



ETFO Submission to the Ministry of Education

Bill 98, Better Schools and Student Outcomes Act, 2023

May 2023


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ETFO represents 83,000 elementary public school teachers, occasional teachers, designated early childhood educators, education support personnel, and professional support personnel across the province. Its Building Better Schools education agenda can be viewed at **BuildingBetterSchools.ca**.

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INTRODUCTION

The Elementary Teachers' Federation of Ontario (ETFO) represents 83,000 public elementary school teachers, occasional teachers, designated early childhood educators, education support personnel, and professional support personnel across the province and is the largest teacher federation in Canada.

ETFO is an important stakeholder in the public education system and appreciates the opportunity to make a submission to the Ministry of Education regarding Bill 98, *Better Schools and Student Outcomes Act, 2023*.

On April 17, Minister of Education Stephen Lecce tabled Bill 98 with the stated objective of “refocusing” the education system and “improving outcomes” for students in Ontario. This legislation was developed without input from ETFO or any other education union.

In its communication to stakeholders announcing the legislation, the Minister indicated that the proposed legislation is “significant and transformative” and asked that feedback on the legislation be provided by May 16, 2023.

That public hearings on the proposed legislation were held by the legislature’s Standing Committee on Social Policy before input from education stakeholders had been gathered, let alone properly considered, is further indication that the government is fully intent on ignoring input that runs counter to its agenda.

Bill 98 is indeed “significant and transformative,” however, not in the way that the government has portrayed it. This legislation would have the opposite effect of what the government has claimed its objectives to be. If adopted, Bill 98 would set public education back decades, undermine student outcomes, diminish accountability and transparency, and lay the groundwork for further privatization of public education.

Bill 98 includes significant amendments to the *Education Act*, the *Early Childhood Educators Act, 2007* (ECEA), and the *Ontario College of Teachers Act, 1996* (OCTA). While a few of the changes to the ECEA and the OCTA contained in Schedules 1 and 3, are supported in principle by ETFO, the bulk of the legislation has been ill-conceived and drafted without any meaningful consultation with crucial stakeholders, including teachers and other education workers and the unions that represent them. During the committee hearings on Bill 98, ETFO called on the government to withdraw Bill 98 and engage in a meaningful consultation process with education stakeholders. In this submission to the Ministry, we reiterate that call; the government should withdraw this legislation and go back to the drawing board.

Because the legislation would provide broad regulation-making powers to the government, the full impact of Bill 98 is almost impossible to predict, and hence difficult to respond to in a comprehensive way. In this submission, ETFO focuses on some of the most significant impacts and potential impacts of the legislation, while acknowledging that additional concerns are likely to arise, should the bill be adopted, depending on how the government makes use of these new broad powers.

In this submission, ETFO first examines the changes to the *Education Act* contained in Schedule 2 of Bill 98 before turning to the changes to the ECEA and the OCTA contained in Schedules 1 and 3.

Recommendation:

1. Withdraw Bill 98 and engage in a meaningful consultation process with education stakeholders.

SCHEDULE 2 – AMENDMENTS TO THE *EDUCATION ACT*

What is most striking about the amendments to the *Education Act* contained in Schedule 2 of Bill 98 is how devoid they are of specific content. While addressing important topics, the amendments contain almost no

rules or principles. Instead, they would grant broad powers to the government to establish policies, guidelines, and regulations that can impact significant aspects of the education system in Ontario.

At its core, Schedule 2 aims to centralize control of public schools in the Ministry of Education, stripping school boards of the ability to tailor programs and supports to the communities they serve. Schedule 2 would remove important safeguards that ensure transparency and accountability in how public education is delivered and would allow the government to carry out an unprecedented sell-off of school sites, the impact of which could be felt for decades to come.

In its current form, Schedule 2 would place future decisions about curriculum review, resource allocation, programming, building of new schools, disposition of school board assets, conduct of trustees, equity programs, and nearly every aspect of the delivery of public education in the hands of the Minister of Education and out of the reach of the students, families, educators, and communities that would be impacted.

Recommendation:

2. Withdraw Schedule 2.

Provincial Priorities in Education

Under Bill 98, the government would have the power to establish priorities for the education system and require school boards to take measures to comply with them. There are few limits on what these priorities could entail, or what the Ministry could force school boards to do.

