

**OECTA Submission to the Standing
Committee on Finance and
Economic Affairs**

***Bill 37 Protecting Students
Act, 2016***

October 2016

ONTARIO ENGLISH
Catholic
Teachers
ASSOCIATION

The Ontario English Catholic Teachers' Association (OECTA) represents the 45,000 passionate and qualified teachers in Ontario's publicly funded English Catholic schools, from Kindergarten to Grade 12.

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1. INTRODUCTION

- 1.01** The Ontario English Catholic Teachers' Association (OECTA) welcomes the opportunity to present issues that are of importance to our 45,000 members as the Standing Committee on Finance and Economic Affairs reviews and considers amendments to Bill 37, the *Protecting Students Act*.
- 1.02** Ensuring that students have a safe and healthy environment in which to learn is of paramount importance to every teacher in Ontario. As discussion on the *Protecting Students Act* unfolds, we must not lose sight of the fact that teachers are responsible adults who maintain the highest standards of professionalism each and every day. They work hard to create safe, healthy, and welcoming environments, and to forge positive relationships that will help students learn and grow. As an Association, we strive to educate our members on professional standards and boundaries. As a result, the overwhelming majority of Ontario's 200,000 plus certified teachers will never encounter the Ontario College of Teachers (hereafter, OCT, or the College).
- 1.03** Of course, we understand that in every profession there are individuals who are accused of wrongdoing, and thus require disciplinary adjudication. We also understand that, given the vulnerability of children, accusations in the education sector must be dealt with swiftly and effectively. Teachers certainly do not condone inappropriate or dangerous behaviour by their colleagues. The objective to "protect students" is not a controversial point. We just want to be sure that all teachers are entitled to due process in the event that they are alleged to have breached professional standards.
- 1.04** In 2011, the *Toronto Star* published a series of articles, which highlighted some of the "lesser cases" of teacher indiscretion, suggesting that the College "may be too prone to shield errant teachers who don't engage in outright criminality, or whose misbehaviour doesn't warrant taking away their licence." In response, the government commissioned the Honorable Justice Patrick LeSage to review the College's "Intake, Investigation and Discipline Procedures and Outcomes, and its Dispute Resolution Program and consider whether they protect the public interest." The LeSage report identified two organizing principles, which he felt must govern the College's actions: efficiency and transparency. With these in mind, Justice LeSage outlined 49 procedural and legislative changes that he felt would "greatly enhance" the College. More than four years have passed since the LeSage report was

published. In the intervening years, OCT has taken steps to adopt more than half of the report's recommendations.

- 1.05** Although there is unanimous agreement that protecting students is critical to the viability of Ontario's education system, legislation that governs this objective is not without complications. Indeed, in many ways the issue is fraught, and Justice LeSage himself recognized this as he described several of the legal and philosophical "conundrums" that emerged as he attempted to find the delicate balance between serving public interest and protecting citizens' rights.
- 1.06** As the committee considers amendments to Bill 37, it is essential that it bears in mind these "conundrums," and does not dismiss them uncritically. Ultimately, to ensure that Bill 37 improves the efficiency and effectiveness of self-regulation, it must successfully maintain the balance between public interest and personal rights.
- 1.07** The emotionally charged nature of this issue lends itself to hyperbole and, as a result, misinterpretation. Sordid stories sell newspapers. However, they also promote mistruths by suggesting that these types of situations are common, or that predatory teachers are roaming the halls of Ontario schools. The reality is far different. The College deals with a number of cases every year, only a tiny proportion of which concern sexual misconduct.
- 1.08** More to the point, grounding legislative debate in hyperbole and inflammatory news headlines is counterproductive to effective policymaking. Any legislation that governs OCT must not only be based in evidence and rational debate, but also must ensure that the College's proceedings uphold the principles of natural justice. Currently, this is not the case. Lodging official complaints and investigations based on unsubstantiated rumours, without being able to produce tangible evidence, does not constitute a just process. Publicly shaming teachers by publishing detailed and sordid *allegations*, prior to any findings of guilt, pre-emptively convicts people in the court of public opinion, and unjustly denigrates the teaching profession. Maintaining online lists of accusations, even after cases have been dismissed or allegations withdrawn, cannot be considered a proportional response. All the while, teachers are forced to sit idly by for months, or even years, awaiting a chance to prove their innocence. Justice delayed is justice denied, and teachers – like all other citizens – deserve the presumption of innocence. Government policy must reflect these basic tenets.

1.09 In many respects, Bill 37 takes steps toward improving the transparency and efficiency of the College. However, there are several aspects of the bill that are ambiguous and require sharper definition, or that have the potential to unfairly encroach upon citizens' rights, under a pretence of protecting public interest. We have two broad areas of concern, related to publication on the register, and procedural matters.

