommended that mirrors the provisions of the *HPPC* to enable Discipline panels to order publication bans on particular matters arising from Discipline proceedings.¹¹⁸ It was also noted that ordering a publication ban should be used sparingly and not as a regular practice.

Council recommended the following amendment to the *Ontario College of Teachers Act* at its November 2009 meeting:

- (1) Upon request, a panel shall make an order that no person shall publish the identity, or any information that could disclose the identity, of:
 - (a) any person under the age of eighteen years who is a witness in a hearing or who is the subject of evidence at a hearing;
 - (b) any witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness; or

¹¹⁷ *HPPC*, s. 45(4).

¹¹⁸ April 14, 2009 Issue Sheet.

(c) any person who is the subject of evidence at a hearing in relation to allegations of a member's misconduct of a sexual nature involving that person.

(2) A request for an order referred to in subsection (1) may be made by any person described in subsection (1), or, where the person is under the age of eighteen years, by the College.

(3) Notwithstanding any order made pursuant to this section, the information prescribed in section 23 of the Act concerning the member whose conduct was in issue at the hearing, shall be available to the public on the register.

This recommendation subsequently became part of the suggested amendments sent to the Minister of Education in March 2011.

The Robins Report recommended similar changes:

Recommendation 38: Publication bans upon identity

38.1 The *Statutory Powers Procedure Act* and the *Labour Relations Act, 1995* should be amended to specifically address publication bans upon the identity of affected persons and information that could disclose their identity. The Ontario College of Teachers Discipline Committee's Rules of Procedure should also specifically address such bans.

38.2 Such amendments should provide, *inter alia*, that:

- (a) publication bans are available, in the least, for witnesses or persons allegedly subjected to sexual misconduct relevant to the proceedings;
- (b) the tribunal shall inform, at the first reasonable opportunity, any witness under the age of 18 and any person allegedly subjected to sexual misconduct relevant to the proceedings of the right to apply for such an order;
- (c) such an order *shall* be made upon application of the witness or person allegedly subjected to sexual misconduct relevant to the proceedings or by the party sharing a common interest with that witness or person.

(Alternatively, such an order *shall* be made, unless the interests of justice otherwise requires.)¹¹⁹

I agree with that recommendation.

vi. Sanctions

Should there be mandatory minimum penalties for certain offences?

Section 51(5) of the *HPPC* provides that if a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel, in addition to other sanctions imposed, shall revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following: (i) sexual intercourse; (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact; (iii) masturbation of the member by, or in the presence of, the patient; (iv) masturbation of the patient by the member; (v) encouragement of the patient by the member to masturbate in the presence of the member.

The primary purpose of sentencing for professional misconduct is to ensure the public is protected from acts of professional misconduct. The British Columbia Court of Appeal stated the following:

In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of

¹¹⁹ The Honourable Sydney L. Robins, *Protecting Our Students: A Review to Identify & Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General – Queen's Printer for Ontario, 2000) at 261.

risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science...¹²⁰ (underlining mine)

Some factors taken into account in determining how the public might be best protected include:

- specific deterrence of the member from engaging in further misconduct;
- general deterrence of other members of the profession;
- rehabilitation of the offender;
- punishment of the offender;
- isolation of the offender;
- denunciation by society of the conduct;
- the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members;
- ensuring the penalty imposed is not disparate with penalties imposed in other cases.¹²¹

In determining a proper penalty for an offence, the following mitigation factors have been considered:

- the attitude of the individual after the offence was committed.¹²² If the individual recognizes that his or her conduct has been wrong, a lesser punishment is often imposed;
- the age and inexperience of the individual;¹²³
- whether the misconduct is the individual's first offence;¹²⁴
- whether the individual has pleaded guilty to the charge and taken responsibility for his or

¹²⁰ *McKee v. College of Psychologists of British Columbia*, [1994] B.C.J. No. 1778 at para. 7 (C.A.).

¹²¹ James Casey, *The Regulation of Professions in Canada* (Toronto: Carswell, 1994) at 14-6.

¹²² *Ratsoy v. Architectural Institute of British Columbia*, [1980] B.C.J. No. 1844 at para. 3 (S.C.).

¹²³ *In Re Percy E. Hagel*, [1912] M.J. No. 23 at para. 27 (K.B.).

¹²⁴ *College of Physicians and Surgeons of Ontario v. Boodoosingh*, [1990] O.J. No. 921 at p. 3 (Div. Ct.), affirmed [1993] O.J. No. 859 (C.A.).

her actions.¹²⁵ (Note: a refusal to admit guilt does not justify a higher penalty.);

- whether restitution has been made by the offender;¹²⁶
- the (otherwise) good character of the offender;¹²⁷
- a long unblemished record of professional service.¹²⁸

A penalty will be found to be unreasonable if it does not bear a direct relationship to the wrongdoing that the individual committed.¹²⁹

The importance of considering previous sentences imposed in other instances of professional misconduct has been stated in the following manner:

Any sentencing involves an onerous exercise of will that involves a conscious act of balancing and comparison... A conscious comparison should be made between the case under consideration and similar cases wherein sentences were imposed...¹³⁰

Cases involving sexual abuse and sexual misconduct by a teacher involving a student are most serious offences. This is a fundamental violation of the trust the public has placed in that teacher.

In my view, the penalty for such violations should almost invariably be revocation of membership and the authority to teach. Anything less brings disrepute on the College and the profession. Having said that, my experience as a Crown Attorney, as a judge, and now as a public lawyer, causes me to be reluctant to recommend mandatory minimum sentences. The

¹²⁵ *Hussein v. Ontario College of Pharmacists*, [1990] O.J. No. 1755 (Div. Ct.).

¹²⁶ *In Re Percy E. Hagel*, [1912] M.J. No. 23 at para. 25 (K.B.).

¹²⁷ *Conforzi v. Assn. of Professional Engineers of Ontario*, [1987] O.J. No. 940 at p. 2 (Div. Ct.).

¹²⁸ *Conforzi v. Assn. of Professional Engineers of Ontario*, [1987] O.J. No. 940 at p. 2 (Div. Ct.).

¹²⁹ *Adamo v. College of Physicians and Surgeons of Ontario*, [2007] O.J. No. 1168 at para. 40 (Div. Ct.).

¹³⁰ *Stevens v. Law Society of Upper Canada* (1979), 55 O.R. (2d) 405 at 411 (Div. Ct.).

potential mischief and injustice a mandatory sentence may cause (and I use the word “may” advisedly), outweighs its merits. None of that, however, should detract from what I have earlier said: the penalty for sexual abuse or sexual misconduct should almost invariably result in the revocation of a teaching certificate.

I was asked to comment on the appropriateness of the disciplinary outcome in previous decisions. As one can see in comments made by various adjudicative bodies, authors and commentators, an “appropriate” penalty can at best only be described as “an appropriate range of penalty.” Sentencing is always a difficult and complex process. I must be cognizant of the fact that penalties imposed by this legislatively-created body are subject to judicial review and appeal. I am reluctant to impose my view of legally imposed dispositions except as already expressed in this report.

I am confident the Investigation, Discipline and Fitness to Practise Committee members, who have taken an oath to act in the public interest, will be cognizant of their responsibility to impose an appropriate penalty as required for offences which they are adjudicating.

vii. “Publication” of Decisions of the Discipline Committee

The Act provides that when the Discipline Committee finds a Member guilty of professional misconduct, it may direct that the finding and the order of the Committee be published (in detail or in summary, with or without the name of the Member) in the official publication of the College and in any other manner or medium that the Committee considers appropriate in the

particular case.¹³¹

As of October 5, 2007, full decisions of the Discipline Committee for hearings held in public have been available in the College's Margaret Wilson Library in both English and French, with the member identified but victim and child witness names and other identifying information removed. Electronic copies of these decisions in both English and French have been available on Quicklaw. Decision summaries have been available in English and French in the College's magazine and on the College's website where publication has been ordered. If the Discipline Committee orders that the Member's name be withheld, the decision summary will appear with the name withheld.

The *HPPC* does not give its discipline committee any discretion with respect to publication. Section 56 of the *HPPC* mandates publication, at least in the annual report.

I recommend legislation be amended to remove from the Discipline Committee any power to make orders restricting publication, other than a publication ban, as described above.

Following discussions with the Minister of Education and the College, the College has recently published full decisions of the Discipline Committee on its website.

Decisions of the Discipline Committee including those that flow from the Dispute Resolution agreements must be published and available on the website and the name of the Member must be included.

¹³¹ *OCTA*, s. 30(5)(#3).

Quarantined Decisions

Fourteen decisions of the Discipline Committee, resolved via the Dispute Resolution Program between 2001 and early 2007, have been “quarantined” - an agreement was made not to make these decisions publicly available in the library or on Quicklaw. It was the opinion of the College that these cases involved matters that were on the “low end” of the spectrum of matters heard by the Discipline Committee. Though allegations in some of these cases included allegations related to sexual abuse, in none of these cases was it alleged that there had been a sexual relationship with a student.

I have been advised this practice has ended. It should. I recommend there be regulation preventing such agreements in the future.

Redaction Guidelines

The College developed a redaction policy under which Discipline Committee decisions from open hearings are reviewed by staff and all identifying information about victims and child witnesses is redacted before the decisions are made available to the public.¹³²

Section 7 of the guidelines outlines when redacting of complainant/witness personal information should take place. Pursuant to s. 9.1(a) of the guidelines, the name of the Member who was the subject of the Discipline Committee proceedings should not be redacted. However, pursuant to s. 9.1(a)(i), notwithstanding s. 9.1(a), the Member’s name should be redacted if identification of

¹³² Information provided to the Review from College staff.

the Member would of necessity identify a vulnerable victim or witness.

viii. Contents of the Register

The Registrar of the College must maintain a register, available for inspection,¹³³ which must contain the following information:

- each Member's name and the class of certificate of qualification and registration and any certificates of additional qualifications that the Member holds;
- the terms, conditions and limitations imposed on each certificate of qualification and registration;
- a notation of every revocation, cancellation and suspension of a certificate of qualification and registration; and
- information that a committee of the College directs shall be included¹³⁴

Section 25.01 of the College by-laws further requires:

- each Member's College registration number;
- subject to any order of the Discipline or Fitness to Practise Committees, if a finding of professional misconduct, incompetence or incapacity has been made: (i) that fact, (ii) the date of the finding, (iii) the penalty, (iv) if under appeal, a notation to that effect, (v) if terms, limitations, conditions have been imposed, a notation to that effect;
- the date on which the Member's certificate of qualification and registration was issued and, if applicable, the termination or expiration date;
- the basic qualifications of the Member as entered on the Member's certificate of qualification;
- any additional qualifications of the Member as entered on the Member's certificate of qualification;

¹³³ *OCTA*, s. 23(1) and s. 23(3).

¹³⁴ *OCTA*, s. 23(2).

- any program of teacher education which has been completed by the Member and entered on the Member’s certificate of qualification.

Under the *HPPC*, a register shall be posted on the College’s website in a manner that is accessible to the public or in any other manner and form specified by the Minister.¹³⁵ The register shall contain “A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 ... until the matter has been resolved.”¹³⁶ The *Ontario College of Teachers Act* does not specify that the register shall be posted on the College’s website, nor that there be notations of all referred matters until resolved.

The Public Interest Committee has recommended an amendment to the College’s legislation or by-laws to provide that the public register contain a reference to a Notice of Hearing once the notice has been issued.¹³⁷ I agree with this recommendation. I also recommend the Act mandate that the register be posted on the College’s website.

Undertakings, Agreements and Restrictions

The by-laws of the Royal College of Dental Surgeons of Ontario allow for the inclusion on the register of restrictions as a result of an undertaking or agreement between the member and the College. It also allows a summary of a restriction imposed on a member’s right to practise that has been imposed by a “court or other lawful authority.”¹³⁸ This could include restrictions as a result of bail conditions or a criminal conviction resulting in incarceration or a sentence

¹³⁵ *HPPC*, s. 23(5).

¹³⁶ *HPPC*, s. 23(2)(#6).

¹³⁷ September 27, 2011 Report of the Public Interest Committee.

¹³⁸ Royal College of Dental Surgeons of Ontario, by-law No. 7, s. 15.2 and s. 15.3.

amounting to house arrest.

The Public Interest Committee has recommended an amendment to the legislation or by-laws to allow for the placement on the public register of undertakings and information about the results of criminal proceedings involving the Member.¹³⁹

I agree with this recommendation and would suggest a by-law provision similar to that of the Royal College of Dental Surgeons of Ontario.

Also raised was a concern that the posting on the register should match precisely any MOA that resulted in an order. The College must be careful regarding the accuracy of the posting to the register.

Removal of Information from the Register

The Ontario College of Teachers by-law 26.01¹⁴⁰ currently outlines information that must be removed from the register:

- If (i) a finding of professional misconduct, incompetence or incapacity was made against a Member, (ii) the penalty imposed was a reprimand, admonishment, counselling, or a fine, and (iii) at least three years have elapsed since the penalty order became final, the finding of professional misconduct, incompetence or incapacity and the penalty shall be removed from the register, subject to any order of the Discipline or Fitness to Practise

¹³⁹ September 27, 2011 Report of the Public Interest Committee.

¹⁴⁰ See also *OCTA*, s. 30(5)(#1).

Committees.

- If (i) terms, conditions or limitations were imposed upon a Member's certificate, and (ii) the terms, conditions, or limitations have been removed, the fact and content of the terms, conditions, or limitations shall be removed from the register.

The College of Physicians and Surgeons of Ontario ("CPSO") by-laws provide that a finding of professional misconduct and a penalty of reprimand or fine is not removed from the register until at least six years have elapsed since the penalty order became final.¹⁴¹

The Ontario College of Teachers' by-laws provide for removal from the register after three years (subject to the order of a committee) and applies to matters of professional misconduct, incompetence or incapacity where a reprimand, admonishment, counselling or fine have been imposed. On the other hand, the CPSO removal applies only to a reprimand or fine and all other matters remain recorded on its register.

I recommend that unless the Committee orders a longer period, the finding is to be removed from the register if at least three years have elapsed, from the date of a finding of professional misconduct, incompetence or incapacity, if a penalty of reprimand, admonishment, counselling or fine have been imposed.

If a suspension or revocation is imposed, it shall remain on the register.

¹⁴¹ CPSO general by-law, s. 50.1(1)(e).

ix. Reinstatement and Variation Hearings

When a Member's certificate is suspended or revoked, the Member may apply for reinstatement a year after the decision is rendered. A Member may also apply for a variation proceeding when they wish to remove or modify terms, conditions or limitations placed on their certificate. Hearings of the Discipline Committee and Fitness to Practise Committee involving reinstatement or variation are closed to the public.¹⁴² This must be changed.

The Public Interest Committee recommended and Council has passed a motion recommending amending the College's legislation to reflect the following:

- Where the original disciplinary proceedings were held in public, the reinstatement or variation proceedings should also be held publicly unless there are compelling considerations that might dictate otherwise.
- Where the fitness to practise proceedings were held with the public excluded, the subsequent reinstatement or variation proceedings should also be held *in camera* unless the Member makes the request that they be public.¹⁴³

The Public Interest Committee found no justification, other than legislation, to have all reinstatement or variation proceedings before a Discipline Committee conducted *in camera*. It believed that the principles that determined whether the original proceedings were held publicly or closed are equally relevant at the reinstatement and variation stages. It stated that where

¹⁴² *OCTA*, s. 33(9) and s. 33(14).

¹⁴³ Public Interest Committee Work Plan for the 5th Council, and Council Meeting Minutes June 3-4, 2010.

reinstatement or variation proceedings originated from Discipline proceedings that were public, both the public and members of the profession continue to have a vested interest in the outcome of such proceedings, which should be public.

These recommended amendments were sent to the Minister of Education in March 2011.

Under the *HPPC*, reinstatement hearings are presumed to be open to the public, absent compelling reasons to hold it *in camera*.¹⁴⁴ Where the underlying revocation or suspension was based on the member's incapacity, the application for reinstatement is referred to the Fitness to Practise Committee, and the hearing would normally be held *in camera*.¹⁴⁵

There is no valid reason why reinstatement or variation proceedings flowing from public hearings should be held *in camera*. I agree with the Public Interest Committee recommendation.

A Member whose certificate has been revoked or cancelled can reapply after one year for reinstatement (assuming the Discipline Committee did not fix the period).¹⁴⁶ The *HPPC* provides that in cases of sexual abuse, at least five years must elapse before reapplying.¹⁴⁷ I recommend that the one year period in the *Ontario College of Teachers Act* be amended and extended to five years for sexual misconduct.

¹⁴⁴ *HPPC*, s. 73(3)(#7).

¹⁴⁵ *HPPC*, s. 73(4)(#10).

¹⁴⁶ *OCTA*, s. 33(4).

¹⁴⁷ *HPPC*, s. 72(3)(a).

x. Scheduling the Hearing and Reaching a Decision

Statistics I have been provided disclose significant periods of delay between the time the Notice of Hearing is issued and the Discipline Committee decision released. I have already identified and commented on some of the reasons for this delay. There are other factors which include hearing schedules, the decision making process and the actual writing of the decision.

I recommend the Discipline panel schedule sittings on consecutive days, and that the sitting schedule be for full days, five days a week. But for exceptional circumstances, there should be no period of interruption from the commencement of the hearing to its conclusion. The evidence cannot be interrupted.

I am advised that the College with the proper resources can run two hearing rooms concurrently. Knowing the resources available to both the external prosecutors and the Member's counsel, I see no reason why there should be any delays. All parties involved in the process must be motivated to move the hearing along uninterrupted to its conclusion.