Once the government sets a provincial priority or priorities, the Minister of Education may “establish policies and guidelines respecting the provincial priorities.” School boards would then be required to comply with these policies and guidelines.

As with the government’s power to set provincial priorities, Bill 98 does not provide any rules or limits for what the Minister’s policies and guidelines might contain. As long as they implement a provincial priority related to “student achievement,” the legislation provides the Minister with largely unfettered authority to impose binding obligations on school boards.

It is worth noting that Bill 98 does not place any obligation on the government to engage in meaningful consultation with affected groups, including educators, parents, or school boards, when establishing provincial priorities or developing related regulations, guidelines, or policies.

Granting the Ministry of Education unlimited authority to establish provincial priorities for the public education system without the obligation to meaningfully consult with stakeholders is not only short-sighted but can be incredibly damaging to Ontario’s public education system. The potential abuse of this power alone should give everyone involved in public education pause.

The level of authority that the government seeks to grant itself with regards to this new provincial priorities framework is unprecedented and could all but eliminate the ability of school boards to respond to the specific needs of the communities they serve.

Use and Disposition of Board Property

Schedule 2 of Bill 98 would grant the Minister new powers of oversight over how school boards acquire, use, and dispose of property, particularly real estate and school buildings. Many of these new powers appear directed at sharing buildings, either through joint use between school boards or through integration with other types of service providers including municipalities and child care providers.

Bill 98 would give the Minister the power to direct two or more school boards to enter into arrangements with each other for the joint use of school sites, and to make regulations governing such arrangements.

Bill 98 would also grant the Minister new powers related to the disposition of property. Bill 98 would replace existing rules with a general regulation-making power to govern how school boards may dispose of property. As with many of the other changes brought by Bill 98, it is impossible to know the full impact of this change, since no regulations currently exist.

In a briefing document shared with stakeholders when Bill 98 was announced, the government discusses these changes under the section titled "Maximizing Capital Assets."¹ In this document, the Ministry lists one of its objectives is "better leveraging [sic] surplus property for public education and other provincial priorities, such as long-term care homes and affordable housing."

In this same briefing document, the government goes on to state that as part of the changes, "[t]he Minister may direct a board to sell or otherwise dispose of a school site, part of a school site or other property of the board if it is not needed to meet current or future pupil accommodation needs of the board, as determined in accordance with the regulation."

In other words, under Bill 98, the Minister would be able to force the sale of school sites that are determined to be surplus according to regulations drafted by the Ministry. Forcing school boards to sell school buildings and properties is short-sighted and can prove incredibly costly in coming years, as communities change and the need for new schools rises. These decisions should be made at the school board level, where the needs of the communities impacted can be considered.

General Control over School Board Affairs

Bill 98 contains a range of provisions that either impose greater Ministry control over school boards or, at a minimum, more detailed rules on how school boards operate. Some of these rules are quite broad. The

¹ Ministry of Education (2023). Briefing deck: *The Better Schools and Students Outcome Act.*"

Minister would be granted the power to make regulations “prescribing activities related to a board’s business activities and governing boards’ participation in those activities.” There is no definition of what constitutes a “business activity.”

Perhaps the most significant changes regarding school board activities relate to the Minister’s powers to control school board spending. Currently the Minister may make regulations requiring school boards to restrict the use of their revenues to specific purposes. Bill 98 would give the Minister more extensive power, including the power to set both minimum and maximum amounts that school boards must spend for specified purposes or any other condition on the use of funds for specified purposes. This is a significant expansion of the government’s power to control the financial affairs of school boards.

Restricting both minimum and maximum amounts of funds that school boards can spend on a specified purpose could effectively eliminate the ability of school boards to respond to the varying needs of students in the communities they serve. School boards have had to cope with the ongoing underfunding of public education under this government, in part by responding to local needs by shifting discretionary funding to cover government shortfalls. While ETFO has long advocated for certain funding allocations, such as funding for English Language Learners, to be enveloped to ensure they are spent as intended, providing the Minister blanket power to set not only minimum amounts, but maximum amounts, could threaten many of the equity-oriented programs that many school boards have been able to implement.

