

## **SPECIAL EDITION: ALLEGATIONS OF SEXUAL MISCONDUCT ADVICE TO MEMBERS**

Over the years, ETFO and its predecessor organizations have provided a comprehensive series of informational articles, videos, and advice to help members prevent the sexual abuse of students and avoid allegations of sexual misconduct. This is an issue that the Union has consistently taken very seriously. ETFO continues to provide guidance to its members in many forums and in many ways.

Recently, the Ontario College of Teachers (OCT) issued its first "Professional Advisory". Every member of OCT will receive a copy in the December 2002 issue of the OCT's publication "Professionally Speaking". In light of the intense public interest in the recent report of Justice Robbins involving these issues, and the release of the OCT advisory, ETFO has decided to issue this document to its members. This article will outline ETFO's continuing work on this issue, will clarify the OCT advisory, and will reinforce the advice that ETFO has provided to its Locals and its members.

### **ETFO Members and Sexual Misconduct**

The Elementary Teachers' Federation of Ontario (ETFO) is an organisation representing approximately 65,000 teachers in the public elementary school system in Ontario. Our members are proud to be teachers. We are proud of our professional judgment, our professional competence and our integrity. ETFO members strive to meet the highest professional standards in their teaching careers. We are mindful of our position of trust and influence with students.

While the incidence of sexual misconduct or sexual abuse perpetrated by teachers is extremely low, each incident tarnishes the reputation of the profession as a whole. ETFO is committed to eradicating sexual abuse and sexual misconduct involving students. At the same time, ETFO is committed to ensuring that its members are considered innocent until proven guilty and that all OCT investigations and hearings meet the highest standards of fairness and justice. False allegations do happen, and they can ruin the professional and personal lives of innocent teachers.

### **The Employer's Duty to Report**

ETFO members should be aware of the new legislative requirements under the Student Protection Act that came into force on September 3, 2002. This legislation amends the Education Act, the Ontario College of Teachers Act and the Teaching Profession Act.

Boards are now obligated to remove a teacher from all duties involving students on becoming aware that a teacher has been charged with or convicted of a criminal offence involving sexual conduct and minors. Moreover, if the board is of the opinion that students may be at risk because of any other charge or conviction under the criminal code, the teacher must be removed from contact with students.

Teachers should be also be aware that the Act places new obligations on their employers to report, promptly and in writing, to the College of Teachers in the following circumstances:

- When the employer becomes aware that a member who is or has been employed by the employer has been charged with or convicted of an offence under the Criminal Code involving sexual conduct and minors.
- When the employer becomes aware that a member who is or has been employed by the employer has been charged with or convicted of an offence under the Criminal Code that in the opinion of the employer indicates that students may be at risk of harm or injury.
- When an employer becomes aware that a member who is or has been employed by the employer has engaged in conduct or taken action that, in the opinion of the employer, should be reviewed by a committee of the College.
- If the employer terminates, or intends to terminate a teacher for reasons of professional misconduct, even if the teacher resigns.

By contrast, a teacher's statutory duty to report a child's abuse including sexual abuse is located in section 72 of the Child and Family Services Act. Under that statute, a teacher must report a reasonable suspicion of a risk of harm or sexual exploitation of a child directly to a Children's Aid Society (Child and Family Services). The duty to report directly to a CAS/CFS is an ongoing one, even if a teacher has already made one report.

### **Sexual Relationships with Students**

Sexual abuse of children is a crime. It is also a form of professional misconduct. The Student Protection Act has amended the Ontario College of Teachers Act to include the following definition of sexual abuse:

- (i) Sexual intercourse or other forms of physical sexual relations between the member and a student,
- (ii) Touching, of a sexual nature, of the student by the member, or
- (iii) Behaviour or remarks of a sexual nature by the member towards the student.

Accordingly, teachers must not have sexual relationships with students. This would include any form of sexual contact including gestures or remarks of a sexual nature.

Allegations of sexual abuse referred to the College will be examined by the Investigation Committee, and may be sent to the Discipline Committee. During the process, a teacher is entitled to a fair investigation. If the allegations are referred to the Discipline Committee, the Committee must treat a teacher as innocent until proven guilty. The Discipline Committee has the power to hear evidence, and to decide whether or not certain actions, examined in their full context, amount to a finding of abuse or another type of professional misconduct.

