

Catholic Principals' Council Ontario
l'Associations des directions et directions-adjointes franco-ontariennes
Ontario Principals' Council

Presentation to the Standing Committee Finance and Economic Affairs

Bill 37 Protecting Students Act

October 27, 2016



PRESENTATION TO THE STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

PROTECTING STUDENTS ACT

Thank you for the opportunity to make submissions to the legislative committee convened to consider Bill 37. The Catholic Principals' Council Ontario, l'Associations des directions et directions-adjointes franco-ontariennes and the Ontario Principals' Council – together representing more than 7500 principals and vice-principals working in Ontario's public schools – collectively want to express our support for the new Bill, and to identify opportunities for improvement. We hope that improvements to the Bill along the lines we've outlined below will result in a more effective Ontario College of Teachers, and, as a result, greater protection for students.

Issue 1 – Peer Review for Principals and Vice-Principals

Principals and vice-principals in Ontario are mandated by statute to belong to the Ontario College of Teachers (OCT), and comprise about four per cent of the College's membership. Notwithstanding their small numbers, complaints against principals and vice-principals annually range between approximately 15 and 20 per cent of all complaints investigated by the College, many of which come from teacher complainants.

School leaders have additional qualifications (required by law), perform different statutory duties, and stand in a supervisory relationship to teachers, including being responsible for implementing the employer's interpretation of collective agreement terms, as well as evaluating and disciplining teachers. This makes the role performed by principals and vice-principals substantially different from that of teachers and makes them uniquely vulnerable to complaints, particularly when their professional responsibilities conflict with the preferences of classroom teachers. That's why it is imperative that principals and vice-principals have their conduct judged by their peers – people who have “walked in their shoes” as a principal or vice-principal employed in the public system, subject to the same legislative duties and substantially similar working conditions.

Principals and vice-principals currently have only one representative on the 37-member College Council. The OPC, CPCO and ADFO share a concern that the investigation, discipline and fitness to practice processes of the College have not been consistently fair and impartial for our members because of the College's longstanding refusal to provide school leaders with meaningful peer review. We have repeatedly addressed this issue with the College and the Ministry of Education over a number of years. Indeed, the government amended the *Ontario College of Teachers' Act* in response to our concerns in 2006, to enable the College to provide peer review for principals and vice-principals by way of regulation. However, the College Council refused to enact the necessary regulation.

In 2012, we made submissions to the Honourable Justice Patrick LeSage on this issue, and he specifically recommended that peer review be implemented as an important component of fairness for principals and vice-principals at the OCT. To that end, he overtly acknowledged our concerns about institutional bias and stated:

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. (Page 44)

Notwithstanding his strong endorsement of the need for peer review for principals and vice-principals, and the fact that the College Council accepted the vast majority of Mr. Justice LeSage's other recommendations, the Council initially did not accept his advice on this point. Recently, the Council appears to have softened its opposition to peer review. The Discipline Committee has agreed to provide a limited form of peer review where they deem that the complaint calls into question the principal or vice-principal member's "managerial" function. In addition, in December 2015, we received notice that the Investigation Committee would "endeavour to make best efforts" to begin to provide peer review. However, these are soft commitments at best, and the Council has continued to avoid making a regulation requiring peer review for our members.

There continues to be some debate on who qualifies as a "peer." Debates have related to whether someone who has taken the necessary additional qualifications courses could be considered a peer (our position is that this is insufficient) and whether someone with experience in the role who has long since retired from education could perform the function (we think that there should be some requirement for "recency" for the peer, either in the performance of the role itself or in a role supporting/supervising principals and vice-principals).

We are pleased to see that Bill 37 contains a provision requiring that any panel considering the conduct or actions of a principal or vice-principal "must include at least one person who is employed as a principal or a vice-principal or who was previously employed as a principal or vice-principal and is still a member of the College." (New clause of OCTA – s. 17(2.1)). However, we continue to have concerns that this may not protect principals and vice-principals adequately from institutional bias at the College. As a result, we are requesting the following amendments:

- 1. Require that a majority of the panel (not just one member) considering the conduct of a principal or vice-principal be peers of the member, or, at the very least, prevent two teacher-union members from forming a majority of the panel.**

2. **Ensure that the “peers” of the member have recent employment experience (within the last five years)**
 - a. **in the role of principal or vice-principal**
 - b. **in a role supervising principals or vice-principals (eg. Supervisory Officer, Director)**
 - c. **in a role supporting principals or vice-principals (eg. retired/former Principal Association employees).**

This would allow a broad range of Council members (past and present) to serve on panels and allow rosters to be populated from a wide range of experienced peers. Of particular concern is the need to ensure there are French language principals and vice-principals on the roster, which are currently in short supply.

3. **Omit the exception in new clause 17(2.2) that would not guarantee peer review to principals and vice-principals if a single member of the Investigation Committee is acting on the Committee’s behalf in determining whether a case ought to be resolved by way of Complaint Resolution. (See new clause 26.1(11)). Many complaints are resolved this way and it would be regrettable to discourage participation in this more timely and efficient process due to a lack of peer review. Where the complainant is a teacher, our members would have serious concerns about the fairness of having a teacher determine whether a resolution reached through the complaint resolution process was acceptable.**

We have been supported in our requests for meaningful peer review by the Supervisory Officers’ and Directors’ associations in the English public, French public, English Catholic, and French Catholic systems in the province. We also believe that Supervisory Officers and Directors ought to be provided a legislative guarantee of peer review to ensure fairness in the College’s investigations and hearings processes vis-à-vis those members of the College as well.