Student Mental Health

ETFO has urged the government to focus on the mental health of students, teachers, and other education workers. Bill 98 would give the Minister the power to establish policies and guidelines respecting student mental health, including the use of learning materials related to student mental health. Unfortunately,

there is no indication of what these policies and guidelines would look like and hence it is difficult to assess whether this will help or hinder school boards' efforts to support student mental health.

What is certain is that without the allocation of additional resources to support student mental health, any guidance from the Ministry would do little to support students and their families. In the results of its 2022 Ontario school survey,² People for Education reported that:

- only 18% of elementary schools have guidance counsellors, with virtually all of those working part-time (98%)
- only 30% of elementary schools have regular access to psychologists
- 49% of elementary schools have regular access to social workers
- 36% of elementary schools have regular access to child and youth workers

In its 2023 pre-budget submission, ETFO called on the government to provide additional funding for in-school supports, including guidance counsellors, social workers, psychologists, and child and youth workers, especially in underserved areas. ETFO also called on the government to fully fund mental health agencies and programs that directly support students' and families' mental health needs.

Any guidelines or policies developed by the Ministry must take into account that educators are specifically trained to teach students curriculum and assess student readiness, achievement, and the supports needed to meet curriculum expectations and learning skills. They are not, however, mental health professionals.

Due to the ongoing interactions educators have with students, they may be aware of possible student mental health issues, however, they are not professionally trained in this discipline or area of expertise.

Educators can, within the scope of the health and physical education curriculum, and as part of a holistic

² People for Education (2022). *2021–2022 Annual Ontario School Survey data handbook*. Toronto. peopleforeducation.ca/wp-content/uploads/2022/09/PFE-AOSS-AnnualReport2022-EN.pdf

approach to well-being and health, continue to teach these expectations and continue to learn through professional development how to teach these expectations. Beyond these specific job-embedded expectations, mental health assessment, diagnosis, and possible referral should be left to trained mental health and medical professionals.

Curriculum Review

Bill 98 includes an amendment that would grant the Minister of Education the power to issue guidelines regarding the review and revision of curricula. These guidelines would require that curriculum revisions be informed by “experts on pedagogy and labour market needs.” The legislation does not require the Minister to consult with education stakeholders and does not provide any indication on how “experts on pedagogy” are determined or on how “labour market needs” are evaluated.

Ontario’s public education system is internationally recognized, in part because it places great emphasis on teaching students to learn, to think critically, to problem-solve, and to be adaptable. Subjecting Ontario’s curriculum to the whims of “labour market needs” is short-sighted – as the labour market fluctuates and could significantly shift in short periods – and limiting. Ontario’s students would be much better served by curriculum that is developed with the input of education stakeholders, including independent experts in K-12 education pedagogy as well as educators and the organizations that represent them.

In 2020, the Ontario Teachers’ Federation (OTF) released a report titled *A Roadmap for Renewal. Revisiting the Curriculum Review Process in Ontario*.³ ETFO calls on the Ministry to review this document and heed its recommendations.

³ Ontario Teachers’ Federation (2020). *A Roadmap for Renewal. Revisiting the Curriculum Review Process in Ontario*. Toronto. otffeo.on.ca/en/wp-content/uploads/sites/2/2020/10/A-roadmap-for-renewal-Revisiting-the-curriculum-review-process-in-Ontario.pdf

Recommendation:

3. Implement the recommendations from the OTF report *A Roadmap for Renewal. Revisiting the Curriculum Review Process in Ontario*.

Evaluation of Textbooks and Learning Materials

Bill 98 includes amendments that allow the Ministry to charge fees for the evaluation of textbooks, library books, reference books, or other learning materials for selection and approval. This represents a significant expansion of the current Ministry's power to evaluate textbooks and procurement of technology.

Granting the Ministry the power to evaluate library books, reference books, and other learning materials raises serious concerns regarding censorship and access to a diversity of resources. Educators' professional judgement includes the ability to choose which resources they use in their teaching. The possibility that the Ministry would restrict access to library and reference books, and other learning resources, is simply not compatible with a public education system that encourages critical thinking and relies on the professional judgement of educators to support student learning.