As I earlier indicated, it is not only inefficient, it is unfair to all involved to have hearings interrupted, let alone interrupted for weeks or months.

At the conclusion of the hearing the Discipline panel should remain and make every effort, no matter how long that may take, to arrive at a preliminary decision. One member of the panel should be designated, either by consensus or by the Chair of the panel, to write the decision. That member should, within a specified time period (60 days), write draft reasons and circulate them to the other panel members. If the members need to re-assemble at this time, such

meetings should, in the normal course, occur electronically. If that is not practical, then they should re-assemble on a weekend or time immediately available to all panellists. This process may occur more than once but it should always be with recognition that the written decision (including a dissent if there is one) be released within four months from the receipt of the last submissions.

The above recommendations are made knowing only too well the difficulty of managing hearings, the adjudicative process, decision making and writing decisions. It is difficult. It is demanding. It is time consuming.

I recommend that members of the Discipline Committee, the Fitness Committee or “the roster” who have outstanding decisions of more than one month not be assigned to another hearing and, preferably, that panels be structured with members who have no outstanding decisions. However, even utilizing the expanded roster, that may not always be possible.

I recommend that a policy be put in place that ensures all Investigation, Discipline, Fitness and roster members be provided judgment writing and decision making instruction programs on a fixed and regular basis. To that end the College can work cooperatively with other colleges, with SOAR¹⁴⁸ and the other talent available with experience in this specialized area. I encourage the College to consider hiring, or retaining, on an ad hoc basis, an editor. That will assist immeasurably in the decision writing process. Such assistance, whether from an editor or from independent legal counsel, will not in any way interfere with the independence of the decision or the process. Other colleges face similar challenges with the decision and judgment writing

¹⁴⁸ Society of Ontario Adjudicators and Regulators “SOAR”.

process. I encourage the College Committees to engage with other colleges, as is already the custom, to discuss and seek common improvements in the investigative and adjudicative process.

H. Stays Pending Appeal

Unless a Committee orders otherwise, when a Discipline or Fitness to Practise Committee decision is appealed, the decision and order of the Committee is stayed until disposal of the appeal.¹⁴⁹ If the College wishes an order to remain in effect pending the appeal, the onus is on the College to request the Committee to expressly provide such an order notwithstanding an appeal. If the Committee refuses to make such an order, the College may bring a motion to the Divisional Court, requesting the Court to lift the stay.

The Public Interest Committee recommended and Council has passed a motion recommending the Act be amended to provide that an appeal from a decision and order of the Discipline or Fitness to Practise Committee does not operate as an immediate and automatic stay of the order.¹⁵⁰

This recommendation subsequently became part of the suggested amendments sent to the Minister of Education in March 2011. I agree with Council's recommended amendments to the Act.

¹⁴⁹ *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 25(1).

¹⁵⁰ Public Interest Committee Work Plan for the 5th Council and Council Meeting Minutes June 3-4, 2010.

I. Teacher Performance Appraisals

Sections 277.40(1) and 277.40.5(1) of the *Education Act*¹⁵¹ provide that when a School Board terminates a teacher's employment as a result of three unsatisfactory teacher performance appraisals, the secretary of the School Board must promptly file a complaint with the College regarding the reasons for termination. In addition, where a teacher employed by a Board resigns while he/she is on review status, the secretary of the Board must promptly file a complaint advising the reasons for the teacher having been placed on review status.¹⁵²

The College's Council has recommended a revised structure for the notification by an employer (School Board) to the College.¹⁵³ Currently, such notification must be handled as a formal public complaint.¹⁵⁴ The Council recommendation would treat it as a regular employer notification which would give the Registrar flexibility in how to deal with the matter.

This recommendation subsequently became part of the suggested amendments sent to the Minister of Education in March 2011.

I agree with this recommendation.

J. Role of the Public Interest Committee

With respect to the need for a Public Interest Committee, it is interesting to note that, prior to the

¹⁵¹ R.S.O. 1990, c. E.2.

¹⁵² *Education Act*, R.S.O. 1990, c. E.2, s. 277.40(2) and s. 277.40.5(2).

¹⁵³ Council Meeting Minutes November 12-13, 2009 and information provided to the Review from College staff.

¹⁵⁴ *Education Act*, R.S.O. 1990, c. E.2, s. 277.40(3) and s. 277.40.5(3).

legislative changes in 2006, the majority of members of Council were College Members in a variety of positions (classroom teachers, supervisory officers, principals/vice-principals, etc.). When this was changed so that the majority of Council were now unionized classroom teachers, the Public Interest Committee was created. The members are not Council members but they are a Committee of Council. Their sole role is to provide advice to Council on matters relating to the “public interest.”

The Public Interest Committee is not well known, either by the profession or the public. The Committee and its recommendations, however, generally appear to carry little weight with the Council. I find their Reports to be first rate and deserving of much more attention by the Council. That being said, and it may be beyond my mandate to comment, I question whether the very existence of the Committee is overall beneficial. Their work is thoughtful and their “product” thought provoking, but I cannot help but think the very existence of this (external) Committee, consciously or sub-consciously, permits every Council member to accept it is the Public Interest Committee’s role and responsibility to deal with “public interest.” The reality is that public interest is a cornerstone of the Ontario College of Teachers. It must underlie each and every decision made by Councillors of the College. Public interest is and should be at the forefront of all the College’s work.

That is unfortunately not enhanced when the Public Interest Committee is seen to be, and is apparently, treated more like an appendage of the College rather than its foundation.

K. Composition of Council

As described in Chapter I, Council is comprised of 37 members, 23 elected by members of the

College and 14 appointed by the Lieutenant Governor in Council.¹⁵⁵ There has been cynicism expressed to us about the relationship of the teacher unions with Council. This is exacerbated when, as we are told, prior to each Council meeting, the elected members of Council meet with their respective unions to consider and be informed on the upcoming Council agenda.

Those optics do nothing to enhance the independence of the Discipline, Investigation and Fitness to Practise Committees that I have been asked to review.

Whilst I recognize that cases before the Investigation Committee and/or Discipline Committee would not be on the Council meeting agenda, the perception of impartial independent adjudication, which is vital at both the Investigation Committee and at the Discipline Committee, is compromised.

“Justice must be rooted in confidence.” There must be public confidence that decision-makers are impartial. Adjudicators cannot be subject to outside influence. They must make impartial decisions based solely on fact and law. Of equal importance, they must be seen by everyone as being capable of making impartial decisions. Those Committee members must ensure they distance themselves from the unions who almost invariably, through legal counsel, represent the Member who comes before them for adjudication. Participating in caucus meetings with their respective unions and associations, prior to Council meetings, sends a contrary message.

Members of Investigation, Discipline and Fitness to Practise Committees should be prohibited from attending such meetings. They should also be prohibited from holding any elected or

¹⁵⁵ *OCTA*, s. 4(2).

appointed union/association positions during their tenure on those Committees. To permit otherwise is to place a cloud over their important role as independent adjudicators.

I have attempted to make recommendations regarding those issues which I believe will improve transparency and efficiency of the College's processes and procedures. This will take effort on the part of all participants in this system. It will however, I believe, result in a process that will serve and protect the public interest.

IV CONCLUSION

The only other College of Teachers in Canada was the British Columbia College of Teachers. In January 2012, that College was disbanded by the Government of British Columbia. I have examined the structure in England which has recently been drastically revised. Little positive guidance can be gained either from the former B.C. experience or the English experience. I have met with and studied other self-regulating professions in Ontario. All that I approached and many who approached me were generous in the time and information provided for this Report. I am most grateful to all of them for the many wise and thoughtful practices they shared with me as well as the generosity of time and expertise they have provided.

As I have said throughout this Report, it is a privilege to self-regulate. With this privilege comes enormous responsibility. I believe the Investigation, Discipline and Fitness to Practise Committees of the Ontario College of Teachers are aware of their important responsibility to the public. I believe their role and the College's public perception will be greatly enhanced if the recommendations I have made are implemented.

V LIST OF RECOMMENDATIONS

Recommendation 1: The College should develop a communication strategy to increase public awareness of the College and its mandate. This would include explaining the distinction between its role and responsibility and that of School Boards. (Page 24)

Recommendation 2: Section 28.01 of the College's by-laws requires a complaint to be in writing. The by-law should be changed to accept complaints made in a form other than writing. An approach similar to that found in s. 25(4) of the *Health Professions Procedural Code* should be used. (Page 25)

Recommendation 3: To ensure consistency in reporting by School Boards, the College must better define "restrictions on the member's duties" (section 43.2 of the *Ontario College of Teachers Act*) which initiates the School Board's reporting obligation. (Pages 25-26)

Recommendation 4: Legislation should require the School Board to provide the College with all relevant information relating to a complaint within a defined timeframe. (Page 26)

Recommendation 5: School Boards should provide the Member a copy of the reporting letter they send to the College pursuant to s. 43.2 and s. 43.3 of the *Ontario College of Teachers Act*. For public complaints, the College should advise the Member as soon as practicable of the complaint. The Member should be kept apprised of the status of the complaint and provided with an updated summary of all relevant information known to the College. (Page 26)

Recommendation 6: The College should not grant Members indeterminate time to reply to a complaint. The Act should be amended to permit a maximum of 60 days to reply. The College should proceed if no response within the prescribed period. (Page 27)

Recommendation 7: The College should only in exceptional circumstances place an investigation in hiatus pending criminal or Children's Aid Societies investigations. College investigations should only be put on hold if it is expedient and efficient, or if the police or Children's Aid Societies request the College to do so. (Page 28)

Recommendation 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*.) (Page 28)

Recommendation 9: The statutory duty of confidentiality in section 48 of the *Ontario College of Teachers Act* should be amended to permit disclosure to bodies that govern a profession inside or outside of Ontario, and a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. (Page 30)

Recommendation 10: There should be a greater mutual sharing of information between the College and School Boards. (Page 30)

Recommendation 11: Section 48 of the *Ontario College of Teachers Act* should be amended to permit the College to provide a Member's response to a complainant. A summary only of the response should be provided if the response would exacerbate the tension between the Member and the complainant. (Page 30)

Recommendation 12: The Registrar should be authorized, in an emergency situation, to appoint an investigator if he/she believes the Member's conduct is likely to expose a student to harm or injury, and there is not time to seek the approval of the Executive Committee. This authority could be similar to that contained in s. 75(2) of the *Health Professions Procedural Code*. (Page 31)

Recommendation 13: There should be clear legislative provisions governing the Dispute Resolution Process. (Page 31)

Recommendation 14: If a complaint, if proven, would likely result in the Member receiving a caution or admonishment by the Investigation Committee, that matter should be in the Dispute Resolution stream. Such decisions of the Investigation Committee should not, in the general course, be publicized or entered on the register. The complainant, however, should be notified of the result. A single member of the Investigation Committee should have authority to dispose of such matters. No other matters should be resolved by way of Dispute Resolution at the Investigation Committee stage. (Page 33)

Recommendation 15: Dispute Resolution Officers should take all reasonable steps to consult with School Boards, or complainants who are members of the public, before reaching an agreement with a Member regarding a complaint. (Page 33)

Recommendation 16: Where the allegation relates to sexual abuse or sexual misconduct, the matter should not be eligible for Dispute Resolution at the Investigation stage. These matters must be dealt with in a public Discipline hearing, after referral by the Investigation Committee. (Page 33)

Recommendation 17: If there has been a criminal conviction for the same conduct that is before the College, and the Member wishes to plead guilty or for any reason the Member is not contesting the allegation, the complaint should be “fast tracked” directly to the Discipline Committee. Legislation should be amended to permit, on consent of all parties, such matters be sent directly to the Discipline Committee. (Page 33)

Recommendation 18: To assist the Investigation Committee to screen complaints, s. 26(2) of the *Ontario College of Teachers Act* should be amended to provide, in addition to “frivolous, vexatious or an abuse of process”, the Investigation Committee shall decline to investigate if a complaint “was made for an improper purpose, manifestly without substance, does not warrant further consideration, or is not in the public interest to further investigate”. (Pages 36-37)

Recommendation 19: The Investigation Committee should in most cases obtain a prosecutorial viability assessment from the College’s external counsel when considering whether to refer a matter to the Discipline Committee. (Page 37)

Recommendation 20: Legislative provisions should be included in the *Ontario College of Teachers Act*, similar to those found in s. 28 of the *Health Professions Procedural Code*, establishing procedural steps to be taken if the Investigation panel has not disposed of a complaint within 120 days. (Page 38)

Recommendation 21: Disclosure to a Member who is the subject of a complaint should occur as soon as possible, beginning at the investigation stage and continuing throughout. (Pages 38-39)

Recommendation 22: There should be regulation or legislation similar to s. 26(2) of the *Health Professions Procedural Code* requiring consideration of prior decisions involving the Member. (Page 39)

Recommendation 23: Sections 43.2 and 43.4 of the *Ontario College of Teachers Act* should be amended so the requirements are the same for the College reporting back to both notifying and current employers. (Page 40)

Recommendation 24: Timelines should be set for drafting, reviewing, signing and serving the Notice of Hearing. (Page 42)

Recommendation 25: All Committee members should share equally in the work of the Committee. The Hearings Co-ordinator should provide a draft list of available panellists to the Chair of the Discipline Committee. The Chair should review the list and ensure that the selection of a Discipline panel be varied and balanced. (Page 43)

Recommendation 26: The *Ontario College of Teachers Act* should be amended to require that a panel established to hear or review a matter relating to a principal or vice-principal must include a principal or vice-principal or retired principal or vice-principal. (Page 44)

Recommendation 27: The government should exercise its authority to appoint additional members to the roster, including persons who have no teaching background. Processes should be established to ensure an adequate number of bilingual and principal/vice-principal members. (Page 45)

Recommendation 28: As soon as a Notice of Hearing has been served, a “scheduling hearing” should be fixed, no later than 30 days from the date the Notice of Hearing was served. If required, a single member of the Discipline Committee should be authorized to conduct such hearing at which the parties or counsel attend, in person or by phone, to fix a pre-hearing date, dates for any required pre-hearing motions and hearing date(s). The pre-hearing date should be no later than 60 days after the scheduling hearing. The hearing date(s) should be within 60 days thereafter. (Page 45)

Recommendation 29: The Notice of Hearing must be posted on the College’s website when it is served on the Member. The website must be updated with every scheduling change. (Page 46)

Recommendation 30: There should be limited narrow power, similar to Civil and Criminal Courts, to close a hearing. (Page 48)

Recommendation 31: The Discipline Committee should be given express authority to order publication bans, similar to s. 45(3) of the *Health Professions Procedural Code* and Recommendation 38 of the Robins Report. (Pages 49-51)

Recommendation 32: The penalty for sexual abuse or sexual misconduct by a teacher involving a student should almost invariably be revocation of the Member’s teaching certificate. (Page 53)

Recommendation 33: Section 30(5)(#3) of the *Ontario College of Teachers Act* should be amended to remove from the Discipline Committee power to make orders restricting publication of decisions, other than the aforementioned publication ban. (Page 55)

Recommendation 34: Decisions, including those that flow from Dispute Resolution agreements of the Discipline Committee, must be published and available on the website and the name of the Member must be included. (Page 55)

Recommendation 35: The legislation or by-laws should be amended to require that the register contain a reference to a Notice of Hearing once the Notice has been issued. (Page 58)

Recommendation 36: The *Ontario College of Teachers Act* should be amended to require that the register be posted on the College's website. (Page 58)

Recommendation 37: The College's legislation or by-laws should be amended to allow for the placement on the register of undertakings and information about the results of relevant criminal proceedings involving the Member. (Page 59)

Recommendation 38: College by-law s. 26.01 and s. 30(5)(#1) of the *Ontario College of Teachers Act* should be amended to provide that at least three years must elapse from the date of a finding of professional misconduct, incompetence or incapacity, if a penalty of reprimand, admonishment, counselling or fine have been imposed, before the finding is removed from the register. Suspensions and revocations shall remain on the register. (Page 60)

Recommendation 39: Where the original disciplinary proceedings were held in public, the reinstatement or variation proceedings should also be held publicly unless there are compelling considerations that might dictate otherwise. (Page 62)

Recommendation 40: Section 33(4) of the *Ontario College of Teachers Act* should be amended to provide that at least five years must elapse before an application for reinstatement can be made when the finding has been sexual abuse or sexual misconduct. (Page 62)

Recommendation 41: The Discipline panel should schedule consecutive full day sittings. But for exceptional circumstances, there should be no period of interruption from the commencement of the hearing to its conclusion. (Page 63)

Recommendation 42: When the hearing is concluded, the Discipline panel must make every effort to arrive at a preliminary decision. One member of the panel should be designated to write the decision. That member should, within a specified time period (60 days), write draft reasons and circulate. If the members need to re-assemble, such meetings should occur electronically or on a weekend or time immediately available to all panellists. The written decision should be released within four months from the receipt of the last submissions. (Pages 63-64)

Recommendation 43: The members of the Discipline Committee, the Fitness Committee or “the roster” who have outstanding decisions of more than one month should not be assigned to another hearing and, preferably, panels should be structured with members who have no outstanding decisions. (Page 64)

Recommendation 44: A policy should be put in place that ensures all Investigation, Discipline, Fitness and roster members be provided judgment writing and decision making instruction programs on a fixed and regular basis. (Page 64)

Recommendation 45: The College should consider hiring or retaining an editor on an ad hoc basis to assist in the decision writing process. (Page 64)

Recommendation 46: The Council recommendation that the *Ontario College of Teachers Act* be amended to provide that an appeal from a decision and order of the Discipline or Fitness to Practise Committee does not operate as an immediate and automatic stay of the order should be implemented. (Page 65)

Recommendation 47: Sections 277.40(3) and 277.40.5(3) of the *Education Act* should be amended to provide that notification by a School Board to the College related to unsatisfactory Teacher Performance Appraisals be treated as a regular employer notification and not a formal public complaint. (Page 66)

Recommendation 48: Members of the Investigation, Discipline and Fitness to Practise Committees should be prohibited from attending the caucus meetings, which are held between elected Council members and their unions/associations when the Council agenda is discussed. (Page 68)

Recommendation 49: Members of the Investigation, Discipline and Fitness to Practise Committees should be prohibited from holding any elected or appointed union/association positions during their tenure on those Committees. (Pages 68-69)

ANNEX

A

Ontario College of Teachers External Review – Terms of Reference

The College has entered into an agreement with the Hon. Patrick LeSage for the review of its' Dispute Resolution Program and its Investigation and Discipline Procedures and Outcomes.

