

Learning from the Teachers

by Richard Steinecke
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Earlier this month the Ontario Legislature introduced comprehensive and innovative amendments to the enabling statute for the regulation of Ontario's teachers and principals. These amendments flow from the recommendations made by retired Justice LeSage in his report commissioned by the College of Teachers.

Transparency

A major theme of the amendments (Bill 103) is to ensure that there is enhanced transparency in the regulatory activities of the College, while offering an appropriate level of privacy for member-specific matters where no findings have been made. For example, the public register (which must be on the College's website) will now include the following:

- All terms, conditions and limitations on a member's registration including those imposed through an undertaking.
- Any restrictions on a member's ability to teach imposed by a court.
- A notation that a matter has been referred to discipline along with all hearing dates and a link to the notice of hearing.
- A notation of every discipline finding along with a link to the published decision.
- Any resolution at the investigations level if the resolution provides for public access.

- All resolutions reached after a matter has been referred to discipline (which resolution must be considered by the Discipline Committee at an open hearing).
- Information about any current or past criminal proceedings relevant to the person's membership.

Less serious disciplinary findings can be removed from the register after three years unless the Discipline Committee directs they be on for a longer period of time.

Other changes related to transparency include:

- The College has to publish, both on its website and in its official newsletter a summary of disciplinary findings and resolutions, including the member's name, unless the disciplinary finding is that the allegations were unfounded (unless the member then asks for publication).
- The exceptions to the College's duty of confidentiality are expanded. Disclosure may be made to a police officer for law enforcement purposes, other regulators or where disclosure is required by some other law.

Efficiency

Some of the amendments also attempt to foster a more timely complaints and discipline process while maintaining fairness to the member. Changes include:

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- Complaints must be acknowledged and the member notified of the complaint as soon as possible after the complaint is received.
- The Registrar can withhold from the member the identity of the complainant where the Registrar reasonably believes such disclosure could lead to harm or injury.
- The Registrar can refer complaints to a resolution process in appropriate cases.
- The screening committee can not only refuse to investigate frivolous and vexatious complaints, it can also decline to investigate complaints that do not warrant investigation or where there is no public interest in investigating it.
- Members now have 60 days, rather than just 30, to respond to a complaint.
- Members will be provided disclosure of a summary of information provided to the College by third parties during an investigation.
- The screening committee is obliged to consider prior complaints and resolutions and concurrent proceedings when dealing with a complaint.
- The screening committee can by-pass their investigation process and refer a matter directly to discipline where the member has been convicted criminally for the conduct in issue.
- The 120 day target date for disposing of a complaint does not include the time where the complaint is in the resolution process. After the 120 days have passed, regular updates must be sent to the parties.
- Once a matter has been referred to discipline, either the Discipline Committee or the

Registrar may refer the matter to a disciplinary resolution process (except if the allegation relates to sexual abuse). The parties to the resolution are the member and the College. However, any resolution must be approved by the Discipline Committee at an open hearing.

Other Interesting Changes

There are a number of other proposed amendments that will be of interest to regulators.

- Either the Registrar or the Deputy Registrar of the College must be fluent in both English and French.
- The definition of professional misconduct has been amended to include breach of the child pornography provisions of the *Criminal Code of Canada*.
- A broad definition is provided of who constitutes a “student” for purposes of sexual abuse (e.g., students who are coached by the member in a sports activity), but it excludes a student who is the spouse of the member.
- There is mandatory revocation for at least five years for members who are found to have engaged in frank sexual acts with a student.
- Victim impact statements can be made where there has been a finding of sexual misconduct.
- The Discipline Committee has the authority to ban publication or broadcast of the identity of a person in appropriate cases. Such orders shall be made automatically in the case of persons who are under 18 years of age or who are the alleged subject of sexual misconduct.
- Orders of revocation, suspension or for terms, conditions and limitations are not stayed by an

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appeal in cases of frank sexual abuse, incompetence or incapacity.

- There will be a mandatory reporting requirement to the College for specified persons where there is an urgent need to disclose a risk of harm by the actions of a member.

Bill 103 has only had first reading so far. It can be found at: <http://www.ontla.on.ca>.