Creating additional financial barriers to the use of books and other learning resources in public schools would limit access to resources that are not released by major publishers. These financial barriers would restrict access to independent and emerging authors and reduce the diversity of materials available to educators, which would be a disservice to students, families, and communities.

SCHEDULES 1 AND 3 - AMENDMENTS TO THE *EARLY CHILDHOOD EDUCATORS ACT* AND THE *ONTARIO COLLEGE OF TEACHERS ACT*

Schedules 1 and 3 of Bill 98 amend the *Early Childhood Educators Act, 2007* (ECEA) and the *Ontario College of Teachers Act, 1996* (OCTA). A core set of changes is common to both statutes. It includes provisions

broadening the availability of counselling for sexual abuse victims.⁴ ETFO supports this change. The core set also includes changes relating to Ontario College of Teachers (“College”) investigations and discipline – some of which raise serious concerns for ETFO about procedural fairness.

ETFO also has serious concerns about changes to the OCTA regarding the treatment of members with administrative suspensions and the addition of a new section of the OCTA regarding accreditation of education programs.

Expanded Powers for the Investigation/Complaints Committee

The Investigation Committee of the Ontario College of Teachers (OCT) and the Complaints Committee of the College of Early Childhood Educators (CECE) play an important role in screening reports regarding member conduct, investigating complaints against members, and deciding whether further action by the College is necessary.

The powers granted to the Investigation/Complaints Committee by the OCTA and the ECEA include broad discretion to determine whether to refer an allegation to the Discipline Committee or Fitness to Practise Committee, require a member to appear before the Investigation/Complaints Committee to be cautioned or admonished, or take other remedial action that is not inconsistent with the act, regulations, or bylaws, including issuing a caution, reminder, advice, or admonishment.⁵ The Investigation/Complaints Committee has typically limited the remedial action taken on a complaint to a caution, reminder, advice, or admonishment.

⁴ Bill 98, Sch. 1, s. 5 and Sch. 3, ss. 1, 17, amending *Early Childhood Educators Act, 2007*, s. 59.2(3)(a) and *Ontario College of Teachers Act, 1996*, ss. 1(3)(10), 58.1(3)(a).

⁵ *Ontario College of Teachers Act, 1996*, s. 26(5)(d); *Early Childhood Educators Act, 2007*, s. 31(5)(e).

Bill 98 expands the kind of action the Investigation/Complaints Committee may take following an investigation to include requiring a member to complete remedial training or education.⁶ ETFO supports this amendment in principle.

Remedial training or education is already considered by the Investigation/Complaints Committee in making decisions about a complaint.

Often, by the time a complaint reaches the Investigation/Complaints Committee stage, the member has already voluntarily completed professional development related to the issues raised in the complaint to improve their practice, or because it has been required by the member's employer. As part of the College's investigation, the member (and sometimes the employer) may provide evidence confirming completion of remedial training or education related to the issues in the complaint for the investigation/complaints committee's consideration.

Through the Ontario College of Teachers' complaint resolution program, some complaints involving allegations of incompetence are resolved at the Investigation Committee level when the committee receives a signed commitment from the member to complete remedial training, such as an additional qualification or additional basic qualification course approved by the Registrar. In considering the complaint and the undertaking, the Investigation Committee may then direct that the matter not be referred to the Discipline Committee or Fitness to Practise Committee.

While evidence of remedial training or education related to the complaint is considered by the Investigation/Complaints Committee as outlined above, under the current OCTA and ECEA, only the

⁶ Bill 98, Sch. 1, s. 1(1) and Sch. 3, s. 6(1), amending *Early Childhood Educators Act*, s. 31(5)(e) and *Ontario College of Teachers Act*, s. 26(5)(d).

Discipline Committee has explicit authority to make an "educational order." These orders form part of the penalty order following a hearing before the Discipline Committee.

To the extent that granting the Investigation/Complaints Committee the power to require members to complete remedial training or education may divert complaints that the committee would have otherwise referred to the Discipline Committee, ETFO can support these changes in principle.

ETFO does wish to note that it is important that any requirement by the Investigation/Complaints Committee to complete remedial training or education be proportionate to the conduct under investigation. The committee should not make requirements that would be more onerous than what might be ordered following a Discipline Committee hearing.