The review will:

- determine whether College processes and procedures protect the public interest, including the processes and procedures contained in the following:
 - the *Ontario College of Teachers Act*, regulations passed under that Act and College bylaws
 - policies, rules and guidelines used by the Investigation and Discipline Committees. Such policies, rules and guidelines would include the “Use of Prior Decisions and/or Concurrent Complaints and Related Information Involving the Same Member”; “Investigation Committee Decisions in the Margaret Wilson Library” and the Discipline Committee’s “Rules of Procedure”
- determine whether these processes and procedures provide fair, impartial and timely adjudication of complaints against members
- examine whether the College’s dispute resolution program protects the public interest
- consider whether the College’s communication and publication practices prior to and following a hearing meet current standards of transparency
- examine whether the College’s Investigation and Discipline Committee members receive appropriate training and legal support to carry out their mandate to protect and serve the public interest
- examine whether cases involving similar findings of fact have resulted in a consistent range of penalties or other outcomes.
- examine whether the College provides acceptable protection of confidentiality in its investigation and hearing procedures
- review College protocols for the initial handling of frivolous and vexatious concerns.

ANNEX

B

List of Participants

Lindy Amato, Director, Professional Affairs, Ontario Teachers' Federation
Raj Anand, Chair, Tribunals Committee, Law Society of Upper Canada
Paul Anthony, Director, Teaching Policy and Standards Branch, Ministry of Education
Anita Ashton, Director, College of Physiotherapists of Ontario
Joe Atkinson, Former Registrar, Ontario College of Teachers
Donald J. Avison, Author "A College Divided: Report of the Fact Finder on the BC College of Teachers"
Ken Bain, President, Ontario Public Supervisory Officials' Association
Ron Bain, Executive Director, Ontario Association of Chiefs of Police
François Benoit, Director of Education, Conseil ontarien des directrices et des directeurs de l'éducation de langue française
Barbara Bierman, Executive Director, Ontario Federation of Independent Schools
Sandra Binns, Vice-President, Ontario Federation of Home and School Associations, Inc.
David Bishop, Inspector, Central Division, Waterloo Regional Police Service
Barbara Brown, Board President, Ontario Federation of Independent Schools
Tony Brown, General Counsel, Toronto District School Board
Christopher Buck, Senior Investigator, Ontario College of Teachers
Douglas Burns, Investigator, Ontario College of Teachers
Jan Campbell, Executive Director, Conference of Independent Schools of Ontario
Nadine Carpenter, Dispute Resolution Officer, Ontario College of Teachers
Paul Cavalluzzo, Cavalluzzo Hayes Shilton McIntyre & Cornish
Camille Chénier, Senior Policy Advisor, Teaching Policy and Standards Branch, Ministry of Education
Anne Coghlan, Executive Director, College of Nurses of Ontario
Sarah Colman, General Counsel, Ontario Principals' Council
Council, Ontario College of Teachers
Marsha Cresswell, Manager of Human Resources, Near North Schools
Michael Crook, Investigator, Ontario College of Teachers
Lisa Da Costa, Investigator, Ontario College of Teachers
Karl Dean, Executive Assistant, Ontario Secondary School Teachers' Federation
Jerry DeQuetteville, Executive Assistant, Elementary Teachers' Federation of Ontario
Sharon Duffy, Legal Counsel, Toronto Catholic District School Board
Francine Dutrisac, Director of Investigations & Hearings, Ontario College of Teachers
Janet Edwards, Superintendent of Education/Ajax Schools/School Community Councils, Durham Region District School Board
Laura Elliott, Executive Superintendent, Ontario Public Supervisory Officials' Association
Marsha Faubert, Society of Ontario Adjudicators and Regulators
Irwin Fefergrad, Registrar, Royal College of Dental Surgeons of Ontario
Liisa Ferris, Investigator, Ontario College of Teachers

Nick Forte, Chair of the Investigation Committee, Ontario College of Teachers
Rocco Gerace, Registrar, College of Physicians and Surgeons of Ontario
Nadine Goulet, Executive Director, Association des directions et directions adjointes des écoles franco-ontariennes
Brian Gover, Stockwoods LLP
Lee Gowers, President, Ontario Federation of Home and School Associations, Inc.
Claudia Guidolin, senior staff member, Association des enseignantes et des enseignants franco-ontariens
Wendy Anes Hirschegger, Secretariat Liaison, Ontario Secondary School Teachers' Federation
Errol Hook, Investigator, Ontario College of Teachers
Zirka Jakibchuk, Dispute Resolutions Officer, Ontario College of Teachers
Brian Jamieson, Senior Communications Officer, Ontario College of Teachers
Marshall Jarvis, General Secretary, Ontario English Catholic Teachers' Association
Frank Kelly, Executive Director, Ontario Public Supervisory Officials' Association
Annie Kidder, Executive Director, People for Education
Rhonda Kimberley-Young, Secretary-Treasurer, Ontario Teachers' Federation
Bill Kirkwood, Vice-Chair of the Fitness to Practise Committee, Ontario College of Teachers
Dale Lafontaine, Investigator, Ontario College of Teachers
Robert Lapper, CEO, Law Society of Upper Canada
Lynne Latulippe, Manager of Investigations, Ontario College of Teachers
Francine LeBlanc-Lebel, President, Ontario Teachers' Federation
Me Lise Leduc, Counsel, Association des enseignantes et des enseignants franco-ontariens
David Leonard, McCarthy Tetrault
Gail Lilley, Chair, Public Interest Committee
Wendy Lopez, General Counsel, Toronto District School Board
Jacquie Lord, Policy Analyst, Ontario College of Teachers
Mark Loya, Manager of Employee Relations/Labour & Legal, Durham Region District School Board
Mary Anne MacAuther, Superintendent, Peel District School Board
Julie Maciura, Steinecke, Maciura, LeBlanc
Patricia Manson, Executive Director, Catholic Principals' Council of Ontario
Paul Marshall, Emond Harnden
Mary McConville, Catholic Children's Aid Society of Toronto
Ian McFarlane, Executive Director, Ontario Principals' Council
Darlene Mead, Chair of the Discipline Committee, Ontario College of Teachers
Wendy Miller, Ontario Association of Children's Aid Societies
Jim Minello, President, Catholic Principals' Council of Ontario
Colinda Morin-Secord, President, Association des directions et directions adjointes des écoles franco-ontariennes

Robert Murray, Director, Legislative & Political Affairs, Ontario Catholic School Trustees' Association

Judith Nyman, Director of Program Policy, Ontario Public School Boards' Association

Kevin O'Dwyer, President, Ontario English Catholic Teachers' Association

Susan Pelky, Hearings Co-ordinator, Ontario College of Teachers

Joshua Phillips, Ursel Phillips Fellows Hopkinson LLP, Counsel, Ontario Secondary School Teachers' Federation

Louise Pinet, Executive Director, Association des conseils scolaires des écoles publiques de l'Ontario

Terry Price, Vice-Chair of the Investigation Committee, Ontario College of Teachers

Jerry Raso, Legal Counsel, Ontario English Catholic Teachers' Association

Raheel Raza, Member of Public Interest Committee, Ontario College of Teachers

Michael Salvatori, Registrar, Ontario College of Teachers

Mark Sandler, Chair, Appeal Panel, Law Society of Upper Canada

Mike Selvaggio, Investigator, Ontario College of Teachers

Mike Sereda, Director of HR, Thames Valley District School Board

Naeem Siddiq, President, Ontario Principals' Council

Pauline Smart, Vice – Chair of the Discipline Committee

Brian P. Smeenk, Fasken Martineau DuMoulin LLP

Richard Steinecke, Steinecke, Maciura, LeBlanc

Susan Thede, Executive Assistant, Elementary Teachers' Federation of Ontario

William Trudell, William Trudell Professional Corporation

Sheilagh Turkington, Counsel, Elementary Teachers' Federation of Ontario

Brenda Stokes Verworn, Board Lawyer, District School Board of Niagara

Hanno Weinberger, Chair of the Fitness to Practise Committee, Ontario College of Teachers

Vicki White, Counsel, College of Physicians and Surgeons of Ontario

Doug Wilson, Former Registrar, Ontario College of Teachers

Margaret Wilson, Former Registrar, Ontario College of Teachers

Martin Zatovkanuk, Dispute Resolutions Officer, Ontario College of Teachers

Caroline Zayid, McCarthy Tetrault

ANNEX

C



Français

Ontario College of Teachers Act, 1996

S.O. 1996, CHAPTER 12

Consolidation Period: From June 1, 2011 to the e-Laws currency date.

Last amendment: 2009, c. 33, Sched. 13, s. 2.

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PART I DEFINITIONS

Definitions

1. In this Act,

“by-laws” means the by-laws made under this Act; (“règlements administratifs”)

“College” means the Ontario College of Teachers; (“Ordre”)

“document” means a record of information in any form and includes any part of it;
 (“document”)

“Minister” means the Minister responsible for the administration of this Act; (“ministre”)

“regulations” means the regulations made under this Act; (“règlements”)

“sexual abuse” of a student by a member means,

- (a) sexual intercourse or other forms of physical sexual relations between the member and the student,
- (b) touching, of a sexual nature, of the student by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the student;
 (“mauvais traitements d’ordre sexuel”)

“school board” means a board as defined in subsection 1 (1) of the *Education Act*. (“conseil scolaire”) 1996, c. 12, s. 1; 1997, c. 31, s. 161; 2001, c. 14, Sched. B, s. 1; 2002, c. 7, s. 2; 2004, c. 26, s. 1.

PART II COLLEGE

College established

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.

Body corporate

(2) The College is a body corporate without share capital with all the powers of a natural person.

Non-application of certain Acts

(3) The *Corporations Act* and *Corporations Information Act* do not apply to the College, except as specifically made applicable by this Act or the regulations. 1996, c. 12, s. 2.

Objects

3. (1) The College has the following objects:

- 1. To regulate the profession of teaching and to govern its members.
- 2. To develop, establish and maintain qualifications for membership in the College.
- 3. To accredit professional teacher education programs offered by post-secondary educational institutions.
- 4. To accredit ongoing education programs for teachers offered by post-secondary educational institutions and other bodies.
- 5. To issue, renew, amend, suspend, cancel, revoke and reinstate certificates of qualification and registration.

6. To provide for the ongoing education of members of the College.
7. To establish and enforce professional standards and ethical standards applicable to members of the College.
8. To receive and investigate complaints against members of the College and to deal with discipline and fitness to practise issues.
9. To develop, provide and accredit educational programs leading to certificates of qualification additional to the certificate required for membership, including but not limited to certificates of qualification as a supervisory officer, and to issue, renew, amend, suspend, cancel, revoke and reinstate such additional certificates.
10. To communicate with the public on behalf of the members of the College.
11. To perform such additional functions as are prescribed by the regulations. 1996, c. 12, s. 3 (1); 2001, c. 14, Sched. B, s. 2; 2004, c. 26, s. 2; 2009, c. 33, Sched. 13, s. 2 (1, 2, 11).

Duty

(2) In carrying out its objects, the College has a duty to serve and protect the public interest. 1996, c. 12, s. 3 (2).

Council

4. (1) The College shall have a Council that shall be its governing body and board of directors and that shall manage and administer its affairs. 1996, c. 12, s. 4 (1).

Composition of Council

(2) The Council shall be composed of,

- (a) 23 persons who are members of the College and who are elected by the members of the College in accordance with the regulations; and
- (b) 14 persons who are appointed by the Lieutenant Governor in Council in accordance with the regulations. 1996, c. 12, s. 4 (2); 2006, c. 10, s. 51.

Role of Registrar

(3) The Registrar shall serve as secretary to the Council and has all the rights of participation at meetings of the Council that a member of the Council has, other than the right to vote. 1996, c. 12, s. 4 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Expenses and remuneration

(4) Council members appointed by the Lieutenant Governor in Council shall be paid, by the Minister, such expenses and remuneration as the Lieutenant Governor in Council determines. 1996, c. 12, s. 4 (4).

Oath

4.1 Before taking up his or her duties, every person elected or appointed to the Council shall swear an oath or affirm in the manner and form and within the time period that is prescribed by the regulations. 2006, c. 10, s. 52.

Duties of Council members

4.2 Every member of the Council shall, in carrying out his or her duties,

- (a) serve and protect the public interest; and

- (b) act in accordance with such conflict of interest rules as may be prescribed by the regulations. 2006, c. 10, s. 52.

Term of office

5. (1) No term of a Council member shall exceed three years, except as permitted by regulation. 1996, c. 12, s. 5 (1).

Multiple terms

(2) A person may be a Council member for more than one term but no person may be a Council member for more than seven consecutive years. 1996, c. 12, s. 5 (2); 2006, c. 10, s. 53 (1).

Transition

(3) The following transitional rules apply with respect to Council members who are serving on the day section 53 of the *Education Statute Law Amendment Act (Student Performance)*, 2006 comes into force and, as a result of that amendment, are ineligible to be Council members because they have served for more than seven consecutive years:

1. With respect to an elected member of Council, the member may, despite subsection (2), continue to serve until the day before the first regular meeting of the Council held after the Council election next following the day section 53 of the *Education Statute Law Amendment Act (Student Performance)*, 2006 comes into force.
2. With respect to an appointed member of Council, the member may, despite subsection (2), continue to serve until his or her term, as provided for in his or her appointment, ends. 2006, c. 10, s. 53 (2).

Qualifications to vote

6. (1) Subject to the regulations, every member of the College who is in good standing is entitled to vote at an election of members of the Council. 1996, c. 12, s. 6 (1).

Good standing

(2) A member is in good standing for the purposes of this section if,

- (a) the member is not in default of payment of a membership fee prescribed by the by-laws; and
- (b) the member's certificate of qualification and registration is not suspended. 1996, c. 12, s. 6 (2); 2009, c. 33, Sched. 13, s. 2 (10).

Vacancies

7. Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum. 1996, c. 12, s. 7.

Council meetings

8. (1) The Council shall meet at least four times a year.

Open to public

(2) The meetings of the Council shall be open to the public and reasonable notice shall be given to the members of the College and to the public.

Exclusion of public

(3) Despite subsection (2), the Council may exclude the public from a meeting or any part of a meeting if it is satisfied that,

- (a) financial or personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public;
- (b) a person involved in a civil or criminal proceeding may be prejudiced;
- (c) the safety of a person may be jeopardized;
- (d) personnel matters or property transactions will be discussed;
- (e) litigation affecting the College will be discussed or instructions will be given to or opinions received from solicitors for the College; or
- (f) the Council will deliberate whether to exclude the public from a meeting or a part of a meeting. 1996, c. 12, s. 8.

Officers

9. (1) The Council may employ such persons as it considers advisable and shall have the officers provided for by the by-laws. 1996, c. 12, s. 9 (1).

Registrar

(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. 1996, c. 12, s. 9 (2); 2009, c. 33, Sched. 13, s. 2 (9).

Chief executive officer

(3) The Registrar shall be the chief executive officer of the College. 1996, c. 12, s. 9 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Meeting with Minister

10. (1) The Council shall meet annually with the Minister.

Open to public

(2) Subsections 8 (2) and (3) apply to the annual meeting with the Minister. 1996, c. 12, s. 10.

Annual report

11. (1) The Council shall report annually to the Minister on the activities and financial affairs of the College.

Tabling of report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then table the report in the Assembly if it is in session or, if not, at the next session. 1996, c. 12, s. 11.

Powers of Minister

12. (1) In addition to his or her other powers and duties under this Act, the Minister may,
- (a) review the activities of the Council and require the Council to provide reports and information;
 - (b) require the Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of this Act;
 - (c) require the Council to make, amend or revoke a regulation. 1996, c. 12, s. 12 (1).

Council to comply

(2) If the Minister requires a Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report to the Minister respecting the compliance. 1996, c. 12, s. 12 (2).

Regulations

(3) If the Minister requires the Council to make, amend or revoke a regulation under clause (1) (c) and the Council does not do so within 60 days, the Lieutenant Governor in Council may, by regulation, make, amend or revoke the regulation. 1996, c. 12, s. 12 (3).

Authority of Lieutenant Governor in Council

(4) Subsections (3) does not give the Lieutenant Governor in Council authority to do anything that the Council does not have authority to do. 1996, c. 12, s. 12 (4).

Copies of regulations, orders

(5) The Council shall ensure that a copy of each regulation made under subsection (3) is available for public inspection in the office of the College. 1996, c. 12, s. 12 (5).

Same

(6) The Registrar shall provide to any person, on payment of a reasonable charge, a copy of any regulation made under subsection (3). 1996, c. 12, s. 12 (6); 2009, c. 33, Sched. 13, s. 2 (9).