### **Amendment to the Teaching Profession Act and s. 18(1)(b)**

The Student Protection Act amended the Teaching Profession Act to provide that a member who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not comply with s. 18(1)(b) of the Teaching Profession Act. In other words, teachers are now exempt from the requirement to provide a copy of an adverse report to the teacher whose conduct has been reported, if that report deals with suspected sexual abuse of a student.

### **Professional Misconduct: Regulation 437/97**

Regulation 437/97 sets out the definition of professional misconduct. Teachers should obtain a full copy of the regulation and review it carefully.

Normally, when allegations of professional misconduct of a sexual nature are made against teachers, OCT will rely on the following definitions of misconduct as set out in the regulation.

## PROFESSIONAL MISCONDUCT

1. *The following acts are defined as professional misconduct for the purposes of subsection 30 (2) of the Act:*
5. *Failing to maintain the standards of the profession.*
7. *Abusing a student physically, sexually, verbally, psychologically or emotionally.*
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.*

However, it is important to note that only the Discipline Committee or Fitness to Practice Committee may make findings of professional misconduct under this regulation and only after a full, fair and just hearing.

It is not sufficient for the OCT to state that certain actions constitute or may constitute professional misconduct. The law in the form of the regulation defines what constitutes professional misconduct. Every individual case before the Discipline Committee will be determined on a case-by-case basis after a full hearing exploring all of the circumstances surrounding the teacher's actions.

### **Attempting to Establish a Sexual Relationship**

Teachers must not establish or attempt to establish sexual relationships with students. The OCT has adopted Justice Robins' use of the term "grooming" to describe non-sexual activity or behaviour between a teacher and a student designed to foster a future sexual relationship. It is important to keep in mind that a teacher's innocent gesture toward a student may be subsequently misinterpreted as "grooming" behaviour.

To date the vast majority of teaching certificate revocations have resulted from boundary violations. These are cases where teachers have been found to behave sexually towards children, thereby transgressing professional boundaries.

However, teachers are compassionate and caring individuals who are in a position of trust. They are often the first person to whom a child will disclose abuse, or other deeply personal information. Here are some professional tips on how to avoid allegations of boundary violations:

- Avoid sending e-mails to students, do not give out your personal e-mail address;
- Keep parents or guardians informed by phone or written communication about any issues concerning their child;
- If a disclosure raises an issue of abuse, report it to the CAS/CFS directly;
- Any suggestions made to students about themselves or their work should be professional in nature;

- Maintain only professional communications and relationships with students and their families;
- Participate only in board approved activities off of the school property (e.g. school trips, tournaments, etc);
- Know and ensure adherence to board policies, practices, and procedures related to physical contact regarding Special Needs students (e.g. restraint);
- Except in an emergency, do not have a student alone in your vehicle;
- Never have a student overnight to your home or cottage;
- If you need to speak to students after class, keep it short and professional;
- If you must detain a student after class, or speak to a student privately at any time, keep your door open;
- Involve appropriate third parties with the student if issues of concern arise;
- Be aware that your gestures or words may be misinterpreted, give thought to your communications with students;
- If a parent raises a concern about your communications or gestures involving their child, raise it immediately with your principal or another board administrator;
- Call ETFO if you need help or have concerns about a situation involving a student.

### **Sexual Harassment**

Teachers may be charged by the OCT with professional misconduct in cases where sexual harassment is alleged. Normally, these allegations arise based on a teacher's interactions with co-workers. The essence of sexual harassment is "unwelcome sexual conduct". It is recognized as an abuse of power and as a form of discrimination based on sex. Keep in mind that sexual comments and conduct are not appropriate in a professional environment, and may cause offense where none is intended. If a charge of professional misconduct is brought before the Discipline Committee, the Committee will determine on a case-by-case basis if unprofessional conduct has occurred.

### **Investigations by the OCT, the Police or the CAS/CFS**

An ETFO member faced with an investigation into his or her conduct by either the OCT, the police, or the CAS/CFS should immediately call Professional Relations Services at ETFO at 1-888-838-3836 or 416-962-3836. Members of ETFO are required to cooperate with these agencies, but are also entitled to seek advice before giving any statements. Investigators from these agencies take notes of any comments whatsoever made by teachers. Teachers are reminded that any comments or statements they make may be used against them later.

### **ETFO Advice to Members**

ETFO has more detailed publications on all of the issues raised by this advisory, and a video documentary entitled "It Can Happen to You - Preventing Allegations of Assault and Professional Misconduct". Call ETFO for more information.

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