It is also important that the Investigation/Complaints Committee provides some flexibility in terms of what is required and what constitutes a reasonable amount of time to complete the requirements.

Finally, it is important that the confidential nature of the investigation/complaint committee decisions be preserved when implementing a requirement to complete remedial training or education. Currently, when the committee requires a member to appear in person to be cautioned or admonished, there is no notation on the register or publication of this requirement. Rather, the Ontario College of Teachers and the College of Early Childhood Educators (CECE) enforce these requirements through their respective professional misconduct regulations, which include the failure to appear before the Investigation/Complaints Committee to be cautioned or admonished, where the committee has required it, as an act of professional misconduct. ETFO submits the same approach should be applied to any requirement to complete remedial training or education.

Recommendation:

4. Introduce section 1(1) of Schedule 1 and section 6(1) of Schedule 3 in a separate bill.

Employer Reports

Both the OCTA and ECEA contain provisions requiring employers to make reports to the respective colleges in certain circumstances, including where the employer has terminated, suspended, or imposed restrictions on a member's duties for reasons of professional misconduct, where the member has been charged with or convicted of certain *Criminal Code* offences, or where the member has engaged in conduct or taken action that, in the employer's opinion, should be reviewed by the College.⁷

Under the current statutory regime, when the Registrar refers an employer report to a body or committee of the College, the employer's report is deemed to be a complaint and the employer is deemed to be the complainant.⁸ The only authority for initiating a Registrar complaint is under the Registrar's investigation powers, which set out the circumstances in which the Registrar may appoint an investigator to investigate a member's conduct.⁹

Under Bill 98, the Registrar of the College would become the deemed complainant in cases of employer reports.¹⁰ ETFO opposes this change.

There are significant differences between an employer (or public) complaint and a Registrar's complaint.

They are initiated through different processes and, more importantly, have very different scopes of what

⁷ *Ontario College of Teachers Act, 1996*, ss. 43.2-43.3; *Early Childhood Educators Act*, ss. 49.1-49.2.

⁸ *Ontario College of Teachers Act, 1996*, s. 43.3.1; *Early Childhood Educators Act, 2007*, s. 49.2.1

⁹ *Ontario College of Teachers Act, 1996*, s. 39(1); *Early Childhood Educators Act, 2007*, s.36(1).

¹⁰ Bill 98, Sch. 1, ss. 3-4 and Sch. 3, s. 13, amending *Early Childhood Educators Act*, ss 49.2.1, 49.3(1)(1.1) and *Ontario College of Teachers Act*, s. 43.3.1

can be investigated. In an employer complaint, the College cannot expand the complaint beyond the allegations that were reported to the College by the employer.

In practice, however, it has been ETFO's experience at the Ontario College of Teachers that the College has been operating for some time as though the Bill 98 amendment is in place, with serious consequences for members.

When an employer makes a mandatory report to the College about a member, the College routinely asks for additional information from the employer and uses the information received to expand the allegations in the complaint to include past conduct that was never reported to the College and, in some cases, may not have even resulted in employer discipline at the time of the conduct in question. The statutes specify what information employers are required to provide.¹¹ For example, the OCTA requires an employer to provide the Registrar with “any information that relates to the professional misconduct,” in the case of Section 43.2, and “any information that relates to the charge, conviction, conduct or action that was the subject of the report,” in the case of Section 43.3. There are timelines for provision of this information, requirements to provide further information upon request of the Registrar, and requirements for the employer to provide the additional information to the member. These provisions, which compel employers to provide certain information to the College relating to conduct the mandatory reports deal with, were not intended to be used to expand College investigations. In the 2012 *Review of the Ontario College of Teachers Intake, Investigation and Discipline Procedures and Outcomes, and the Dispute Resolution Program* (“LeSage report”), the Honourable Justice LeSage cautioned against the Ontario College of Teachers becoming a “duplicative adjudicator” by using its resources to investigate matters previously addressed by the

¹¹ *Ontario College of Teachers Act, 1996*, ss.43.2-43.3; *Early Childhood Educators Act, 2007*, ss.49.1-49.2.

employer. While these comments in the LeSage report appear to be directed primarily at certain public complaints, the concerns raised would seem equally applicable to the College taking it upon itself to investigate matters that an employer determined did not warrant disciplinary action nor required reporting to the College.