Expenses of College

(7) The Minister may pay the College for expenses incurred in complying with a requirement under subsection (1). 1996, c. 12, s. 12 (7).

Annual meeting of members

13. The College shall hold an annual meeting of the members not more than 15 months after the holding of the last preceding annual meeting of members. 1996, c. 12, s. 13.

Membership

14. (1) Every person who holds a certificate of qualification and registration is a member of the College, subject to any term, condition or limitation to which the certificate is subject. 1996, c. 12, s. 14 (1); 2009, c. 33, Sched. 13, s. 2 (10).

Resignation of membership

(2) A member may resign his or her membership by filing a resignation in writing with the Registrar. 1996, c. 12, s. 14 (2); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(3) The certificate of qualification and registration of a person who files a resignation is cancelled. 1996, c. 12, s. 14 (3); 2009, c. 33, Sched. 13, s. 2 (10).

Expiry of membership

(4) A certificate of qualification and registration that expires in accordance with the regulations is cancelled. 1996, c. 12, s. 14 (4); 2009, c. 33, Sched. 13, s. 2 (10).

Continuing jurisdiction: revocation, cancellation

(5) A person whose certificate of qualification and registration is revoked or cancelled continues to be subject to the jurisdiction of the College for professional misconduct, incompetence or incapacity referable to any time during which the person held,

(a) a certificate of qualification and registration under this Act; or

- (b) an Ontario Teacher's Certificate or a letter of standing as a teacher under the *Education Act*, 1996, c. 12, s. 14 (5); 2009, c. 33, Sched. 13, s. 2 (10).

Committees

15. (1) The Council shall establish the following committees:

1. Executive Committee.
2. Investigation Committee.
3. Discipline Committee.
4. Registration Appeals Committee.
5. Fitness to Practise Committee.

Same

(2) The Council may establish other committees as the Council from time to time considers necessary.

Vacancies

(3) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than the quorum. 1996, c. 12, s. 15.

Executive Committee

16. The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council other than the power to make, amend or revoke a regulation or by-law. 1996, c. 12, s. 16.

Committee procedures

Majority on committees

17. (1) A majority of the persons appointed or elected to a Committee mentioned in subsection 15 (1) shall be persons elected to the Council under clause 4 (2) (a). 1996, c. 12, s. 17 (1).

Panels

(2) The powers and duties of a committee mentioned in paragraph 2, 3, 4 or 5 of subsection 15 (1) may be exercised by a panel that satisfies the following rules:

1. The panel must consist of at least three persons.
2. A majority of the persons on the panel must be members of the committee.
3. The panel must include at least one member of the committee who was elected to the Council under clause 4 (2) (a) and at least one member of the committee who was appointed to the Council under clause 4 (2) (b).
4. A member of the panel who is not a member of the committee must be on a roster of eligible panellists for the committee established under subsection (3). 2001, c. 9, Sched. E, s. 1 (1).

Roster of eligible panellists

(3) The Council may establish a roster of eligible panellists for a committee mentioned in paragraph 2, 3, 4 or 5 of subsection 15 (1), consisting of such persons as the Council considers qualified to serve as members of a panel of the committee. 2001, c. 9, Sched. E, s. 1 (1).

Same

(4) The Lieutenant Governor in Council may appoint such persons to a roster of panellists established under subsection (3) as he or she considers appropriate. 2001, c. 9, Sched. E, s. 1 (1).

Not member of committee

(5) A person included on a roster for a committee is not a member of the committee by reason of his or her inclusion on the roster or his or her service on a panel of the committee. 2001, c. 9, Sched. E, s. 1 (1).

Decision of committee

(6) A decision, finding, order, opinion or action of a panel of a committee is deemed to be the decision, finding, order, opinion or action of the committee. 2001, c. 9, Sched. E, s. 1 (1).

PART II.1 PUBLIC INTEREST COMMITTEE

Public Interest Committee established

17.1 (1) A committee to be known in English as the Public Interest Committee and in French as comité de protection de l'intérêt public is established. 2006, c. 10, s. 54.

Composition

(2) The Minister shall appoint no fewer than three and no more than five persons who are not members of the College to the Committee and shall designate one of those persons as the Chair of the Committee. 2006, c. 10, s. 54.

Same

(3) Appointments and designations by the Minister under subsection (2) shall be in accordance with the regulations, if any. 2006, c. 10, s. 54.

Term of office

(4) No term of a member of the Committee shall exceed three years, except as permitted by regulation. 2006, c. 10, s. 54.

Multiple terms

(5) A person may be a Committee member for more than one term but no person may be a Committee member for more than six consecutive years. 2006, c. 10, s. 54.

Duties

(6) The Committee shall,

(a) advise the Council with respect to the duty of the College and the members of the Council to serve and protect the public interest in carrying out the College's objects; and

(b) perform such other duties as may be prescribed by the regulations. 2006, c. 10, s. 54.

PART III REGISTRATION

Procedures to be fair and open

17.2 (1) Any power that may be exercised and any duty that must be performed under this Part shall be exercised or performed fairly and in a manner such that any decisions made with respect to an applicant are transparent to and understandable by that applicant, with due regard to his or her individual circumstances. 2006, c. 10, s. 55.

Standards

(2) The Council shall make regulations, subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, establishing standards, practices and procedures to ensure that the requirements of subsection (1) are fulfilled. 2006, c. 10, s. 55.

Registration

18. (1) The Registrar shall issue a certificate of qualification and registration to a person who applies for it in accordance with the regulations and who fulfils the requirements specified in the regulations for the issuance of the certificate. 1996, c. 12, s. 18 (1); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Notation of new teacher program

(1.1) When the College is notified by a board that a member has successfully completed the new teacher induction program under the *Education Act*, the Registrar shall note that fact on the member's certificate. 2006, c. 10, s. 56; 2009, c. 33, Sched. 13, s. 2 (9).

Grounds for refusal

(2) The Registrar may refuse to issue a certificate of qualification and registration where the Registrar has reasonable grounds to believe that,

- (a) the past conduct or actions of the applicant afford grounds for belief that the applicant will not perform his or her duties as a teacher in accordance with the law, including but not limited to this Act, the regulations and the by-laws; or
- (b) the applicant does not fulfil the requirements specified in the regulations for the issuance of the certificate. 1996, c. 12, s. 18 (2); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Same

(3) Except as otherwise directed under this Act, the Registrar shall refuse to issue a certificate of qualification and registration to an applicant who previously held a certificate of qualification and registration that was revoked as a result of a decision of the Discipline Committee or the Fitness to Practise Committee and that was not reinstated under section 33 or 34. 1996, c. 12, s. 18 (3); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Terms, etc., on consent

(4) If the Registrar is of the opinion that a certificate of qualification and registration should be issued to an applicant with terms, conditions or limitations imposed and the applicant consents to the imposition, the Registrar may do so. 1996, c. 12, s. 18 (4); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Same

(5) Limitations that may be imposed on consent under subsection (4) include the fixing of a period of not longer than one year during which the applicant may not apply under section 22. 1996, c. 12, s. 18 (5).

Disclosure of application file

19. (1) The Registrar shall give an applicant for a certificate of qualification and registration, at the applicant's request, a copy of each document the College has that is relevant to the application. 1996, c. 12, s. 19 (1); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Exception

(2) The Registrar may refuse to give an applicant anything that may, in the Registrar's opinion, jeopardize the safety of any person. 1996, c. 12, s. 19 (2); 2009, c. 33, Sched. 13, s. 2

(9).

Notice of proposal to refuse to issue, revoke, etc.

20. (1) Where the Registrar proposes,

- (a) to refuse to issue a certificate of qualification and registration; or
- (b) to impose terms, conditions or limitations on a certificate of qualification and registration to which the applicant has not consented,

the Registrar shall first serve notice of the proposal, with written reasons for it, on the applicant. 1996, c. 12, s. 20 (1); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Exception

(2) Subsection (1) does not apply where the Registrar refuses to issue a certificate under subsection 18 (3). 1996, c. 12, s. 20 (2); 2009, c. 33, Sched. 13, s. 2 (9).

Contents of notice

(3) A notice under subsection (1) shall state that the applicant may request a review by the Registration Appeals Committee in accordance with subsection (4). 1996, c. 12, s. 20 (3).

Request for review

(4) The request for review must be,

- (a) in writing;
- (b) served on the Registrar within 60 days after the notice under subsection (1) is served on the applicant; and
- (c) accompanied by the fee prescribed by the by-laws for the purpose. 1996, c. 12, s. 20 (4); 2009, c. 33, Sched. 13, s. 2 (9).

Submissions

(5) The request for review may be accompanied by written submissions. 1996, c. 12, s. 20 (5).

Power of Registrar where no review

(6) Where the applicant does not request a review by the Registration Appeals Committee in accordance with subsection (4), the Registrar may carry out the proposal stated in the notice under subsection (1). 1996, c. 12, s. 20 (6); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(7) Where the Registrar imposes terms, conditions and limitations on the applicant's certificate of qualification and registration under subsection (6), the Registrar may fix a period of not longer than one year during which the applicant may not apply under section 22. 1996, c. 12, s. 20 (7); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Review by Registration Appeals Committee

21. (1) Where the applicant requests a review in accordance with subsection 20 (4), the Registration Appeals Committee shall conduct the review. 1996, c. 12, s. 21 (1).

Exception

(2) Despite subsection (1), the Registration Appeals Committee may refuse to conduct a review if, in its opinion, the request for review is frivolous, vexatious or an abuse of process. 1996, c. 12, s. 21 (2).

Extension of time for requesting review

(3) The Registration Appeals Committee may extend the time for requesting a review under subsection 20 (4) where it is satisfied that there are apparent grounds for granting relief and that there are reasonable grounds for applying for the extension. 1996, c. 12, s. 21 (3).

Same

(4) The Committee may give the directions that it considers appropriate consequent on the extension. 1996, c. 12, s. 21 (4).

Same

(5) Directions may be given under subsection (4) to the applicant, to the Registrar or to both, either before or after the Committee conducts the review. 1996, c. 12, s. 21 (5); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(6) Directions that may be given to the Registrar under subsection (4) include but are not limited to directions to do one or more of the following:

1. Remove specified terms, conditions or limitations on a certificate of qualification and registration issued under section 20.
2. Impose specified terms, conditions or limitations on a certificate of qualification and registration issued under section 20.
3. Revoke a certificate of qualification and registration issued under section 20.
4. Vary or eliminate a period fixed under subsection 20 (7). 1996, c. 12, s. 21 (6); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Examination of documents, submissions

(7) The Registration Appeals Committee shall ensure that the person requesting the review is given an opportunity to examine and make written submissions on any documents that the Committee intends to consider in making its decision on the review. 1996, c. 12, s. 21 (7).

No hearing

(8) Except as provided by section 20 and this section, the Registration Appeals Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 1996, c. 12, s. 21 (8).

Orders

(9) After considering the request for review, the submissions and any document that the Committee considers relevant, the Registration Appeals Committee may make an order doing one or more of the following:

1. Directing the Registrar to issue a certificate of qualification and registration.
2. Directing the Registrar to issue a certificate of qualification and registration if the applicant fulfils requirements specified in the regulations for the issuance of the certificate.
3. Directing the Registrar to issue a certificate of qualification and registration subject to specified terms, conditions or limitations.
4. Directing the Registrar to refuse to issue a certificate of qualification and registration.

1996, c. 12, s. 21 (9); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Same

(10) Where the Registration Appeals Committee makes an order under paragraph 3 of subsection (9), the Committee may fix a period of not longer than one year during which the person who requested the review may not apply under section 22. 1996, c. 12, s. 21 (10).

Order to return fee

(11) The Registration Appeals Committee may order that the fee paid under subsection 20 (4) be returned to the person who requested the review where, in the opinion of the Committee, to do so would be appropriate in all the circumstances. 1996, c. 12, s. 21 (11).

Service of decision on parties

(12) The Registration Appeals Committee shall give its decision under this section in writing, with reasons, and shall serve the person who requested the review with a copy. 1996, c. 12, s. 21 (12).

Variation of registration conditions

22. (1) A member may apply to the Registration Appeals Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed by the Registrar or the Registration Appeals Committee on the member's certificate of qualification and registration. 1996, c. 12, s. 22 (1); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Same

(2) The application must be,

(a) in writing; and

(b) accompanied by the fee prescribed for the purpose by the by-laws. 1996, c. 12, s. 22 (2).

Limitations

(3) The right to apply under subsection (1) is subject to,

(a) any limitation imposed by the Registrar or Registration Appeals Committee under section 18, 20 or 21; and

(b) any limitation imposed under subsection (8) in the disposition of a previous application under this section. 1996, c. 12, s. 22 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Submissions

(4) The application may be accompanied by written submissions. 1996, c. 12, s. 22 (4).

Examination of documents, submissions

(5) The Registration Appeals Committee shall ensure that the applicant is given an opportunity to examine and make written submissions on any documents that the Committee intends to consider in making its decision on the application. 1996, c. 12, s. 22 (5).

No hearing

(6) Except as provided by this section, the Registration Appeals Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 1996, c. 12, s. 22 (6).

Orders

(7) After considering the application, the submissions and any document that the Committee considers relevant, the Registration Appeals Committee may make an order doing one or more of the following:

1. Refusing the application.
2. Directing the Registrar to remove any term, condition or limitation imposed on the certificate of qualification and registration.
3. Directing the Registrar to impose specified terms, conditions or limitations on the certificate of qualification and registration. 1996, c. 12, s. 22 (7); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Limitations on application

(8) The Registration Appeals Committee, in disposing of an application under this section, may fix a period of not longer than six months during which the applicant may not apply under subsection (1). 1996, c. 12, s. 22 (8).

Order to return fee

(9) The Registration Appeals Committee may order that the fee paid under subsection (2) be returned to the applicant where, in the opinion of the Committee, to do so would be appropriate in all the circumstances. 1996, c. 12, s. 22 (9).

Service of decision on applicant

(10) The Registration Appeals Committee shall give its decision under this section in writing, with reasons, and shall serve the applicant with a copy. 1996, c. 12, s. 22 (10).

Register

23. (1) The Registrar shall maintain a register. 1996, c. 12, s. 23 (1); 2009, c. 33, Sched. 13, s. 2 (9).

Contents

(2) Subject to any by-law respecting the removal of information from the register, the register shall contain,

- (a) each member's name and the class of certificate of qualification and registration and any certificates of additional qualifications that the member holds;
- (b) the terms, conditions and limitations imposed on each certificate of qualification and registration;
- (c) a notation of every revocation, cancellation and suspension of a certificate of qualification and registration;
- (d) information that a committee required by this Act directs shall be included; and
- (e) information that the by-laws prescribe as information to be kept in the register. 1996, c. 12, s. 23 (2); 2001, c. 14, Sched. B, s. 3 (1); 2004, c. 26, s. 3 (1); 2009, c. 33, Sched. 13, s. 2 (3, 10).

New teacher program

(2.1) In the case of a member who has successfully completed the new teacher induction program under the *Education Act*, the Registrar shall, within 60 days of receiving notice that the member has done so, note that information on the register and such information is not subject to removal by by-law. 2006, c. 10, s. 57; 2009, c. 33, Sched. 13, s. 2 (9).

Inspection

(3) Any person has the right, during normal business hours, to inspect the register. 1996, c. 12, s. 23 (3).

Copies

(4) The Registrar shall provide to any person, on payment of a reasonable charge, a copy of any part of the register. 1996, c. 12, s. 23 (4); 2009, c. 33, Sched. 13, s. 2 (9).

Suspension: failure to pay fees, provide information

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. 1996, c. 12, s. 24 (1); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Same

(2) The Registrar shall not suspend a member's certificate of qualification and registration without first giving the member two-months notice of the default and intention to suspend. 1996, c. 12, s. 24 (2); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Re-instatement

(3) A person whose certificate of qualification and registration was suspended by the Registrar under subsection (1) is entitled to have the suspension removed on payment of the fees and penalties prescribed by the by-laws or on provision of the information required by the by-laws, as the case may be. 1996, c. 12, s. 24 (3); 2009, c. 33, Sched. 13, s. 2 (9, 10).

PART III (ss. 24.1-24.11) Repealed: 2004, c. 26, s. 4.

PART IV INVESTIGATION COMMITTEE

Composition of Investigation Committee

25. (1) The Council shall appoint at least seven of its members to the Investigation Committee.

Same

(2) At least two of the members of the Investigation Committee shall be persons who were appointed to the Council by the Lieutenant Governor in Council.

Same

(3) No person who is a member of the Discipline Committee or the Fitness to Practise Committee shall be a member of the Investigation Committee. 1996, c. 12, s. 25.

Duties of Investigation Committee

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

- (a) a member of the public;
- (b) a member of the College;
- (c) the Registrar;
- (d) the Minister. 1996, c. 12, s. 26 (1); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(2) Despite subsection (1), the Investigation Committee shall refuse to consider and investigate a complaint if, in its opinion,

- (a) the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member;
- (b) the complaint is frivolous, vexatious or an abuse of process. 1996, c. 12, s. 26 (2).

Same

(3) No action shall be taken by the Investigation Committee under subsection (5) unless,

- (a) a complaint in a format prescribed by the by-laws has been filed with the Registrar;
- (b) the member whose conduct or actions are being investigated has been notified of the complaint and given at least 30 days in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the matter; and
- (c) the Committee has examined or has made every reasonable effort to examine all the information and documents that the College has that are relevant to the complaint. 1996, c. 12, s. 26 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(4) Notice of a complaint under clause (3) (b) shall include reasonable information about any allegations contained in the complaint. 1996, c. 12, s. 26 (4).