1.10 We have several recommendations that we believe would strike a more appropriate balance between protecting public interest and citizens' rights, and also that would improve the transparency and efficiency of the Ontario College of Teachers. We thank the Standing Committee on Finance and Economic Affairs for receiving this submission, and urge the government to take this opportunity to reconsider some of its proposals as it prepares amendments to Bill 37, the *Protecting Students Act*.

2. PUBLICATION ON THE REGISTER

2.01 The issue of publication speaks to the topic of transparency, an issue with which Justice LeSage grappled in his 2012 report. On one hand, protecting public interest means that the public must be aware of proceedings, and certain information regarding said proceedings and results must be posted in an accessible manner. But at what point do the potentially negative consequences of publication outweigh a desire to protect the public interest?

2.02 Bill 37 greatly expands what is to be included in the Registry. We have two specific concerns. If passed, Bill 37 will repeal Clause 29 (2) (b.3) and replace it with: "for every hearing of the Discipline Committee, a notice of hearing and a notice of the day and time of the hearing, together with a link to the notices as published on the College's website."

2.03 This is problematic with respect to an individual's presumption of innocence, not in official proceedings, but rather in the court of public opinion. It is not hyperbole to say that this can have devastating, long-term effects on an individual's career, given that a teacher's reputation is critical to their ability to maintain standing in the community and succeed in the classroom.

2.04 Presently, the "notice of hearing" contains specific details of the allegations against a member. Publication of these details will arguably cause great harm to the reputation

of the specific teacher, and by extension to the teaching profession as a whole. Justice LeSage was clearly sensitive to this issue, and admitted that the idea of posting “lengthy and specific allegations, which are later withdrawn or on which the Member is found not guilty, troubles me.”

- 2.05** Particularly in instances where allegations are withdrawn, or where a complaint is dismissed, we must question what purpose is served by maintaining lengthy and potentially sordid false allegations in a publicly accessible way. This does not serve or protect the public interest. Rather, this is a form of punishment, despite one’s innocence. A core element of labour law is the notion that publication is a form of penalty. Thus, to publish detailed allegations about a member is to penalize that individual, both before their case is heard, as well as after they have been exonerated. This distorts the presumption of innocence, and penalizes innocent individuals.
- 2.06** A second concern involves changes to Subsection 23 (2) of the Act, which adds to the published register “information respecting any current or previous criminal proceedings involving a member that are relevant to his or her membership, including any undertakings of the member in relation to the proceeding.” Simply put, this wording goes far beyond the publication of a teacher’s name after they are found guilty of an offence; it even goes well beyond publishing a teacher’s name if they are *charged* with an offense. In effect, this wording will publish detailed information when a teacher is merely “involved” in a proceeding.
- 2.07** This language change substantially exceeds the recommendation by Justice LeSage, who indicated that only the following should be published: “A summary of any existing restriction on the member’s right to practice that has been imposed by a court or other lawful authority, if the College is aware of the restriction, including the name of the court or other lawful authority that imposed the restriction and the date the restriction was imposed.”
- 2.08** The negative consequences of expanding the registry in these ways far exceeds any potential benefit to serving the public interest and will, in effect, prosecute teachers in the court of public opinion, regardless of that teacher’s guilt or innocence.

Recommendations:

That the government include an amendment whereby the Notice of Hearing contain only those clauses outlined in Ontario Regulation 437/97 that are alleged to have been violated.

That the government include an amendment to provide that the Registry contain only a summary of any existing restrictions on the members' right to practice that has been imposed by a court or other lawful authority.

3. PROCEDURAL MATTERS

3.01 Central to the LeSage report was the idea that changes to the College represent improvements on efficiency. Much of this concerns procedural issues, which can be divided into two themes:

- What is in the bill that requires amendment
- What is not in the bill that requires inclusion

3.02 What is in the Bill

Bill 37 seeks to clarify and detail when a school board must report to the College that it has imposed restrictions on a member for reasons of professional misconduct.

These restrictions criteria include:

- a) Restrictions on the age of students, grades or subjects that a member may teach or supervise;
- b) Restrictions on a member's eligibility to teach with out supervision;
- c) Restrictions on a member's participation in or supervision of extracurricular activities;
- d) Restrictions on a member's assignment to duties that relate to teaching or education, which may be done by reassigning the member to duties that are not related to teaching or to education; and
- e) Any other restriction prescribed by the regulations.

3.03 There are several issues with this inclusion. First, although the Act does not change the circumstances under which a school board must report, and reports are required only for reasons of professional misconduct, the likely effect of this feature will be to have school boards report more, even when not required. A strict reading of the Act indicates that reports to the College are to be made only when a restriction is placed

on the teacher for “reasons of professional misconduct.” However, we are concerned that the proposed wording will prompt boards to be cautious, and to file reports when they are uncertain.