One positive change in Bill 98 related to employer reports and the provision of information is an amendment to the OCTA that would make it an offence for an employer not to comply with the timelines for providing required information to the College following an employer report.¹² Delays in investigations because school boards are not adhering to the timelines in the OCTA are routine and significant. It is not uncommon for College investigators to have to chase school boards for information for many months – if not longer. These delays have a significant impact on members who are subject to College complaints. Deterring delays by school boards through a new offence is appropriate.

Recommendation:

5. Withdraw sections 3-4 of Schedule 1 and Section 13 of Schedule 3.
6. Introduce Section 16 of Schedule 3 in a separate bill.

Criminal Convictions

Bill 98 permits the Ontario College of Teachers and the College of Early Childhood Educators to expedite the processing of complaints where members have been found guilty or convicted of offences under the *Criminal Code* – at the expense of procedural fairness and natural justice, which greatly concerns ETFO.

¹² Bill 98, Sch. 3, s. 16, amending *Ontario College of Teachers Act*, s. 48.1.

These amendments authorize the colleges to unilaterally bypass the investigation process where a member has been found guilty or convicted of any *Criminal Code* offence related to the conduct in the complaint.¹³ In the case of certain sexual offences, the colleges will be able to bypass the discipline hearing process entirely. These changes are both unnecessary, given the Colleges' existing powers, and fall short of the minimum standards of procedural fairness that apply to professional regulatory investigations and proceedings.

Regulated professionals are owed procedural fairness in investigations and disciplinary proceedings where an individual's right to practice their profession is at stake. The Supreme Court of Canada described the minimum standards of procedural fairness in *Baker v. Canada (Citizenship and Immigration)* as follows:

The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision [emphasis added].¹⁴

These minimum standards of procedural fairness in investigation and discipline proceedings are reflected in the statutory provisions of the OCTA and ECEA relating to the Investigation/Complaints Committee and the discipline and fitness to practise committees.

For investigations, the statutes require, among other things, that members be provided with timely written notice of a complaint; disclosure of information relating to the complaint in the College's possession; any prior decisions of the College that will be considered, and an opportunity to make submissions regarding those prior matters; an opportunity for the member to provide a written response to the complaint; and a

¹³ Bill 98, Sch. 1, s. 1(2) and Sch. 3, s. 6(2), amending *Early Childhood Educators Act, 2007*, s. 31(9) and *Ontario College of Teachers Act, 1996*, s. 26(9)

¹⁴ *Baker v. Canada (Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para. 28.

written decision and, in some cases, written reasons for the decision regarding the complaint.¹⁵ The statutes also provide timelines for the investigation.¹⁶

These basic standards of procedural fairness can be waived by a member under the current statutes with a written agreement between the member and the College to bypass the Investigation/Complaints Committee and proceed directly to the Discipline Committee where the member has been found guilty or convicted of a *Criminal Code* offence related to the conduct in the complaint.

Bill 98 removes the requirement for the member's consent. The Investigation/Complaints Committee will have discretion to unilaterally skip the investigation process and refer a matter directly to the Discipline Committee.

This amendment is unnecessary. The Investigation/Complaints Committee already has the power to refer complaints to the Discipline Committee or Fitness to Practise Committee but can only do so after an investigation. In exceptional circumstances where there are safety concerns that the member's conduct exposes or is likely to expose students to harm or injury, the Investigation/Complaints Committee has discretion to refer a complaint to another body of the College to determine whether an interim order suspending the member's registration may be appropriate.¹⁷ The statutes require that the investigation continue after such a referral is made. The current provisions appropriately balance procedural fairness and the protection of the public interest.

This amendment is also impractical. It applies to any criminal offence for which a member has been found guilty or convicted – even offences that may have very little relevance to the member's duties as a teacher

¹⁵ *Ontario College of Teachers Act, 1996*, s. 26; *Early Childhood Educators Act, 2007*, s. 31.

¹⁶ *Ontario College of Teachers Act, 1996*, s. 26.2; *Early Childhood Educators Act, 2007*, s. 31.2.