Same

(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. 1996, c. 12, s. 26 (5).

Decision and reasons

(6) The Investigation Committee shall give its decision in writing to the Registrar for the purposes of subsection (7) and, except where the decision is made under clause (5)(a), its reasons for the decision. 1996, c. 12, s. 26 (6); 2009, c. 33, Sched. 13, s. 2 (9).

Notice

(7) The Registrar shall provide the complainant and the person complained against with a copy of the written decision made by the Investigation Committee and its reasons for the decision, if any. 1996, c. 12, s. 26 (7); 2009, c. 33, Sched. 13, s. 2 (9).

No hearing

(8) Except as provided by this section, the Investigation Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 1996, c. 12, s. 26 (8).

Timely disposal

(9) The Investigation Committee shall use its best efforts to dispose of a complaint within 120 days of it being filed with the Registrar. 1996, c. 12, s. 26 (9); 2009, c. 33, Sched. 13, s. 2 (9).

**PART V
DISCIPLINE AND FITNESS TO PRACTISE**

Composition of Discipline Committee

27. (1) The Council shall appoint at least 11 of its members to the Discipline Committee.

Same

(2) At least four of the members of the Discipline Committee shall be persons who were appointed to the Council by the Lieutenant Governor in Council.

Chair of Committee

(3) The Council shall appoint one of the members of the Discipline Committee as the Chair. 1996, c. 12, s. 27.

Composition of Fitness to Practise Committee

28. (1) The Council shall appoint at least five of its members to the Fitness to Practise Committee.

Same

(2) At least one of the members of the Fitness to Practise Committee shall be a person who was appointed to the Council by the Lieutenant Governor in Council.

Chair of Committee

(3) The Council shall appoint one of the members of the Fitness to Practise Committee as the Chair. 1996, c. 12, s. 28.

Reference by Council or Executive Committee

29. (1) The Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a member of the College. 1996, c. 12, s. 29 (1).

Same

(2) The Council or the Executive Committee may direct the Fitness to Practise Committee to hold a hearing and determine any allegation of incapacity on the part of a member of the College. 1996, c. 12, s. 29 (2).

Interim suspension

(3) The Council or the Executive Committee may make an interim order directing the Registrar to suspend a member's certificate of qualification and registration or impose terms, conditions or limitations on a member's certificate of qualification and registration if,

- (a) an allegation respecting the member has been referred to the Discipline Committee or to the Fitness to Practise Committee; and
- (b) the Council or the Executive Committee is of the opinion that the actions or conduct of the member exposes or is likely to expose students to harm or injury. 1996, c. 12, s. 29 (3); 2009, c. 33, Sched. 13, s. 2 (9, 10).

Restriction

- (4) No order shall be made under subsection (3) unless the member has been given,
- (a) notice of the Executive Committee's or the Council's intention to make the order; and
 - (b) at least 14 days to make written submissions to the Executive Committee or the Council. 1996, c. 12, s. 29 (4).

Same

(5) Clause (4) (b) does not apply where the Executive Committee or the Council is of the opinion that the delay would be inappropriate in view of the risk of harm or injury to students. 1996, c. 12, s. 29 (5).

No hearing

(6) Except as provided by this section, the Executive Committee or the Council need not hold a hearing or afford any person an opportunity to make oral or written submissions before making a decision or giving a direction under this section. 1996, c. 12, s. 29 (6).

Procedure following order

(7) If an order is made under subsection (3) in relation to a matter referred to the Discipline Committee or the Fitness to Practise Committee,

- (a) the College shall prosecute the matter expeditiously; and
- (b) the Discipline Committee or the Fitness to Practise Committee shall give precedence to the matter. 1996, c. 12, s. 29 (7).

Duration of order

(8) An order under subsection (3) continues in force until the matter is disposed of by the Discipline Committee or the Fitness to Practise Committee. 1996, c. 12, s. 29 (8).

Discipline Committee, findings of professional misconduct and incompetence

30. (1) The Discipline Committee shall,

- (a) hear and determine matters directed or referred to it under section 26, 29 or 33; and
- (b) perform such other duties as are assigned to it by the Council. 1996, c. 12, s. 30 (1).

Professional misconduct

(2) A member may be found guilty of professional misconduct by the Discipline Committee, after a hearing, if the member has been guilty, in the opinion of the Committee, of professional misconduct as defined in the regulations. 1996, c. 12, s. 30 (2).

Incompetence

(3) The Discipline Committee may, after a hearing, find a member to be incompetent if, in its opinion, the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of a student of a nature or extent that demonstrates that the member is unfit to continue to carry out his or her professional responsibilities or that a certificate held by the member under this Act should be made subject to terms, conditions or limitations. 1996, c. 12, s. 30 (3).

Powers of Discipline Committee

(4) Where the Discipline Committee finds a member guilty of professional misconduct or to be incompetent, it may make an order doing one or more of the following:

1. Directing the Registrar to revoke any certificate held by the member under this Act.

2. Directing the Registrar to suspend any certificate held by the member under this Act for a stated period, not exceeding 24 months.
3. Directing the Registrar to impose specified terms, conditions or limitations on any certificate held by the member under this Act.
4. Directing that the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period. 1996, c. 12, s. 30 (4); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(5) Where the Discipline Committee finds a member guilty of professional misconduct, it may, in addition to exercising its powers under subsection (4), make an order doing one or more of the following:

1. Requiring that the member be reprimanded, admonished or counselled by the Committee or its delegate and, if considered warranted, directing that the fact of the reprimand, admonishment or counselling be recorded on the register for a specified or unlimited period.
2. Imposing a fine in an amount that the Committee considers appropriate, to a maximum of \$5,000, to be paid by the member to the Minister of Finance for payment into the Consolidated Revenue Fund.
3. Directing that the finding and the order of the Committee be published, in detail or in summary, with or without the name of the member, in the official publication of the College and in any other manner or medium that the Committee considers appropriate in the particular case.
4. Fixing costs to be paid by the member to the College. 1996, c. 12, s. 30 (5).

Same

(6) In making an order under paragraph 4 of subsection (4), the Committee may specify the terms that it considers appropriate, including but not limited to terms requiring the successful completion by the member of specified courses of study. 1996, c. 12, s. 30 (6).

Same

(7) In making an order revoking or suspending a certificate or imposing terms, conditions or limitations on a certificate, the Committee may fix a period during which the member may not apply under section 33. 1996, c. 12, s. 30 (7).

Publication on request

(8) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in the official publication of the College, on the request of the member against whom the allegation was made. 1996, c. 12, s. 30 (8).

Costs

(9) Where the Discipline Committee is of the opinion that the commencement of the proceeding was unwarranted, the Committee may order that the College reimburse the member for his or her costs or such portion of them as the Discipline Committee fixes. 1996, c. 12, s. 30 (9).

Fitness to Practise Committee, finding of incapacity

31. (1) The Fitness to Practise Committee shall,

- (a) hear and determine matters directed or referred to it under section 26, 29 or 33; and
- (b) perform such other duties as are assigned to it by the Council. 1996, c. 12, s. 31 (1).

Incapacity

(2) The Fitness to Practise Committee may, after a hearing, find a member to be incapacitated if, in its opinion, the member is suffering from a physical or mental condition or disorder such that the member is unfit to continue to carry out his or her professional responsibilities or that a certificate held by the member under this Act should be made subject to terms, conditions or limitations. 1996, c. 12, s. 31 (2).

Powers of Fitness to Practise Committee

(3) Where the Fitness to Practise Committee finds a member to be incapacitated, it may make an order doing one or more of the following:

1. Directing the Registrar to revoke any certificate held by the member under this Act.
2. Directing the Registrar to suspend any certificate held by the member under this Act for a stated period, not exceeding 24 months.
3. Directing the Registrar to impose specified terms, conditions or limitations on any certificate held by the member under this Act.
4. Directing that the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period. 1996, c. 12, s. 31 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Same

(4) In making an order under paragraph 4 of subsection (3), the Committee may specify the terms that it considers appropriate, including but not limited to terms requiring the production to the Committee of evidence satisfactory to it that any physical or mental condition or disorder in respect of which the penalty was imposed has been resolved. 1996, c. 12, s. 31 (4).

Same

(5) In making an order revoking or suspending a certificate or imposing terms, conditions or limitations on a certificate, the Committee may fix a period during which the member may not apply under section 33. 1996, c. 12, s. 31 (5).

Publication on request

(6) The Fitness to Practise Committee shall cause a determination by the Committee that an allegation of incapacity was unfounded to be published in the official publication of the College, on the request of the member against whom the allegation was made. 1996, c. 12, s. 31 (6).

Costs

(7) Where the Fitness to Practise Committee is of the opinion that the commencement of the proceeding was unwarranted, the Committee may order that the College reimburse the member for his or her costs or such portion of them as the Committee fixes. 1996, c. 12, s. 31 (7).

Procedure: incompetence, misconduct, incapacity hearings

32. (1) This section applies to hearings of the Discipline Committee under section 30 and to hearings of the Fitness to Practise Committee under section 31. 1996, c. 12, s. 32 (1).

Parties

(2) The College and the member whose conduct or actions are being investigated are parties to the hearing. 1996, c. 12, s. 32 (2).

Examination of documentary evidence

(3) A party to the hearing shall be given an opportunity to examine before the hearing any documents that will be given in evidence at the hearing. 1996, c. 12, s. 32 (3).

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Discipline Committee or Fitness to Practise Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council or Executive Committee considering the referral of the matter to the Discipline Committee or Fitness to Practise Committee, and shall not communicate directly or indirectly about the subject-matter of the hearing with any person or with any party or representative of a party except on notice to and opportunity for all parties to participate. 1996, c. 12, s. 32 (4).

Same

(5) Despite subsection (4), the Discipline Committee or Fitness to Practise Committee may seek legal advice from an adviser independent from the parties and, in that case, the nature of the advice shall be made known to the parties so that they may make submissions as to the law. 1996, c. 12, s. 32 (5).

Hearings of Discipline Committee to be public

(6) A hearing of the Discipline Committee shall, subject to subsection (7), be open to the public. 1996, c. 12, s. 32 (6).

Exclusion of public

(7) The Discipline Committee may make an order that the public be excluded from a hearing or any part of a hearing if the Committee is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a civil or criminal proceeding may be prejudiced;
- (d) the safety of a person may be jeopardized; or
- (e) the Committee will deliberate whether to exclude the public from a hearing or a part of a hearing. 1996, c. 12, s. 32 (7).

Fitness to Practise Committee hearings to be closed

(8) A hearing of the Fitness to Practise Committee shall, subject to subsection (9), be closed to the public. 1996, c. 12, s. 32 (8).

Open on request of member in some cases

(9) A hearing of the Fitness to Practise Committee shall be open to the public if the person who is alleged to be incapacitated requests it in a written notice received by the Registrar before the day the hearing commences, unless the Fitness to Practise Committee is satisfied that,

- (a) matters involving public security may be disclosed;

- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of acceding to the request of the person who is alleged to be incapacitated;
- (c) a person involved in a civil or criminal proceeding may be prejudiced;
- (d) the safety of a person may be jeopardized; or
- (e) the Committee will deliberate whether to exclude the public from a hearing or a part of a hearing. 1996, c. 12, s. 32 (9); 2009, c. 33, Sched. 13, s. 2 (9).

Recording of evidence

(10) The oral evidence taken before the Discipline Committee or Fitness to Practise Committee shall be recorded and, if requested by a party, copies of a transcript shall be provided to the party at the party's expense. 1996, c. 12, s. 32 (10).

Only members at hearing to participate in decision

(11) No member of the Discipline Committee or Fitness to Practise Committee shall participate in a decision of the Committee following a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties. 1996, c. 12, s. 32 (11).

Release of documentary evidence

(12) Documents and things put in evidence at a hearing shall, on the request of the party who produced them, be returned by the Discipline Committee or Fitness to Practise Committee within a reasonable time after the matter in issue has been finally determined. 1996, c. 12, s. 32 (12).

Service of decision, reasons

(13) Subject to subsection (14), the Discipline Committee or Fitness to Practise Committee shall serve its decision, with reasons,

- (a) on the parties; and
- (b) where the matter was referred to the Discipline Committee or Fitness to Practise Committee as a result of a complaint under subsection 26 (1), on the complainant. 1996, c. 12, s. 32 (13).

Same

(14) Where the hearing was closed, the Discipline Committee or Fitness to Practise Committee may, in its discretion, serve its decision on the complainant without reasons. 1996, c. 12, s. 32 (14).

PART VI REINSTATEMENT AND VARIATION

Reinstatement and variation procedures

Reinstatement after disciplinary proceedings

33. (1) A person who has had a certificate revoked or suspended as a result of a proceeding before the Discipline Committee may apply in writing to the Registrar to have a new certificate issued or the suspension removed. 1996, c. 12, s. 33 (1); 2009, c. 33, Sched. 13, s. 2 (9).

Variation after disciplinary proceedings

(2) A person who has a certificate that is subject to terms, conditions or limitations as a result of a proceeding before the Discipline Committee may apply in writing to the Registrar for the removal or modification of the terms, conditions or limitations. 1996, c. 12, s. 33 (2); 2009, c. 33, Sched. 13, s. 2 (9).

Time of application

(3) An application under subsection (1) or (2) shall not be made before the expiry of the period fixed for the purpose by the Discipline Committee under subsection 30 (7) or under paragraph 6 of subsection (6), as the case may be. 1996, c. 12, s. 33 (3).

Same

(4) If the Discipline Committee did not fix a period under subsection 30 (7) or under paragraph 6 of subsection (6), an application under subsection (1) or (2) shall not be made earlier than one year from the date of the order under section 30 or the date of the last order made under this section, as the case may be. 1996, c. 12, s. 33 (4).

Referral to Discipline Committee

(5) The Registrar shall refer an application under subsection (1) or (2) to the Discipline Committee. 1996, c. 12, s. 33 (5); 2009, c. 33, Sched. 13, s. 2 (9).

Order

(6) The Discipline Committee may, after a hearing, make an order doing one or more of the following:

1. Refusing the application.
2. Directing the Registrar to issue a certificate to the applicant.
3. Directing the Registrar to remove the suspension of the applicant's certificate.
4. Directing the Registrar to impose specified terms, conditions and limitations on a certificate of the applicant.
5. Directing the Registrar to remove any term, condition or limitation on a certificate of the applicant.
6. Fixing a period during which the applicant may not apply under this section. 1996, c. 12, s. 33 (6); 2009, c. 33, Sched. 13, s. 2 (9).

Parties

(7) The College and the applicant are parties to the hearing. 1996, c. 12, s. 33 (7).

Examination of documentary evidence

(8) A party to the hearing shall be given an opportunity to examine before the hearing any documents that will be given in evidence at the hearing. 1996, c. 12, s. 33 (8).

Closed hearings

(9) Hearings of the Discipline Committee under this section shall be closed to the public. 1996, c. 12, s. 33 (9).

Recording of evidence

(10) If requested by a party, the oral evidence taken before the Discipline Committee under this section shall be recorded and, if requested by a party, copies of a transcript shall be provided to the party at the party's expense. 1996, c. 12, s. 33 (10).

Only members at hearing to participate in decision

(11) No member of the Discipline Committee shall participate in a decision of the Committee under this section unless he or she was present throughout the hearing and heard the evidence and the argument of the parties. 1996, c. 12, s. 33 (11).

Release of documentary evidence

(12) Documents and things put in evidence at a hearing under this section shall, on the request of the party who produced them, be returned by the Discipline Committee within a reasonable time after the matter in issue has been finally determined. 1996, c. 12, s. 33 (12).

Service of decision on parties

(13) The Discipline Committee shall give its decision under this section in writing, with reasons, and shall serve each party with a copy of the decision. 1996, c. 12, s. 33 (13).

Fitness to Practise Committee

(14) Subsections (1) to (13) apply with necessary modifications to the Fitness to Practise Committee and, for the purpose,

- (a) a reference to the Discipline Committee shall be deemed to be a reference to the Fitness to Practise Committee;
- (b) a reference to subsection 30 (7) shall be deemed to be a reference to subsection 31 (5);
- (c) a reference to section 30 shall be deemed to be a reference to section 31. 1996, c. 12, s. 33 (14).

Application

(15) This section applies with necessary modifications to,

- (a) a person whose certificate of qualification or letter of standing was suspended or cancelled by the Minister before May 20, 1997 under paragraph 13 of subsection 8 (1) of the *Education Act*, as it read immediately before its repeal; and
- (b) a person whose certificate of qualification or letter of standing was suspended or cancelled as a result of a decision of the Minister under paragraph 2 of subsection 2 (2) of Ontario Regulation 276/97 (Transitional Matters — Discipline) made under the Act that was deemed by paragraph 4 or 5 of that subsection to be a decision of the Discipline Committee. 2009, c. 33, Sched. 13, s. 2 (4).

Reinstatement: no hearing

34. The Council or Executive Committee may, without a hearing, with respect to a member or former member who has had a certificate suspended or revoked for any reason under this Act, make an order doing one or more of the following:

1. Directing the Registrar to issue a certificate to the member or former member.
2. Directing the Registrar to remove the suspension of the member's or former member's certificate. 1996, c. 12, s. 34; 2009, c. 33, Sched. 13, s. 2 (9).

PART VII APPEALS TO COURT

Appeal to court

35. (1) A party to a proceeding before the Registration Appeals Committee, the Discipline Committee or the Fitness to Practise Committee may appeal to the Divisional Court,

in accordance with the rules of court, from the decision or order of the committee. 1996, c. 12, s. 35 (1).

