



## MEMBERS AS WITNESSES IN FORMAL PROCEEDINGS INVOLVING COLLEAGUES

It is possible that at some point in your career, you may be asked to be a witness in a formal proceeding about an incident involving a colleague. Such a request often results in feelings of uneasiness. Members are curious about whether they must participate in such investigations. This bulletin contemplates a variety of formal settings where you may be called upon to give your version of events. Should you be asked to participate in any formal proceeding, seek advice from Professional Relations Services (PRS) staff to discuss the specifics of your situation.

### **Members as Witnesses in a District School Board Proceeding:**

You may be asked to participate in a Board investigation involving a colleague. Your Board is your employer and as such may compel your participation in such investigations. Your refusal to cooperate may be seen as insubordination and could lead to discipline. It would be in your best interest to have a local Federation representative present at any meeting that you are required to attend to give information or evidence that will form part of a Board investigation.

As well, you will need to be mindful of your obligations under the ETFO Constitution, Article VI, Code of Professional Conduct and your duties in the regulation made under the *Ontario Teaching Profession Act*, Duties of a Member to Fellow Members whenever you are called to participate in an investigation involving a colleague. You should contact staff in Professional Relations Services (PRS) to discuss these obligations.

### **Members as Witnesses in an Ontario College of Teachers (OCT) Proceeding:**

Members of the Ontario College of Teachers are required to participate in OCT investigations, if asked. Failing to co-operate in a College investigation could be considered professional misconduct (*O.Reg. 437/97 (22)*).

### **Members as Witnesses in a College of Early Childhood Educators (CECE) Proceeding:**

Similarly, the College of Early Childhood Educators has a regulation which requires members to participate in an investigation. Failing to co-operate could be viewed as professional misconduct (*O.Reg. 223/08 (25)*).

### **Members as Witnesses in a Child and Family Services (CAS) Proceeding:**

There is no legal obligation on members to participate in a CAS investigation involving a colleague; you should contact staff in Professional Relations Services to discuss the specifics of any situation where you have been contacted by the CAS to speak about another colleague.

### **Members as Witnesses in a Police Investigation:**

There is no legal obligation to participate in a police investigation involving a colleague. If the police want to ask you questions, you do not need to answer. You cannot obstruct the police in the course of their duties but deciding not to give a statement is not "obstruction. Should you choose to make a statement to the police regarding an investigation involving a colleague, the police will likely videotape your statement and in the event that your colleague is charged, he/she will be provided with a copy of your videotaped statement, as well as any related police interview notes. If you are contacted by police to provide information about a colleague, you should make no statement and contact PRS staff for advice.

### **Members as Witnesses in a Court Proceeding:**

If you are contacted by a lawyer or the crown attorney with respect to a court proceeding about a colleague, you should not speak to the lawyer without first contacting your Federation. If your colleague is charged and the case goes to trial, you can be placed under subpoena to testify by either side which thinks your statement is relevant. You could also face a subpoena to testify in a civil proceeding involving a colleague, or in a child custody dispute (*see below*). Members who are subpoenaed are required to attend the court proceeding.

PRS MATTERS



### **Members as Witnesses in a Child Custody Dispute:**

Members are often approached during child custody disputes to give evidence on behalf of the parties. You should be mindful of the legal restrictions on disclosing the contents of a student's OSR, as well as other issues that might arise. Professional Relations Services staff has produced a PRS Matters bulletin (#44) which can be found at the following link:

<http://www.etfo.ca/AdviceForMembers/PRSMattersBulletins/Pages/Student%20Parent%20Custody%20Issues.aspx>

Also, a webcast on this subject can be found at the following link:

<http://www.etfo.ca/multimedia/webcasts/Subpoenas/Pages/default.aspx>

Please ensure that you are familiar with your obligations under the ETFO Code of Professional Conduct and the regulation made under the Teaching Profession Act. These obligations are outlined below:

### **ETFO Constitution, Article VI, Code of Professional Conduct:**

- 6.1 A member shall:
- 6.1.1 recognize the Federation as the official voice of all the active members of the Federation;
  - 6.1.2 adhere to the Constitution, Bylaws, and Directives of the Federation;
  - 6.1.3 support collective bargaining initiatives, including a strike authorized by the Executive;
  - 6.1.4 refrain from undertaking or supporting actions which undermine established bargaining procedures;
  - 6.1.5 honour the terms of the collective agreement;
  - 6.1.6 strive to eliminate all forms of harassment between individuals in the educational system
  - 6.1.7 endeavour to ensure equity and inclusiveness in the workplace;
  - 6.1.8 strive to achieve and maintain a high degree of professionalism and to uphold the honour, dignity and ethical standards of the teaching profession.
- 6.2 A member who is representing ETFO on the local executive and/or the Executive shall, in addition to 6.1;
- 6.2.1 strive to achieve and maintain a high degree of professionalism and to uphold the honour, dignity and ethical standards of the Elementary Teachers' Federation of Ontario.

### **Regulation made under the Teaching Profession Act, Duties of a Member to Fellow Members:**

18. (1) A member shall:
- (a) avoid interfering in an unwarranted manner between other teachers and pupils;
  - (b) on making an adverse report on another member, furnish him with a written statement of the report at the earliest possible time and not later than three days after making the report;
  - (c) notwithstanding section 18 (1) (b), a member who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not provide him or her with a copy of the report or with any information about the report (WB02).

### **Members as Witnesses in a Workplace Safety and Insurance Board (WSIB) Matter:**

There is no legal obligation to participate as a witness in a WSIB investigation. As such, members who are witnesses can decide if they wish to participate in an interview with a WSIB investigator. Members could be summoned to testify in a hearing at the WSIB Appeals Resolution Office and/or Workplace Safety and Insurance Appeals Tribunal (WSIAT) and would be obliged to participate. Failing to appear may mean that penalties are pursued against you.

In all cases, members are asked to seek advice before participating in any formal proceedings such as those described above. If you have questions or concerns, call staff in Professional Relations Services (PRS) at 416-962-3836 or 1-888-838-3836.

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Elementary Teachers' Federation of Ontario  
Fédération des enseignantes et des enseignants de l'élémentaire de l'Ontario  
136 Isabella Street, Toronto, Ontario M4Y 0B5  
Telephone: 416-962-3836 Toll free: 1-888-838-3836 Fax: 416-642-2424 Website: [www.etfo.ca](http://www.etfo.ca)