¹⁷ See, for example, *Ontario College of Teachers Act, 1996*, s. 26(1.2.1); *Early Childhood Educators Act, 2007*, s. 31(1.2.1).

or early childhood educator. The amendment presumes that all complaints involving a criminal finding of guilt or conviction are routinely referred to the Discipline Committee. They are not. In deciding whether a complaint that relates to conduct for which a member has received a criminal finding of guilty or conviction warrants any action by the College – let alone a referral to the Discipline Committee or Fitness to Practise Committee – the Investigation/Complaints Committee must investigate. For example, a member's conviction for an impaired driving offence may have little relevance to their professional practice. It would depend on the facts: did the offence occur during or close to the workday; does the member's employer have concerns about the member being impaired at work; does the member have a substance use disorder and, if so, is the member receiving treatment? With respect to fitness issues, the Investigation/Complaints Committee has powers to make inquiries about a member's capacity and can require a member to submit to physical or mental examination.¹⁸ This amendment contemplates the Investigation/Complaints Committee being able to carry out their statutory duties without any investigation at all. It is unnecessary, impractical, and a departure from basic standards of procedural fairness.

Removing the requirement for a Discipline Committee hearing for a member who has been convicted or found guilty of certain sexual offences under the *Criminal Code* and no longer has any appeal rights in the criminal system is also a significant departure from the procedural fairness standards outlined by the Supreme Court of Canada in *Baker* – that decisions be made using a fair, impartial, and open process. That these decisions be made using an open process is appropriately reflected in statutory requirements for public hearings, public notice of hearings, and public decisions by the Discipline Committee. How transparency will be achieved without a hearing is unclear.

¹⁸ *Ontario College of Teachers Act, 1996*, ss. 26(4.5)-26(4.11) and *Early Childhood Educators Act, 2007*, ss. 31(4.5)-31(4.11)

There are many regulated professions that have mandatory revocation provisions akin to those found in the OCTA and ECEA; however, it does not appear that any of these regulators have removed the right to a hearing. Because a criminal conviction or finding of guilt cannot generally be relitigated before the Discipline Committee, and cases involving certain sexual offences will almost always result in mandatory revocation, the hearings in these cases are often uncontested, short proceedings. Any concerns about risk to students pending a Discipline Committee hearing can be dealt with using the existing powers in the statutes. The colleges should not dispense with hearings altogether.

Recommendations:

7. Withdraw Section 6(2) of Schedule 3.
8. Withdraw Section 7 of Schedule 3.

New Rules for Administrative Suspensions at the Ontario College of Teachers

Bill 98 makes changes to how members can regain registration if they are suspended for non-payment of fees, non-payment of penalties, or failure to provide the required information (i.e., under an administrative suspension). Currently, members have a right to re-registration if they pay the necessary fees or provide the required information. Under Bill 98, if a member is suspended for three years or more for one of these reasons, the Registrar may revoke the member's registration. To be able to teach again, a member would be required to re-apply in accordance with the regulations.¹⁹ Bill 98 also provides that the three-year period can be shortened by regulation.

Every day, in schools across the province, there are unfilled teacher assignments. Not having qualified teachers in classrooms adversely impacts student learning. While this has been a problem for many years, it

¹⁹ Bill 98, Sch. 3, ss. 5(2)-(3), 10, amending *Ontario College of Teachers Act, 1996*, ss. 24(3)-(4), 40(1)(14.3.1).

has only become more urgent since the COVID-19 pandemic, which has led to band-aid solutions like changes to the Ontario Teachers' Pension Plan permitting retired teachers to work more days per year.

Yet, amid this crisis, Bill 98 erects additional barriers to members returning to teaching. The only possible explanation for new rules authorizing the revocation of members' registration after an administrative suspension for three years (or an even shorter period by regulation) is the collection of more fees. These provisions are a cash grab at the expense of members who the College should be encouraging to return to teaching. Placing additional barriers to their return, such as the requirement for re-registration, makes it more likely that members will take their teaching skills, talents, and experience elsewhere.