Issue 2 – Complaint Resolution

We value the College’s complaint resolution process for providing a more timely and efficient process for resolving complaints. Current practice allows the process to be used in cases where the outcome of an investigation would likely result in a decision that the College will “take no further action.” These are cases wherein the complainant has provided little or no evidence to support their allegations, and/or where the member can demonstrate that the allegations are false. These kinds of cases should continue to be streamed into the complaint resolution process. It would be unfair for the least blameworthy of members to be denied the most efficient and timely process available.

1. **Clause 26.1(a) should be amended to ensure that complaint resolution is available in cases that would likely result in the dismissal of the complaint (a decision to “take no further action” by the Committee).**

Issue 3 – Information on the College’s Register

Currently, all decisions of the Discipline Committee of the College are available on its website and, in most cases, a link appears on the public register for every member who has ever had a finding of professional misconduct made against them. We object to this blanket approach to maintaining the link on the person’s register page in perpetuity. We are pleased that the legislation would allow the link to be removed after three years in the less serious cases. We are requesting the following amendments:

- 1. Exclude “not guilty” outcomes from the requirement in new clause 23(2)(b.5) that would require a notation of every decision of the Discipline Committee following a proceeding, together with a link to the decision as published on the College’s website, to be recorded on the member’s register page. Members who are found “not guilty” should not have their reputations further tarnished by having unproven allegations remain linked to their register page.**
- 2. Exclude “not guilty” and “withdrawal of Notice of Hearing” outcomes from the requirement in new clause 23(2)(b.6) that would require a notation of every resolution adopted by the Discipline Committee under section 30.1, together with a link to the resolution as published on the College’s website, to be recorded on the member’s register page.**
- 3. Ensure that the list of possible outcomes in new clause 23(2.6), about which any notation of a decision or resolution (and the link) ought to be removed from the register three years after the day the committee decided the matter, is broad and inclusive, given the open-ended mandate of the Discipline Committee (eg. terms, conditions and limitations on a certificate may require taking a course; a member may enter into an undertaking with the College in respect of their duties or certain actions they promise to take). Decisions ordering all possible outcomes, short of suspension and revocation, should be eligible for removal after three years.**
- 4. Amend new clause 23(3)(d.1) to address only criminal proceedings for which a member has been found guilty. It would be inappropriate and highly prejudicial to include information about criminal proceedings where a member has been acquitted or the charge(s) has been stayed or withdrawn.**
- 5. Amend new clause 23(3) and/or existing 23(2)(b) to ensure that the explicit details of the terms, conditions, and limitations in Fitness to Practice cases are not required to be posted. These details often reveal private medical information and should not be widely available online.**

Issue 4 – Procedural Fairness and Member Safety

There are a few areas of vagueness in the new legislation that would benefit from greater clarity to ensure fairness to members responding to complaints.

- 1. In new clause 26(3)(b), we appreciate that the member whose conduct or actions are being investigated will be given 60 days to respond, but submit that the time should not begin to run until the College has disclosed to the member all relevant information related to the complaint. Timely disclosure remains a concern for members responding to complaints and it's unfair to require a response from them before they've received all of the relevant information.**
- 2. New clause 26(3)(c) and 26(4.2) read together would mean that some prior decisions would not be considered by the Committee (eg. frivolous/vexatious complaints); however, it's also important to exclude prior decisions where the outcome was to dismiss the complaint (or, in the usual language of the Investigation Committee decisions, where the Committee decides, after a full investigation, to "take no further action.") If such decisions are included for consideration, it would invite the new panel to re-visit the facts of such cases, which is inappropriate and prejudicial. The principle of *res judicata* should apply.**
- 3. New clause 26.1(5), dealing with resolutions coming before the Committee, should also exclude from consideration prior decisions where the outcome was to "take no further action," for the reasons expressed above.**
- 4. The Registrar should have the overt discretion not to provide the complainant with the member's written explanations or representations, or a summary thereof, in cases where the complainant may pose a risk to the member. In some cases, members have been exposed to serious threats of violence by complainants. Members of the College should not be rendered more vulnerable to violence by the College's processes.**
- 5. New clause 26(4.3) should be amended to state specifically that the member shall have a reasonable opportunity to make submissions on the relevance of, and weight to be accorded to, prior decisions or concurrent proceedings, before the Committee considers the information.**
- 6. Similarly, new clause 26(4.4) should be amended to state specifically that the member shall be provided with a reasonable opportunity to respond to the new information.**

Issue 5 – Protection of Students

New Clause 1(2)(4) states that for the purposes of the definitions of “sexual abuse” and “sexual misconduct” in subsection (1), a reference to a student does not include the member’s spouse. We think that this exclusion is too broad, and want to avoid the situation where a member avoids responsibility for sexual abuse by marrying his/her victim after-the-fact. Whenever a member has a sexual relationship, or grooms a student for a sexual relationship, when the person is in a position of power as the student’s teacher, a subsequent marriage should not undo the sexual abuse or misconduct.

If a relationship develops only after a student leaves school, then it’s appropriate to exclude it; however, if the relationship begins while the (minor) student is enrolled at school, it should be captured by the definition of “sexual abuse” and “sexual misconduct.”

Thank you for the opportunity to provide the view of Ontario’s school leaders in this important debate.