Same

(2) For the purposes of this section,

- (a) a person who requests a review under section 21 is a party to the review under section 21 by the Registration Appeals Committee; and
- (b) a person who applies for an order under section 22 is a party to the proceeding under section 22 by the Registration Appeals Committee. 1996, c. 12, s. 35 (2); 2001, c. 14, Sched. B, s. 5; 2004, c. 26, s. 5.

Certified copy of record

(3) On the request of a party desiring to appeal to the Divisional Court and on payment of the fee prescribed by the by-laws for the purpose, the Registrar shall give the party a certified copy of the record of the proceeding, including any documents received in evidence and the decision or order appealed from. 1996, c. 12, s. 35 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Powers of court on appeal

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and that the court considers appropriate and, for the purpose, the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers appropriate. 1996, c. 12, s. 35 (4).

PART VIII REGISTRAR'S POWERS OF INVESTIGATION

Registrar's investigation

36. (1) Where the Registrar believes on reasonable and probable grounds,

- (a) that a member has committed an act of professional misconduct or is incompetent or incapacitated;
- (b) that there is cause to refuse to issue a certificate applied for under this Act;
- (c) that there is cause to suspend or revoke a certificate issued under this Act; or
- (d) that there is cause to impose terms, conditions or limitations on a certificate applied for or issued under this Act,

the Registrar may appoint one or more investigators to investigate whether such act has occurred, such incompetence or incapacity exists or there is such cause. 1996, c. 12, s. 36 (1); 2009, c. 33, Sched. 13, s. 2 (9).

Approval of Executive Committee

(2) The Registrar shall not make an appointment under subsection (1) without the approval of the Executive Committee. 1996, c. 12, s. 36 (2); 2009, c. 33, Sched. 13, s. 2 (9).

Powers of investigator

(3) The investigator may inquire into and examine the conduct or actions of the member to be investigated as the conduct or actions relate to the member's professional responsibilities.

1996, c. 12, s. 36 (3).

Application of *Public Inquiries Act, 2009*

(4) Section 33 of the *Public Inquiries Act, 2009* applies to the investigation. 2009, c. 33, Sched. 6, s. 76.

Same

(5) The investigator may, on production of his or her appointment, enter at any reasonable time the place of work of the member or the premises of the member's employer and may examine anything found there that is relevant to the investigation. 1996, c. 12, s. 36 (5).

Obstruction of investigator

(6) No person shall obstruct an investigator in the course of his or her duties or withhold or conceal from him or her or destroy anything that is relevant to the investigation. 1996, c. 12, s. 36 (6).

Entries and searches

37. (1) A justice of the peace may, on the application of an investigator, issue a warrant authorizing the investigator to enter and search a place and examine anything that is relevant to the investigation if the justice of the peace is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds for believing that,

- (a) the member being investigated has committed an act of professional misconduct or is incompetent or incapacitated; and
- (b) there is something relevant to the investigation at the place.

Searches by day unless stated

(2) A warrant issued under subsection (1) does not authorize an entry or search after sunset and before sunrise unless it is expressly stated in the warrant.

Assistance and entry by force

(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force.

Investigator to show identification

(4) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification, on request, to any person at the place. 1996, c. 12, s. 37.

Relevant documents and objects

Copying

38. (1) An investigator may copy, at the College's expense, a document or object that an investigator may examine under section 36 or under the authority of a warrant issued under section 37.

Removal

- (2) An investigator may remove a document or object described in subsection (1) if,
- (a) it is not practicable to copy it in the place where it is examined; or
 - (b) a copy of it is not sufficient for the purposes of the investigation.

Return

- (3) If it is practicable to copy a document or object removed under subsection (2), the

investigator shall,

- (a) if it was removed under clause (2)(a), return the document or object within a reasonable time; or
- (b) if it was removed under clause (2)(b), provide the person who was in possession of the document or object with a copy of it within a reasonable time.

Copy as evidence

(4) A copy of a document or object certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document or object itself. 1996, c. 12, s. 38.

Report of investigation

39. The Registrar shall report the results of an investigation to one or more of the Executive Committee, the Investigation Committee the Discipline Committee or the Fitness to Practise Committee, as the Registrar considers appropriate. 1996, c. 12, s. 39; 2009, c. 33, Sched. 13, s. 2 (9).

PART IX REGULATIONS AND BY-LAWS

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,

1. making any provision of the *Business Corporations Act*, the *Corporations Act* and the *Corporations Information Act* applicable to the College, with such modifications as the Council considers necessary or advisable;
2. defining constituencies along regional, occupational and other lines for the purpose of electing persons to the Council under clause 4 (2) (a);
3. prescribing the number of representatives for each constituency defined under paragraph 2;
4. respecting qualifications, nomination procedures and election procedures for the purpose of electing persons to the Council under clause 4 (2) (a);
 - 4.1 prescribing rules for candidates for election to the Council;
 - 4.2 prescribing the form of the oath or affirmation required under section 4.1, the manner in which it shall be made and the time period within which it shall be made;
 - 4.3 setting out procedures for the purposes of determining whether a member has contravened the oath or affirmation required under section 4.1;
 - 4.4 governing conflict of interest with respect to members of the Council and for members of committees, including, but not limited to, prescribing conflict of interest rules or guidelines and setting out procedures for the purposes of determining whether the rules or guidelines have been broken;
5. prescribing the conditions for disqualifying elected members from sitting on the Council and for suspending a person from his or her office as a member of the Council and governing the removal of suspended or disqualified members of the

Council;

6. extending the term of office of Council members by up to six months;
- 6.1 extending the term of office of members of the Public Interest Committee;
7. governing the filling of vacancies created on the Council by the departure of elected members of the Council;
8. prescribing the quorum of the Council;
9. respecting the composition and election or appointment of committees required by this Act, other than the Investigation Committee, the Discipline Committee, the Fitness to Practise Committee and the Public Interest Committee;
10. governing the filling of vacancies on the committees required by this Act other than the Public Interest Committee;
11. prescribing terms of office of members of committees required by this Act other than the Public Interest Committee;
12. respecting practice and procedure of committees required by this Act;
13. prescribing the quorums of the committees required by this Act;
14. governing the establishment, powers and duties of panels of a committee required by this Act other than the Public Interest Committee;
- 14.1 prescribing additional duties of the Public Interest Committee;
- 14.2 requiring that a panel established to hear or review a matter relating to a principal or vice-principal must include a principal or vice-principal;
15. designating persons or bodies for the purposes of section 47;
16. prescribing classes of certificates of qualification and registration, including but not limited to classes of certificates that are temporary, provisional or otherwise limited;
17. respecting terms, conditions and limitations that may be imposed on certificates of qualification and registration;
18. respecting requirements, including but not limited to standards, qualifications, examinations and experience requirements, for the issuance of certificates of qualification and registration and providing for exemptions from those requirements;
19. respecting accreditation of teacher education programs offered by post-secondary educational institutions and ongoing education programs for teachers offered by post-secondary educational institutions and other bodies;
20. respecting requirements, including but not limited to standards, qualifications, examinations and experience requirements in respect of 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;
21. providing for exemptions from requirements under paragraph 20;
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;
23. establishing processes and criteria for granting to members qualifications additional to those required for a certificate of qualification and registration, including but not limited to additional qualifications as a supervisory officer;
 - 23.1 providing for qualifications additional to those required for a certificate of qualification and registration to be indicated on a certificate of qualification and registration or for certificates to be issued for such additional qualifications;
 24. prescribing ongoing education requirements for members;
 25. establishing processes and criteria for suspending certificates of members who fail to meet ongoing education requirements;
 26. establishing processes and criteria for removing the suspension of certificates where the suspension was as a result of failure to meet ongoing education requirements;
 27. establishing processes and criteria for suspending a certificate of qualification and registration under section 275 of the *Education Act*;
 28. respecting any matter ancillary to this Act with respect to the issuance, expiry, renewal, amendment, suspension, cancellation, revocation and reinstatement of certificates issued under this Act;
 29. requiring employers of members to deduct members' fees from their salaries and to submit the fees directly to the College, in the manner and within the times specified in the regulations;
 30. prescribing penalties to be paid by employers for the late submission of fees to the College;
 31. subject to subsection (1.1), defining professional misconduct for the purposes of this Act. 1996, c. 12, s. 40 (1); 2001, c. 9, Sched. E, s. 1 (2); 2001, c. 14, Sched. B, ss. 6-8; 2002, c. 7, s. 3 (1); 2004, c. 26, s. 6; 2006, c. 10, s. 58 (1-7); 2009, c. 33, Sched. 13, s. 2 (5-7, 10, 11).

Due process

(1.0.1) Without limiting the generality of paragraphs 4.3, 4.4 and 5 of subsection (1), a regulation made under any of those paragraphs shall provide for procedures by which a member may appeal a determination that is adverse to him or her. 2006, c. 10, s. 58 (8).

Sexual abuse

(1.1) The definition of "professional misconduct" under paragraph 31 of subsection (1) shall be deemed to include sexual abuse of a student by a member. 2002, c. 7, s. 3 (2).

Copies of regulations

(2) The Council shall ensure that a copy of each regulation is available for public inspection in the office of the College. 1996, c. 12, s. 40 (2).

Same

(3) The Registrar shall provide to any person, on payment of a reasonable charge, a copy of any regulation made under this section. 1996, c. 12, s. 40 (3); 2009, c. 33, Sched. 13, s. 2 (9).

Filling of vacancies

(4) The regulations under paragraphs 7 and 10 of subsection 40 (1) must set out

procedures for filling vacancies on the Council and required committees and must require that each procedure for filling a vacancy begin within 10 days of the vacancy arising. 1996, c. 12, s. 40 (4).

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,

1. prescribing the seal and other insignia of the College and providing for their use;
2. providing for the execution of documents by the College;
3. respecting banking and finance;
4. fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
5. respecting conflict of interest rules for officers and employees of the College;
6. respecting indemnification by the College of members of the Council, of members of committees and of officers and employees of the College;
7. respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
8. providing for the remuneration of members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council or the Minister, and for the payment of the expenses of the Council and committees in the conduct of their business;
9. respecting the calling, holding and conducting of meetings of the members;
10. authorizing voting, by mail or other means, by the members on any of the business of the College and prescribing procedures for such voting;
11. prescribing positions of officers of the College, providing for the election or appointment of officers and prescribing the duties of officers;
12. prescribing forms and formats and providing for their use;
13. providing procedures for making, amending and revoking by-laws;
14. respecting the management of property of the College;
15. respecting the borrowing of money by the College and the giving of security in respect of the borrowing;
16. providing for the method of service of any document or class of documents given or served under this Act;
17. providing for the composition, election or appointment, powers, duties, quorums, practices and procedures of committees other than those required by this Act;
- 17.1 respecting the establishment of a roster of eligible panellists for a committee established under this Act, other than the Public Interest Committee, and the selection, qualifications and training of eligible panellists;
18. prescribing terms of office of members of committees other than those required by this Act;

19. prescribing the conditions disqualifying elected members of the Council from sitting on committees and governing the removal of disqualified members of committees;
20. governing the filling of vacancies on committees other than those required by this Act;
21. respecting reports to Council to be made by committees other than the Public Interest Committee;
22. prescribing professional standards and ethical standards applicable to members;
23. prescribing annual membership fees and other fees payable by members, applicants for membership and other persons for anything the Registrar or any committee, other than the Public Interest Committee, is required or authorized to do under this Act;
24. prescribing penalties to be paid by members for the late payment of any fee;
25. prescribing any fee referred to in this Act as prescribed by the by-laws;
26. respecting the reporting and publication of decisions of the College, the Council and the committees, other than the Public Interest Committee;
27. respecting the keeping of a register of members, including but not limited to by-laws prescribing the information that must be kept in the register and the information that may be removed from the register;
28. requiring members to provide the College with information necessary for establishing and maintaining the register and for establishing and maintaining records necessary for the proper functioning of the College;
29. requiring members to provide the College with information about their participation in ongoing education programs;
30. respecting membership of the College in other organizations the objects of which are not inconsistent with and are complementary to those of the College, the payment of fees to such organizations and representation at meetings of such organizations;
31. providing for the establishment and dissolution and governing the operation of groups of members and respecting grants by the College to such groups;
32. authorizing the making of grants to advance knowledge of education or to maintain or improve standards of teaching or support or encourage public information and interest in education;
33. respecting scholarships, bursaries and prizes to assist in the education of teachers or persons wishing to become teachers. 1996, c. 12, s. 41 (1); 2001, c. 9, Sched. E, s. 1 (3); 2001, c. 14, Sched. B, s. 9; 2004, c. 26, s. 7; 2006, c. 10, s. 59; 2009, c. 33, Sched. 13, s. 2 (9).

Meetings by telecommunications, etc.

(2) A by-law made under paragraph 7 or 9 of subsection (1) may provide for the meetings to be held in any manner that allows all the persons participating to communicate with each other simultaneously and instantaneously. 1996, c. 12, s. 41 (2).

Unanimous by-laws, etc.

(3) A by-law or resolution signed by all the members of the Council is as valid and

effective as if passed at a meeting of the Council called, constituted and held for the purpose. 1996, c. 12, s. 41 (3).

Copies of by-laws

(4) The Council shall ensure that a copy of each by-law is given to the Minister and is available for public inspection in the office of the College. 1996, c. 12, s. 41 (4).

Same

(5) The Registrar shall provide to any person, on payment of a reasonable charge, a copy of any by-law made under this section. 1996, c. 12, s. 41 (5); 2009, c. 33, Sched. 13, s. 2 (9).

Regulations made by Lieutenant Governor in Council

42. (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing additional functions of the College for the purposes of paragraph 11 of subsection 3 (1);
- (b) respecting the appointment of persons to the Council under clause 4 (2) (b), including but not limited to regulations specifying how different interests are to be represented on the Council;
 - (b.1) respecting the appointment and remuneration of persons to the Public Interest Committee and the designation of the Chair of the Committee, including, but not limited to, regulations specifying how different interests are to be represented on the Committee;
- (c)-(d) Repealed: 2006, c. 10, s. 60 (2).
- (e) providing for such other matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the College. 1996, c. 12, s. 42 (1); 2006, c. 10, s. 60 (1, 2).

(2)-(3) Repealed: 2006, c. 10, s. 60 (3).

42.1 Repealed: 2004, c. 26, s. 8.

42.2 Repealed: 2004, c. 26, s. 9.

Regulations and by-laws: general or specific

43. (1) A regulation or by-law made under any provision of this Act may be general or specific.

Same

(2) Without limiting the generality of subsection (1), a regulation or by-law may be limited in its application to any class of members, certificates or qualifications.

Classes

(3) A class under this Act may be defined with respect to any attribute and may be defined to consist of or to exclude any specified member of the class, whether or not with the same attributes. 1996, c. 12, s. 43.

PART IX.1

REPORTING REQUIREMENTS RELATED TO PROFESSIONAL MISCONDUCT

Application of Part

43.1 (1) For the purposes of this Part, an employer shall be considered to employ or to

have employed a member only if the employer employs or employed the member,

- (a) to teach a person who is 18 years old or less or, in the case of a person who has special needs, 21 years old or less; or
- (b) to provide services, including support services, related to the education of a person who is 18 years old or less or, in the case of a person who has special needs, 21 years old or less. 2002, c. 7, s. 4.

Special needs

(2) For the purposes of subsection (1), a person has special needs if,

- (a) in the opinion of the employer, the person, by reason of some mental or physical disability, is particularly vulnerable to sexual abuse; or
- (b) the employer, exercising reasonable diligence, should have formed the opinion that the person, by reason of some mental or physical disability, is particularly vulnerable to sexual abuse. 2002, c. 7, s. 4.

Crown bound

(3) This Part binds the Crown. 2002, c. 7, s. 4.

Employer reports re: termination, etc.

43.2 (1) An employer of a member who terminates the member's employment or imposes restrictions on the member's duties for reasons of professional misconduct shall file with the Registrar within 30 days after the termination or restriction a written report setting out the reasons. 2002, c. 7, s. 4; 2009, c. 33, Sched. 13, s. 2 (9).

Same

(2) If an employer of a member intended to terminate the member's employment or to impose restrictions on the member's duties for reasons of professional misconduct but the employer did not do so because the member resigned, the employer shall file with the Registrar within 30 days after the resignation a written report setting out the reasons on which the employer had intended to act. 2002, c. 7, s. 4; 2009, c. 33, Sched. 13, s. 2 (9).

Same

(3) If a member resigns while his or her employer is engaged in an investigation into allegations of an act or omission by the member that would, if proven, have caused the employer to terminate the member's employment or to impose restrictions on the member's duties for reasons of professional misconduct, the employer shall file with the Registrar within 30 days after the resignation a written report stating the nature of the allegations being investigated. 2002, c. 7, s. 4; 2009, c. 33, Sched. 13, s. 2 (9).

Registrar to report back

(4) Where an employer makes a report to the Registrar under subsection (1), (2) or (3), the Registrar shall, as soon as is reasonably possible, provide the employer with a written report respecting the action, if any, taken by the Registrar in response to the employer's report. 2002, c. 7, s. 4; 2009, c. 33, Sched. 13, s. 2 (9).

Employer reports re: certain offences, conduct

43.3 (1) An employer shall promptly report to the College in writing when the employer becomes aware that a member who is or has been employed by the employer,

- (a) has been charged with or convicted of an offence under the *Criminal Code* (Canada)

involving sexual conduct and minors;

- (b) has been charged with or convicted of an offence under the *Criminal Code* (Canada) that in the opinion of the employer indicates that students may be at risk of harm or injury; or
- (c) has engaged in conduct or taken action that, in the opinion of the employer, should be reviewed by a committee of the College. 2002, c. 7, s. 4.