The members mostly likely to be impacted by these changes are those who are not working as teachers for family reasons and are not paying fees. They are taking extended leaves of absence from the profession to care for children or aging parents. They are most likely to be women. While some members may choose to and have the resources to continue to pay fees during these periods, many will not be able to do so, particularly those who did not have job security or regular incomes before their leaves, such as occasional teachers.

The changes also impact retired teachers who are considering working as occasional teachers. Requiring them to continue to pay fees, which appears to be the object of this change, or making them re-apply for registration after potentially decades of College membership in good standing, is a deterrent to their return to the classroom.

Recommendation:

9. Withdraw Section 5 of Schedule 3.

Accreditation of Education Programs

Bill 98 introduces a new provision respecting the accreditation of post-secondary professional teacher education programs. Under the amendment, programs can only be accredited if they enable students "to acquire knowledge of the Ontario curriculum, particularly in relation to math, reading and literacy, and any other element of a professional teacher education program prescribed by the regulations."²⁰ This new provision is found sandwiched between a section about the composition of committee panels and Part III of the OCTA, which deals with member registration.

The Ontario College of Teachers' statutory objects include the accreditation of professional teacher education programs offered by post-secondary educational institutions.²¹ The accreditation process and requirements are currently set out in Ontario Regulation 347/02: Accreditation of Teacher Education Programs. Among the many requirements for accreditation in the regulation is that "the program is current, references the Ontario curriculum, includes the application of current research in teacher education and represents a wide knowledge base in the divisions and components of the program."²² The regulation does not mention specific subjects, let alone require particular focus on a subject as a condition for accreditation. The current requirements recognize that teacher candidates need a wide breadth of knowledge, deep critical thinking and problem-solving skills, and the ability to be flexible and responsive to all the different needs and challenges teachers may encounter in the classroom. This is further reflected in the College's *Accreditation Resource Guide*, which is currently being refreshed as part of a review cycle that included feedback from education stakeholders, including ETFO. The current requirements reject a reductionist approach to teacher education.

²⁰ Bill 98, Sch. 3, s. 3, adding *Ontario College of Teachers Act, 1996*, s. 17.1

²¹ *Ontario College of Teachers Act, 1996*, s. 3(1)(3)

²² O.Reg. 347/02, s. 9(1)(4)

This new provision appears to be part of the current government's focus on so-called "basics" education, whereby "basics" does not mean understanding how students learn and the best ways to teach the wide variety of needs teachers encounter. Instead, "basics" are a list of subjects that can be added to or taken away from at any time. This limited focus lacks awareness that most faculties offer programs for all divisions. It does not make sense for all teacher candidates to learn the same subjects and topics to the same degree, regardless of their respective program and the criteria required to teach those divisions.

Implicit in the government's focus – and this new provision in the OCTA – is an assumption that teacher programs are not already equipping teacher candidates with the skills, knowledge, and judgement needed to teach math, reading, and literacy, and that teachers who are in the classroom today do not have the skills, knowledge, and judgement to teach students. These assumptions are not supported by the evidence regarding how students are performing in these areas.

The focus on teacher education programs also fails to recognize that teachers grow in their learning through regular professional development once they begin teaching. This professional learning should be job-embedded and ongoing, recognizing that learning is not static and needs to be differentiated for all types of learners.

Inserting a new provision in the OCTA to highlight specific subjects is short-sighted. It reflects a lack of respect for teacher's knowledge, professionalism, and skills, and a lack of understanding as to what teacher candidates and teachers need to succeed in their profession.

Recommendation:

10. Withdraw Section 3 of Schedule 3.

RECOMMENDATIONS

1. Withdraw Bill 98 and engage in a meaningful consultation process with education stakeholders.
2. Withdraw Schedule 2.
3. Implement the recommendations from the OTF report *A Roadmap for Renewal. Revisiting the Curriculum Review Process in Ontario*.
4. Introduce Section 1(1) of Schedule 1 and Section 6(1) of Schedule 3 in a separate bill.
5. Withdraw sections 3-4 of Schedule 1 and Section 13 of Schedule 3.
6. Introduce Section 16 of Schedule 3 in a separate bill.
7. Withdraw Section 6(2) of Schedule 3.
8. Withdraw Section 7 of Schedule 3.
9. Withdraw Section 5 of Schedule 3.
10. Withdraw Section 3 of Schedule 3.

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