3.04 The increasing number of reports to the College will have unintended consequences. Much of the debate surrounding the announcement of Bill 37 was based on the idea that, currently, the timelines for conducting OCT investigations and holding hearings drags on far too long, and teachers are left waiting, sometimes for months or even years, before having their cases heard. By including vaguely worded stipulations that will almost certainly increase the number of reports filed, the result will be more cases and longer wait times. This does not improve efficiency.

3.05 A second issue is that the current wording of Bill 37 leaves open the possibility of the College serving as a duplicative adjudicator. Specifically, the bill does not explicitly state that boards have no duty to report while an issue is at the school board investigation stage, regardless of whether the school board investigation pertains to allegations of professional misconduct, and the teacher has been assigned to home duties. Reporting to the College during this stage of a school board’s investigation leaves open the possibility that a board investigation is occurring simultaneously with an investigation by OCT. We must remember, the school board is the employer; it must be allowed to complete its investigation, and render its findings, before the matter is taken up by the College. Justice LeSage was clear on this point, saying that “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.”

3.06 Another important issue is the disclosure of evidence. Currently, there is no explicit language in the bill that would require full disclosure of all information and documentation received by the College with respect to a complaint lodged against a member, regardless of the complaint’s origin. In the past, counsel has had to engage in lengthy discourse in order to obtain evidence pertaining to the accusations. This delayed the process while leaving the member and counsel unable to adequately prepare. Bill 37 should include a stipulation requiring the “full disclosure” of all information and documentation to a member’s counsel, including any evidence

obtained after the lodging of the official complaint. Full disclosure was also a recommendation of Justice LeSage, which somehow did not make its way into Bill 37.

3.07 What is Not in the Bill

Whether a teacher, doctor, or private citizen, it is rational to expect that when official complaints are lodged, and a judicial process is initiated, there are reasonable grounds for these actions. However, there are numerous examples where the College Registrar has lodged official complaints on the most speculative bases. For example, an official complaint of alleged sexual abuse was lodged by the Registrar against a teacher based entirely on a newspaper article. In another example, a teacher was alleged to have sent a romantic valentine card to a student; the Registrar lodged an official complaint, despite never having seen the card. This is patently unfair.

3.08 By not mandating that complaints be based on “reasonable grounds,” teachers are exposed to having complaints lodged against them by the Registrar that are based on hearsay, or in some cases unsubstantiated accusations. We must not conflate increased complaints with increased vigilance. This sort of approach protects neither students nor the public interest. It serves only to denigrate the teaching profession by rallying public opinion around misguided notions of vigilance. We must at all times remember: public *opinion* is not the same as public *interest*. The bill should be amended to make it clear that the Registrar needs “reasonable grounds” to initiate a complaint. As a corollary, before a complaint is accepted by the College, proper documentation and information should be required to ensure the complaint is legitimate.

Recommendations:

That the government amend the Bill to provide that there is no duty to report while an issue is under investigation by the school board.

That the government include an amendment that requires the Registrar to have “reasonable grounds” to initiate a complaint.

That the government include an amendment to require proper documentation and information before accepting a complaint.

That the government include an amendment to ensure full disclosure of all information and documentation regarding a complaint to a member's counsel at the Investigation Stage, including any evidence obtained after the lodging of the official complaint.

4. CONCLUSION

4.01 Protecting students is a top priority for teachers across Ontario, and Bill 37, the *Protecting Students Act*, takes several important steps toward this objective, by improving the transparency and efficiency with which the Ontario College of Teachers operates. At the same time, it is imperative that the legislation governing the College maintains the balance articulated by Justice LeSage, and does not seek to protect the public interest by unjustly encroaching on the rights of teachers. Achieving this balance, and ensuring due process and the rule of law, will benefit the entire education system, students and teachers alike.

4.02 We urge the committee to consider and adopt the recommendations proposed by OECTA, which ultimately would strengthen and improve the *Protecting Students Act*.

5. RECOMMENDATIONS

- 5.01** That the government include an amendment whereby the Notice of Hearing contain only those clauses outlined in Ontario Regulation 437/97 that are alleged to have been violated.
- 5.02** That the government include an amendment to provide that the Registry contain only a summary of any existing restrictions on the members' right to practice that has been imposed by a court or other lawful authority.
- 5.03** That the government amend the Bill to provide that there is no duty to report while an issue is under investigation by the school board.
- 5.04** That the government include an amendment that requires the Registrar to have "reasonable grounds" to initiate a complaint.
- 5.05** That the government include an amendment to require proper documentation and information before accepting a complaint.
- 5.06** That the government include an amendment to ensure full disclosure of all information and documentation regarding a complaint to a member's counsel at the Investigation Stage, including any evidence obtained after the lodging of the official complaint.

6. WORKS CITED

"Stop Shielding Rogue Teachers." Editorial. *Toronto Star*, September 30, 2011.

LeSage, Patrick. *Review of the Ontario College of Teachers Intake, Investigation and Discipline Procedures and Outcomes, and the Dispute Resolution Process*, May 31, 2012.