Same

(2) An employer who makes a report under subsection (1) respecting a charge or conviction shall promptly report to the College in writing if the employer becomes aware that the charge was withdrawn, the member was discharged following a preliminary inquiry, the charge was stayed, or the member was acquitted. 2002, c. 7, s. 4.

College reports to employers

43.4 (1) The College shall provide employers of members with information respecting certain decisions and orders under this Act in accordance with the following rules and with subsection (2):

1. If a decision respecting a member is made under subsection 26 (5), the Registrar shall provide the documents referred to in subsection 26 (7) to the member's employer.
2. If an order respecting a member is made under subsection 29 (3), the Registrar shall provide a copy of the order to the member's employer.
3. If an order respecting a member is made under section 30 or 31, the Discipline Committee or the Fitness to Practise Committee, as the case may be, shall provide the employer with the same material as is served on the parties under subsection 32 (13).
4. If a decision respecting a member is made under section 33, the Discipline Committee or the Fitness to Practise Committee, as the case may be, shall provide the employer with the same material as is served on the parties under subsection 33 (13) or (14).
5. If an order respecting a member is made under section 34, the Registrar shall provide a copy of the order to the member's employer.
6. If a court order respecting a member is made under section 35, the Registrar shall provide a copy of the order, with reasons, if any, to the member's employer. 2002, c. 7, s. 4; 2009, c. 33, Sched. 13, s. 2 (9).

Same

(2) The following are the employers who shall receive the information referred to in subsection (1):

1. An employer who employed the member at the time the relevant decision or order referred to in subsection (1) was made.
2. An employer who made a report respecting the member under section 43.3, if the subject of the report is related to the decision or order referred to in subsection (1). 2002, c. 7, s. 4.

**PART X
MISCELLANEOUS**

Right to use French

44. (1) A person has the right to use French in all dealings with the College.

Council to ensure

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College.

Limitation

(3) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

Definition

(4) In this section,

“dealings” means any service or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1996, c. 12, s. 44.

Official publication

45. The Council shall establish and maintain an official publication of the Council. 1996, c. 12, s. 45.

Leave of absence

46. (1) A person who is a member of the Council, a member of a committee established under this Act or a member of a panel of a committee established under this Act shall be granted, on request, a paid leave of absence by his or her employer for the purposes of,

- (a) attending a meeting or other proceeding of the Council, committee or panel of the committee during work hours; or
- (b) performing other work of the College during work hours at the request of the Registrar or his or her delegate. 2001, c. 9, Sched. E, s. 1 (4); 2009, c. 33, Sched. 13, s. 2 (9).

Employer reimbursement

(2) If an employer has provided a leave of absence to a person under subsection (1), the College shall reimburse the employer for the salary expense, if any, incurred by the employer in temporarily hiring someone else to replace the person in the workplace. 2001, c. 9, Sched. E, s. 1 (4).

Information and disclosure

47. (1) For the purpose of carrying out its objects, the College may require the Provincial Schools Authority, a school board or any other person or body designated by the regulations to provide the College with information, including personal information within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act* or section 28 of the *Municipal Freedom of Information and Protection of Privacy Act*, in respect of members of the College. 1996, c. 12, s. 47 (1).

(2)-(4) Repealed: 2002, c. 7, s. 5.

Information provided by Minister to College

(5) If required by the College for the purpose of carrying out its objects, the Minister may provide to the College information, including personal information within the meaning of

section 38 of the *Freedom of Information and Protection of Privacy Act*, in respect of its members, former members and applicants for membership. 1996, c. 12, s. 47 (5).

Information provided by College to Minister

(6) For the purpose of carrying out his or her duties under the *Education Act*, the Minister has the authority to collect from the College information, including personal information within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act*, in respect of its members, former members and applicants for membership. 1996, c. 12, s. 47 (6).

Confidentiality

48. (1) Every person engaged in the administration of this Act, including any person appointed under section 36, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties and shall not communicate any of those matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceeding under this Act or the regulations or by-laws;
- (b) to his or her counsel;
- (c) with the consent of the person to whom the information relates; or
- (d) to the extent that the information is available to the public under this Act.

Testimony in civil proceeding

(2) No person to whom subsection (1) applies shall be compelled to give testimony in any civil proceeding, other than a proceeding under this Act or an appeal or judicial review relating to a proceeding under this Act, with regard to information obtained in the course of his or her duties.

Evidence on civil proceedings

(3) No record of a proceeding under this Act and no document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in any civil proceeding, other than a proceeding under this Act or an appeal or judicial review relating to a proceeding under this Act.

Offence

(4) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 1996, c. 12, s. 48.

Offence: failure to report

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.

Order directing compliance

49. Where it appears to the College that any person does not comply with this Act or the regulations or by-laws, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and the judge may make the order or such other order as the judge thinks fit. 1996, c. 12, s. 49; 2006, c. 19, Sched. C, s. 1 (1).

Offence: obstruction of investigator

50. Any person who contravenes subsection 36 (6) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1996, c. 12, s. 50.

Offence: false representation to obtain certificate

51. (1) Every person who makes a representation, knowing it to be false, for the purpose of having a certificate issued under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Assisting in false representation

(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1996, c. 12, s. 51.

Service of notice or document

52. (1) A notice or document to be given or served under this Act is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by mail; or
- (c) given or served in accordance with by-laws respecting service.

Same

(2) Where a notice or document to be given under this Act is sent by mail addressed to a person at the last address of the person in the records of the College, there is a rebuttable presumption that the notice or document is delivered to the person on the fifth day after the day of mailing. 1996, c. 12, s. 52.

Registrar's certificate as evidence

53. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the College, is admissible in evidence in a court of law as proof, in the absence of evidence to the contrary, of the facts stated in it, without proof of the appointment or signature of the Registrar and without proof of the seal. 1996, c. 12, s. 53; 2009, c. 33, Sched. 13, s. 2 (9).

Statutory Powers Procedure Act

54. In the event of a conflict between this Act, the regulations or the by-laws and the *Statutory Powers Procedure Act*, the provisions of this Act, the regulations and the by-laws prevail. 1996, c. 12, s. 54.

Immunity of College

55. No proceeding for damages shall be instituted against the College, the Council, a committee established under this Act, a member of the Council, a member of a committee established under this Act or a member of a panel of a committee established under this Act, or an officer, employee, agent or appointee of the College for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power. 2001, c. 9, Sched. E, s. 1 (5).

Deemed loan

56. (1) Any payment made by the Minister that is charged to an appropriation of the

Ministry of Education and Training made for the fiscal year beginning on April 1, 1994 or for any subsequent fiscal year, for the purpose of establishing or operating the College, shall be deemed to have been a loan from the Province of Ontario to the College. 1996, c. 12, s. 56 (1).

Same

(2) A payment for the purpose of the Ontario Teaching Council Implementation Committee established by Order in Council to advise the Minister in respect of the establishment and mandate of the College is a payment for the purpose of establishing the College within the meaning of subsection (1). 1996, c. 12, s. 56 (2).

Same

(3) The Minister shall notify the College of the amount of any payment described in subsection (1) and shall, by order, direct the repayment of the amount by the College to the Province of Ontario. 1996, c. 12, s. 56 (3).

Same

(4) The determination by the Minister of the amount of a payment described in subsection (1) is final and shall not be reviewed in any court. 1996, c. 12, s. 56 (4).

Same

(5) An order under subsection (3) may fix a schedule for repayment of an amount and may prescribe the rate of interest payable on the amount from the date of the order until the date on which the amount is repaid in full. 1996, c. 12, s. 56 (5).

Same

(6) A rate of interest prescribed in an order under subsection (3) shall not exceed the prime rate of the bank listed in Schedule I or II of the *Bank Act* (Canada) that has the highest prime rate on the day that the order is made. 1996, c. 12, s. 56 (6).

Same

(7) An order under subsection (3) is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1996, c. 12, s. 56 (7); 2006, c. 21, Sched. F, s. 136 (1).

Guarantee of loans

57. (1) The Lieutenant Governor in Council may, by order, authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee the repayment of loans made to the College, including interest.

Same

(2) A guarantee given under subsection (1) is subject to any conditions that the Minister of Finance imposes. 1996, c. 12, s. 57.

Regulations under *Teaching Profession Act*

58. (1) The Minister may require the board of governors of The Ontario Teachers' Federation to amend or revoke a regulation made under the *Teaching Profession Act* if, in the Minister's opinion, the regulation conflicts with or overlaps with this Act or a regulation or by-law under this Act. 1996, c. 12, s. 58 (1).

Same

(2) If the Minister requires the board of governors of The Ontario Teachers' Federation to amend or revoke a regulation under subsection (1) and the board of governors does not do so within 60 days, the Lieutenant Governor in Council may, by regulation, amend or revoke the

regulation. 1996, c. 12, s. 58 (2).

Same

(3) Subsection (2) does not give the Lieutenant Governor in Council authority to do anything that the board of governors of The Ontario Teachers' Federation does not have authority to do. 1996, c. 12, s. 58 (3).

Legislation Act, 2006

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a regulation made under subsection (2). 2006, c. 21, Sched. F, s. 123.

**PART XI
TRANSITIONAL PROVISIONS**

59. Repealed: 2006, c. 10, s. 61.

First meeting of members

60. The College shall hold its first annual meeting of the members not more than 15 months after the first Council is duly elected and appointed. 1996, c. 12, s. 60.

61. Repealed: 2006, c. 10, s. 61.

Transition: initial membership

62. (1) Every person who, on a day to be specified in a regulation made under subsection (2), holds an Ontario Teacher's Certificate or a letter of standing issued under the *Education Act* shall be deemed to hold a certificate of qualification and registration under this Act. 1996, c. 12, s. 62 (1); 2009, c. 33, Sched. 13, s. 2 (10).

Same

(2) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations specifying a day for the purposes of subsection (1) and providing a concordance between,

- (a) qualifications held under the *Education Act* by persons affected by subsection (1) before the specified day; and
- (b) certificates, including any terms, conditions or limitations on those certificates, held under this Act on and after the specified day. 1996, c. 12, s. 62 (2).

Same

(3) For the purposes of subsection (2), qualifications include,

- (a) qualifications set out in Regulation 297 of the Revised Regulations of Ontario, 1990;
- (b) qualifications set out on Ontario Teacher's Qualifications Record Cards;
- (c) qualifications set out on any other records of qualification held by the Ministry in respect of any person affected by subsection (1). 1996, c. 12, s. 62 (3).

Same

(4) Regulations that may be made under subsection (2) include but are not limited to regulations,

- (a) classifying certificates of qualification and registration that come into being as a result of subsection (1);
- (b) deeming certificates of qualification and registration of any class prescribed under

- clause (a) to be subject to specified terms, conditions and limitations;
 - (c) deeming terms, conditions and limitations referred to in clause (b) to have been imposed by the Registrar under this Act;
 - (d) deeming any person who holds a certificate of qualification and registration of any class prescribed under clause (a) to also hold one or more additional certificates of qualification;
 - (e) deeming additional certificates referred to in clause (d) to have been issued under this Act, 1996, c. 12, s. 62 (4); 2009, c. 33, Sched. 13, s. 2 (8, 9, 11).
- (5) Repealed: 2006, c. 10, s. 62.

Same

(6) Subsections 40 (2) and (3) apply to a regulation made under subsection (2). 1996, c. 12, s. 62 (6).

Transition: persons in programs

63. (1) Any person who,

- (a) is enrolled in a program of professional education within the meaning of Regulation 297 of the Revised Regulations of Ontario, 1990 on the date specified under subsection 62 (2); and
- (b) fulfils the requirements for an Ontario Teacher's Certificate as they existed immediately before the date specified under subsection 62 (2),

shall be deemed to have fulfilled the requirements for the issuance of a certificate of qualification and registration. 1996, c. 12, s. 63 (1); 2009, c. 33, Sched. 13, s. 2 (10).

Same

(2) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations providing for any matter that it considers necessary or advisable in connection with the issuance of certificates of qualification and registration under subsection (1), including but not limited to regulations,

- (a) relating to terms, conditions and limitations to be imposed on the certificates;
- (b) relating to the classification of the certificates; and
- (c) respecting processes and criteria for the issuance of the certificates. 1996, c. 12, s. 63 (2); 2009, c. 33, Sched. 13, s. 2 (11).

Same

(3) Subsections 40 (2) and (3) apply to a regulation made under subsection (2). 1996, c. 12, s. 63 (3).

63.1 Repealed: 2004, c. 26, s. 10.

64.-67. Omitted (amends or repeals other Acts). 1996, c. 12, ss. 64-67.

68. Omitted (provides for coming into force of provisions of this Act). 1996, c. 12, s. 68.

69. Omitted (enacts short title of this Act). 1996, c. 12, s. 69.

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ANNEX

D

Ontario College of Teachers By-Laws

.....

25.01 In addition to the information prescribed by section 23 of the Act, the register shall contain:

- (a) each member's College registration number
- (b) subject to any order of the Discipline or Fitness to Practise Committees, if a finding of professional misconduct, incompetence or incapacity has been made:
 - (i) that fact
 - (ii) the date of the finding
 - (iii) the penalty
 - (iv) if under appeal, a notation to that effect
 - (v) if terms, limitations, conditions have been imposed, a notation to that effect
- (c) the date on which the member's certificate of qualification and registration was issued and, if applicable, the termination or expiration date
- (d) the basic qualifications of the member as entered on the member's certificate of qualification
- (e) any additional qualifications of the member as entered on the member's certificate of qualification
- (f) any program of teacher education which has been completed by the member and entered on the member's certificate of qualification.

.....

26.01 Notwithstanding section 23 of the Act, and other provision of the bylaws:

- (a) if:
 - (i) a finding of professional misconduct, incompetence or incapacity was made against a member
 - (ii) the penalty imposed was a reprimand, admonishment, counselling, or a fine, and
 - (iii) at least three (3) years have elapsed since the penalty order became final, the finding of professional misconduct, incompetence or incapacity and the penalty shall be removed from the register, subject to any order of the Discipline or Fitness to Practise Committees;
- (b) if:
 - (i) terms, conditions or limitations were imposed upon a member's certificate, and
 - (ii) the terms, conditions, or limitations have been removed, the fact and content of the terms, conditions, or limitations shall be removed from the register.

.....

28.01 A complaint filed pursuant to section 26 of the Act shall:

- (a) be in writing
- (b) contain the name of the member who is the subject of the complaint
- (c) in the case of a complaint under paragraph 26(1)(a) or (b) of the Act, contain the full name, address and telephone number of the person making the complaint
- (d) include a description of the conduct or actions of the member about which the complaint is being made
- (e) contain a "Request to Initiate Investigation" form as provided for in the bylaws and signed by the complainant.

.....

33.01 Members of a roster of panellists described in section 17(3) of the Act shall be either current or former members of Council, or a person appointed under section 17(4) of the Act.

33.02 The Registrar shall develop procedures for maintaining a list of members of the roster.

33.03 The Registrar shall provide appropriate training and orientation for members of the roster before such members perform duties or exercise powers under the Act.

33.04 A member of the roster for the Investigation Committee may not be on a roster for the Discipline Committee or a roster for the Fitness to Practise Committee.

33.05 Members of the roster described in section 17.3 of the Act shall, in the performance of their duties, comply with the provisions of the Act, the regulations made under the Act and the bylaws of the College.

33.06 The Council shall disqualify a member of the roster from sitting on panels if the member:

- (a) is found by the Discipline Committee to be guilty of professional misconduct or to be incompetent
- (b) is found by the Fitness to Practise Committee to be incapacitated
- (c) fails, without cause, to attend a hearing of a panel of a committee for which he or she has been selected.

33.07 A member of the roster who is the subject of a proceeding before the Discipline Committee or the Fitness to Practise Committee as a result of a referral under section 26 or 29 of the Act is suspended from the roster and any panel pending the outcome of the proceeding.

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ANNEX

E



Français

Ontario College of Teachers Act, 1996

ONTARIO REGULATION 437/97

PROFESSIONAL MISCONDUCT

Consolidation Period: From December 15, 2009 to the e-Laws currency date.

Last amendment: S.O. 2009, c. 33, Sched. 13, s. 7.

This is the English version of a bilingual regulation.

1. The following acts are defined as professional misconduct for the purposes of subsection 30 (2) of the Act:

1. Providing false information or documents to the College or any other person with respect to the member's professional qualifications.
2. Inappropriately using a term, title or designation indicating a specialization in the profession which is not specified on the member's certificate of qualification and registration.
3. Permitting, counselling or assisting any person who is not a member to represent himself or herself as a member of the College.
4. Using a name other than the member's name, as set out in the register, in the course of his or her professional duties.
5. Failing to maintain the standards of the profession.
6. Releasing or disclosing information about a student to a person other than the student or, if the student is a minor, the student's parent or guardian. The release or disclosure of information is not an act of professional misconduct if,
 - i. the student (or if the student is a minor, the student's parent or guardian) consents to the release or disclosure, or
 - ii. if the release or disclosure is required or allowed by law.
7. Abusing a student verbally.
 - 7.1 Abusing a student physically.
 - 7.2 Abusing a student psychologically or emotionally.

- 7.3 Abusing a student sexually.
8. Practising or purporting to practise the profession while under the influence of any substance or while adversely affected by any dysfunction,
 - i. which the member knows or ought to know impairs the member's ability to practise, and
 - ii. in respect of which treatment has previously been recommended, ordered or prescribed but the member has failed to follow the treatment.
9. Contravening a term, condition or limitation imposed on the member's certificate of qualification and registration.
10. Failing to keep records as required by his or her professional duties.
11. Failing to supervise adequately a person who is under the professional supervision of the member.
12. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false, improper or misleading statement.
13. Falsifying a record relating to the member's professional responsibilities.
14. Failing to comply with the Act or the regulations or the by-laws.
15. Failing to comply with the *Education Act* or the regulations made under that Act, if the member is subject to that Act.
16. Contravening a law if the contravention is relevant to the member's suitability to hold a certificate of qualification and registration.
17. Contravening a law if the contravention has caused or may cause a student who is under the member's professional supervision to be put at or to remain at risk.
18. An act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
19. Conduct unbecoming a member.
20. Failing to appear before a panel of the Investigation Committee to be cautioned or admonished, if the Investigation Committee has required the member to appear under clause 26 (5) (c) of the Act.
21. Failing to comply with an order of a panel of the Discipline Committee or an order of a panel of the Fitness to Practise Committee.
22. Failing to co-operate in a College investigation.
23. Failing to take reasonable steps to ensure that the requested information is provided in a complete and accurate manner if the member is required to provide information to the College under the Act and the regulations.
24. Failing to abide by a written undertaking given by the member to the College or by an agreement entered into by the member with the College.
25. Failing to respond adequately or within a reasonable time to a written inquiry from the College.

26. Practising the profession while the member is in a conflict of interest.

27. Failing to comply with the member's duties under the *Child and Family Services Act*.
O. Reg. 437/97, s. 1; O. Reg. 134/08, s. 1; S.O. 2009, c. 33, Sched. 13, s. 7.

2. A finding of incompetence, professional misconduct or a similar finding against a member by a governing authority of the teaching profession in a jurisdiction other than Ontario that is based on facts that would, in the opinion of the Discipline Committee, constitute professional misconduct as defined in section 1, is defined as professional misconduct for the purposes of subsection 30 (2) of the Act. O. Reg. 437/97, s. 2.

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ANNEX

F

(Excerpts)

Health Professions Procedural Code

Regulated Health Professions Act, 1991

S.O. 1991, CHAPTER 18

Consolidation Period: From December 31, 2011 to the e-Laws currency date.

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

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SCHEDULE 2
HEALTH PROFESSIONS PROCEDURAL CODE

Note: This Code is deemed by section 4 of the *Regulated Health Professions Act, 1991* to be part of each health profession Act.

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Register

23. (1) The Registrar shall maintain a register. 2007, c. 10, Sched. M, s. 28.

Contents of register

(2) The register shall contain the following:

1. Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. The name, business address and business telephone number of every health profession corporation.
3. The names of the shareholders of each health profession corporation who are members of the College.
4. Each member's class of registration and specialist status.
5. The terms, conditions and limitations that are in effect on each certificate of registration.

6. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, until the matter has been resolved.
7. The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the relevant committee makes no finding with regard to the proceeding.
8. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal.
9. A notation of every revocation or suspension of a certificate of registration.
10. A notation of every revocation or suspension of a certificate of authorization.
11. Information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included.
12. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.
13. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.
14. Information that is required to be kept in the register in accordance with the by-laws. 2007, c. 10, Sched. M, s. 28.

Publication ban

(3) No action shall be taken under this section which violates a publication ban, and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 28.

Panels specifying information in register

(4) In disposing of a matter, a panel of the Registration, Discipline or Fitness to Practise Committee may, for the purposes of paragraph 11 of subsection (2), specify information that is to be included in the register in addition to the information specified in other paragraphs of subsection (2). 2007, c. 10, Sched. M, s. 28.

Access to information by the public

(5) All of the information required by paragraphs 1 to 13 of subsection (2) and all information designated as public in the by-laws shall, subject to subsections (6), (7), (8), (9) and (11), be made available to an individual during normal business hours, and shall be posted on the College's website in a manner that is accessible to the public or in any other manner and form specified by the Minister. 2007, c. 10, Sched. M, s. 28.

When information may be withheld from the public

(6) The Registrar may refuse to disclose to an individual or to post on the College's website an address or telephone number or other information designated as information to

be withheld from the public in the by-laws if the Registrar has reasonable grounds to believe that disclosure may jeopardize the safety of an individual. 2007, c. 10, Sched. M, s. 28.

Same

(7) The Registrar may refuse to disclose to an individual or to post on the College's website information that is available to the public under subsection (5), if the Registrar has reasonable grounds to believe that the information is obsolete and no longer relevant to the member's suitability to practise. 2007, c. 10, Sched. M, s. 28.

Same, personal health information

(8) The Registrar shall not disclose to an individual or post on the College's website information that is available to the public under subsection (5) that is personal health information, unless the personal health information is that of a member and it is in the public interest that the information be disclosed. 2007, c. 10, Sched. M, s. 28.

Restriction, personal health information

(9) The Registrar shall not disclose to an individual or post on the College's website under subsection (8) more personal health information than is reasonably necessary. 2007, c. 10, Sched. M, s. 28.

Personal health information

(10) In subsections (8) and (9),

“personal health information” means information that identifies an individual and that is referred to in clauses (a) through (g) of the definition of “personal health information” in subsection 4 (1) of the *Personal Health Information Protection Act, 2004*. 2007, c. 10, Sched. M, s. 28.

Other cases when information may be withheld

(11) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 7 of subsection (2) if,

- (a) a finding of professional misconduct was made against the member and the order made was only a reprimand or only a fine, or a finding of incapacity was made against the member;
- (b) more than six years have passed since the information was prepared or last updated;
- (c) the member has made an application to the relevant committee for the removal of the information from public access because the information is no longer relevant to the member's suitability to practise, and if,
 - (i) the relevant committee believes that a refusal to disclose the information outweighs the desirability of public access to the information in the interest of any person affected or the public interest, and

- (ii) the relevant committee has directed the Registrar to remove the information from public access; and
- (d) the information does not relate to disciplinary proceedings concerning sexual abuse as defined in clause (a) or (b) of the definition of “sexual abuse” in subsection 1 (3). 2007, c. 10, Sched. M, s. 28.

Information from register

(12) The Registrar shall provide to an individual a copy of any information in the register that the individual is entitled to obtain, upon the payment of a reasonable fee, if required. 2007, c. 10, Sched. M, s. 28.

Positive obligation

(13) Subject to subsection (11), where an individual inquires about a member, the Registrar shall make reasonable efforts to ensure that the individual is provided with a list of the information that is available to the public under subsection (5). 2007, c. 10, Sched. M, s. 28.

Meaning of results of proceeding

(14) For the purpose of this section and section 56, “result”, when used in reference to a disciplinary or incapacity proceeding, means the panel’s finding, particulars of the grounds for the finding, and the order made, including any reprimand. 2007, c. 10, Sched. M, s. 28.

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Panel for investigation or consideration

25. (1) A panel shall be selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee to investigate a complaint filed with the Registrar regarding the conduct or actions of a member or to consider a report that is made by the Registrar under clause 79 (a). 2007, c. 10, Sched. M, s. 30.

Composition

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 30.

Quorum

(3) Three members of a panel constitute a quorum. 2007, c. 10, Sched. M, s. 30.

Complaint must be recorded

(4) A panel shall not be selected to investigate a complaint unless the complaint is in writing or is recorded on a tape, film, disk or other medium. 2007, c. 10, Sched. M, s. 30.

Complainant to be informed

(5) The Registrar shall give a complainant notice of receipt of his or her complaint and a general explanation of the processes of the College, including the jurisdiction and role of the Inquiries, Complaints and Reports Committee, together with a copy of the provisions of sections 28 to 29. 2007, c. 10, Sched. M, s. 30.

Notice to member

(6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,

- (a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;
- (b) a copy of the provisions of section 25.2; and
- (c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5). 2007, c. 10, Sched. M, s. 30.

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What a panel may do

26. (1) A panel, after investigating a complaint or considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant to the complaint or the report, may do any one or more of the following:

1. Refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
2. Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.
3. Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.
4. Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws. 2007, c. 10, Sched. M, s. 30.

Prior decisions

(2) A panel of the Inquiries, Complaints and Reports Committee shall, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). 2007, c. 10, Sched. M, s. 30.

Quality assurance

(3) In exercising its powers under paragraph 4 of subsection (1), the panel may not refer the matter to the Quality Assurance Committee, but may require a member to complete a specified continuing education or remediation program. 2007, c. 10, Sched. M, s. 30.

Complaint in bad faith, etc.

(4) If the panel considers a complaint to be frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the complainant and the member notice that it intends to take no action with respect to the complaint and that the complainant and the member have a right to make written submissions within 30 days after receiving the notice. 2007, c. 10, Sched. M, s. 30.

Same

(5) If the panel is satisfied, after considering the written submissions of the complainant and the member, that a complaint was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the panel shall not take action with respect to the complaint. 2007, c. 10, Sched. M, s. 30.

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Timely disposal

28. (1) A panel shall dispose of a complaint within 150 days after the filing of the complaint. 2007, c. 10, Sched. M, s. 30.

Not affected by ADR

(2) A referral to an alternative dispute resolution process under section 25.1 does not affect the time requirements under this section. 2007, c. 10, Sched. M, s. 30.

If complaint not disposed of

(3) If a panel has not disposed of a complaint within 150 days after the complaint was filed, the Registrar shall provide the complainant with written notice of that fact and an expected date of disposition which shall be no more than 60 days from the date of the written notice. 2007, c. 10, Sched. M, s. 30.

If further delay

(4) If a panel has not disposed of the complaint by the expected date of disposition described in subsection (3), the Registrar shall,

- (a) provide the member and complainant with written notice and reasons for the delay and the new expected date of disposition which shall be no more than 30 days from the date of the revised notice or from the expected date of disposition described in subsection (3), whichever is sooner; and
- (b) provide the Board with written notice of and reasons for the delay as were provided to the member and complainant. 2007, c. 10, Sched. M, s. 30.

Powers of the Board

(5) The Board, on application of the member or the complainant, shall consider the written reasons for the delay and shall do any one of the following:

1. Direct the Inquiries, Complaints and Reports Committee to continue the investigation.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Investigate the complaint and make an order under subsection (9) within 120 days of the decision to investigate the complaint. 2007, c. 10, Sched. M, s. 30.

Board's investigatory powers

(6) In investigating a complaint under paragraph 3 of subsection (5), the Board has all the powers of a panel of the Inquiries, Complaints and Reports Committee and of the Registrar with respect to the investigation of the matter and may appoint an investigator under clause 75 (1) (c). 2007, c. 10, Sched. M, s. 30.

Continuing power of Inquiries, Complaints and Reports Committee

(7) The Inquiries, Complaints and Reports Committee may take action under section 26 at any time before the Board completes its investigation. 2007, c. 10, Sched. M, s. 30.

Same

(8) For greater certainty, if the Inquiries, Complaints and Reports Committee takes action as provided for in subsection (7), the Board no longer has jurisdiction to take action under section 26. 2007, c. 10, Sched. M, s. 30.

Powers of Board re an investigation

(9) After an investigation, the Board may do any one or more of the following:

1. Refer the matter to the Inquiries, Complaints and Reports Committee.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Require the Inquiries, Complaints and Reports Committee or a panel to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 30.

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Hearings public

45. (1) A hearing shall, subject to subsection (2), be open to the public. 1991, c. 18, Sched. 2, s. 45 (1).

Exclusion of public

(2) The panel may make an order that the public be excluded from a hearing or any part of it if the panel is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized. 1991, c. 18, Sched. 2, s. 45 (2); 2007, c. 10, Sched. M, s. 37.

Orders preventing public disclosure

(3) In situations in which the panel may make an order that the public be excluded from a hearing, it may make orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (3).

Public information may be disclosed

(4) No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public. 1991, c. 18, Sched. 2, s. 45 (4).

Exclusion of public

(5) The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (2). 1991, c. 18, Sched. 2, s. 45 (5).

Orders with respect to matters in submissions

(6) The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (6).

Reasons for order, etc.

(7) The panel shall ensure that any order it makes under this section and its reasons are available to the public in writing. 1991, c. 18, Sched. 2, s. 45 (7).

Reconsidering of order

(8) The panel may reconsider an order made under subsection (2) or (3) at the request of any person or on its own motion. 1991, c. 18, Sched. 2, s. 45 (8).

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Professional misconduct

51. (1) A panel shall find that a member has committed an act of professional misconduct if,

- (a) the member has been found guilty of an offence that is relevant to the member's suitability to practise;
- (b) the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations;
- (b.0.1) the member has failed to co-operate with the Quality Assurance Committee or any assessor appointed by that committee;
- (b.1) the member has sexually abused a patient; or
- (c) the member has committed an act of professional misconduct as defined in the regulations. 1991, c. 18, Sched. 2, s. 51 (1); 1993, c. 37, s. 14 (1); 2007, c. 10, Sched. M, s. 39 (1).

Orders

(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

Idem

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms,

conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 51 (3).

Suspension of order

(4) A panel may suspend the effect of all or part of an order made under subsection (2) for a specified period and on specified conditions. 1991, c. 18, Sched. 2, s. 51 (4); 2007, c. 10, Sched. M, s. 39 (2).

Orders relating to sexual abuse

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
 - i. sexual intercourse,
 - ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - iii. masturbation of the member by, or in the presence of, the patient,
 - iv. masturbation of the patient by the member,
 - v. encouragement of the patient by the member to masturbate in the presence of the member. 1993, c. 37, s. 14 (3).

Statement re impact of sexual abuse

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient. 1993, c. 37, s. 14 (3).

Same

(7) The statement may be made by the patient or by his or her representative. 1993, c. 37, s. 14 (3).

Same

(8) The panel shall not consider the statement unless a finding of professional misconduct has been made. 1993, c. 37, s. 14 (3).

Notice to member

(9) When a written statement is filed, the panel shall, as soon as possible, have copies of it provided to the member, to his or her counsel and to the College. 1993, c. 37, s. 14 (3).

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Publication of decisions

56. (1) The College shall publish a panel's decision and its reasons, or a summary of its reasons, in its annual report and may publish the decision and reasons or summary in any other publication of the College.

Publication of member's name

(2) In publishing a decision and reasons or summary under subsection (1), the College shall publish the name of the member who was the subject of the proceeding if,

- (a) the results of the proceeding may be obtained by a person from the register; or
- (b) the member requests the publication of his or her name.

Withholding of member's name

(3) The College shall not publish the member's name unless it is required to do so under subsection (2). 1991, c. 18, Sched. 2, s. 56.

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Applications for reinstatement

72. (1) A person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed. 1991, c. 18, Sched. 2, s. 72 (1).

Time of application

(2) An application under subsection (1) shall not be made earlier than,

- (a) one year after the date on which the certificate of registration was revoked or suspended; or
- (b) six months after a decision has been made in a previous application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Time of application, sexual abuse cases

(3) An application under subsection (1), in relation to a revocation for sexual abuse of a patient, shall not be made earlier than,

- (a) five years after the date on which the certificate of registration was revoked; or
- (b) six months after a decision has been made in a previous application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Notice where complainant

(4) The Registrar shall give the complainant in the original proceeding notice of an application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Reasons for reinstatement

(5) The person making the application under subsection (1) shall provide reasons why the certificate should be issued or the suspension be removed. 2007, c. 10, Sched. M, s. 52.

Referral to Committee

73. (1) The Registrar shall refer the application, if the revocation or suspension was on the grounds of,

- (a) professional misconduct or incompetence, to the Discipline Committee; or
- (b) incapacity, to the Fitness to Practise Committee.

Hearings

(2) The chair of a committee to which an application is referred shall select a panel from among the members of the committee to hold a hearing of the application.

Procedural provisions

(3) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Discipline Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (2) (composition).
3. Subsection 38 (3) (composition).
4. Subsection 38 (5) (quorum).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 45 (hearings open).
8. Section 47 (sexual misconduct witnesses).
9. Section 48 (transcript of hearings).
10. Section 50 (members of panel who participate).
11. Section 55 (release of evidence).

Idem

(4) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).
2. Section 43 (no communication by panel members).
3. Section 44 (legal advice).
4. Section 47 (sexual misconduct witnesses).
5. Section 48 (transcript of hearings).
6. Section 50 (members of panel who participate).
7. Section 55 (release of evidence).
8. Subsection 64 (2) (composition).

9. Subsection 64 (3) (quorum).
10. Section 68 (hearings closed).

Order

(5) A panel may, after a hearing, make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration. 1991, c. 18, Sched. 2, s. 73 (1-5).

Limitation for sexual abuse cases

(5.1) A panel may not make an order directing that the Registrar issue a new certificate of registration to an applicant whose certificate had been revoked for sexual abuse of a patient unless the prescribed conditions are met. 1993, c. 37, s. 19.

Decision

(6) A panel that held a hearing of an application shall give its decision and reasons in writing to the applicant and the Registrar. 1991, c. 18, Sched. 2, s. 73 (6).

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Investigators

75. (1) The Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if,

- (a) the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries, Complaints and Reports Committee approves of the appointment;
- (b) the Inquiries, Complaints and Reports Committee has received information about a member from the Quality Assurance Committee under paragraph 4 of subsection 80.2 (1) and has requested the Registrar to conduct an investigation; or
- (c) the Inquiries, Complaints and Reports Committee has received a written complaint about the member and has requested the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 53.

Emergencies

(2) The Registrar may appoint an investigator if,

- (a) the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately; and

(b) there is not time to seek approval from the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 53.

Report

(3) Where an investigator has been appointed under subsection (2), the Registrar shall report the appointment of the investigator to the Inquiries, Complaints and Reports Committee within five days. 2007, c. 10, Sched. M, s. 53.

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