



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

Bill 37: Protecting Students Act, 2016

Submitted by:

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The Council of the College of Early Childhood Educators is pleased to provide the Standing Committee on Finance and Economic Affairs with input during the Committee's consideration of Bill 37, the *Protecting Students Act, 2016*.

Background

The College of Early Childhood Educators (the College) was established under the *Early Childhood Educators Act, 2007* (ECE Act). The College regulates the profession of early childhood education in the public interest and is accountable to the Ministry of Education. The College has over 50,000 current members who are trusted to provide education and care of the most vulnerable members of Ontario's population.

On August 31, 2015 the Ontario government brought the *Child Care Modernization Act, 2014* into force. This legislation brought about a number of amendments to the ECE Act to support the College in protecting the public interest, enhance the efficiency and transparency of discipline processes and expand the obligation of employers to report misconduct by RECEs to the College. The College has implemented those changes.

College of Early Childhood Educators: Commentary on Schedule 1 of Bill 37

The College supports the proposed amendments to the ECE Act set out in Schedule 1 of Bill 37. They build upon the amendments brought about by the *Childcare Modernization Act, 2014*, and are primarily procedural changes to enhance transparency and improve efficiency to better protect children and families. The College supports those changes, and has included some proposed wording to better effect the intent of those provisions.¹

The College recognizes the government's commitment to ensuring that schools and child care centers are a safe environment for children, and that regulatory processes are fair, efficient and transparent. To that end, the College requests that two new provisions of the ECE Act be included in Bill 37.

¹ Appendix A (attached)

1. Physical and mental examinations of members

The College requests amendments to the ECE Act to provide the authority for the Complaints Committee of the College to order that a member undergo a physical or mental examination when the Complaints Committee has grounds to believe that a member is incapacitated.

The College is charged with regulating the profession of early childhood education in the public interest by administering the processes for dealing with complaints about the conduct and capacity of members.

The ECE Act requires the College to have a Fitness to Practise Committee with the responsibility for determining whether members are incapacitated. In accordance with the ECE Act, the Fitness to Practise Committee may, after a hearing, find a member of the College to be incapacitated if, in its opinion, the member is suffering from a physical or mental condition or disorder such that the member is unfit to continue to carry out his or her professional responsibilities or the member's certificate of registration should be made subject to terms, conditions or limitations.²

However, the College currently lacks the authority to obtain the necessary evidence to allow the Fitness to Practise Committee to make findings with respect to the capacity of a member. The lack of the requisite authority in the ECE Act creates an ongoing risk that members who are suffering from a physical or mental condition that makes them unfit to practise may nevertheless continue to practise the profession. Registered early childhood educators are entrusted with our children and our youngest learners. In addition to education, they are responsible for the safety and wellbeing of children ranging from infants to school-age. The possibility that young children could be left in the care of an individual incapacitated by a physical or mental disorder brings the potential for tragic consequences.

² Early Childhood Educators Act, s. 34(2)

Evidence Required by the Fitness to Practise Committee:

Assessment by an Expert: Assessment of the existence, severity and impact of physical or mental conditions or disorders will almost always require reliance on assessments or diagnoses by experts. In some cases, members may be willing to cooperate with the College and obtain such an assessment and share it with the College. In many cases, members may be unwilling or unable to do so.

Current Information: The health information must also be current. According to the ECE Act, the Committee must consider whether the member is *currently* suffering from a physical or mental condition or disorder. Historical information is not sufficient because a member's condition or disorder or its impact on the member's fitness to practise may change.

Consistency with Other Self-Regulating Professions:

The majority of self-regulating professions in Ontario have the ability to order physical or mental examinations of members in order to determine capacity. For example:

- Regulated Health Professions³
- Accountants⁴
- Human Resources Professionals⁵
- Lawyers⁶
- Social Workers and Social Service Workers⁷

Safeguards:

High threshold: An examination can only be ordered by the Complaints Committee. Before an examination can be ordered, the concern regarding a member's capacity must have reached a certain evidentiary threshold.

³Health Professions Procedural Code, Schedule 2 to the Regulated Health Professions Act, s. 59(2)

⁴ Certified Management Accountants Act, s. 48(3)

⁵ Registered Human Resources Professionals Act, s. 47(3)

⁶ Law Society Act, s. 39

⁷ Social Work and Social Service Work Act, s. 35.1(3)

No forcible assessment: No member can be assessed against his or her will. Failure to submit to an examination ordered by the Complaints Committee would result in a suspension of a member's certificate of registration. Members may elect to resign their membership.

Confidential: The report of the assessment would be used in relation to the College proceeding regarding the member. Fitness to Practise proceedings are generally not open to the public. While a suspension, revocation or the imposition of terms, conditions or limitations on a certificate of registration ordered by the Fitness to Practise Committee would be reflected on the public register, the reasons for the decision would not generally be publicly available.

Benefits to the Public and the Member:

Effective Resolution and Rehabilitation: The orientation of the fitness to practise process is not punitive. The goal is to ensure children and families are protected while working towards the rehabilitation of the member. Rather than focusing exclusively on the conduct that results from the condition or disorder, the fitness to practise process allows the College to identify the root cause and support a long-term solution.

Efficiency: Physical or mental assessments may be difficult for members to obtain in a timely manner. Often, an order of a committee such as the Complaints Committee can facilitate an expedited assessment.

Accessible: The cost of a physical or mental assessment may be prohibitive for many members. Where the assessment is ordered by the College, it will generally be paid for by the College, allowing members to obtain an expert evaluation and recommendations that may otherwise be out of their reach.

The College would be pleased to provide any additional information that might be of assistance, and refers the Standing Committee to the provisions under sections 59 and 60 of the Health Professions Procedural Code (schedule 2) under the *Regulated Health*

Professions Act, 1991 which outline the process for considering matters related to incapacity in the regulated health professions.

Addition requested to the ECE Act:

31. (4.5) If the Complaints Committee believes that the member may be incapacitated, the Committee shall make the inquiries it considers appropriate.

(4.6) If the Complaints Committee has reasonable and probable grounds to believe that the member is incapacitated, it may,

- (a) require the member to submit to physical or mental examinations, or both, which shall be conducted or ordered by a qualified professional specified by the Committee; and
- (b) make an order, subject to subsection (4.8), directing the Registrar to suspend the member's certificate of registration until he or she submits to the examinations.

(4.7) The Complaints Committee shall give a copy of any report of any examinations required under subsection (4.6) to the member and may give a copy of the report to one or more of the Executive Committee, the Discipline Committee or the Fitness to Practise Committee, as it considers appropriate.

(4.8) No order shall be made under subsection (4.6), unless the member has been given,

- (a) notice of the Complaints Committee's intention to make the order; and
- (b) at least 14 days after the notice was given to make written submissions in respect of it to the Complaints Committee.

(4.9) Clause 4.8 (b) does not apply if the Complaints Committee believes that the delay would be inappropriate in view of the risk of harm or injury to any child.

(7.1) Despite subsection (7), the Registrar may refuse to disclose personal health information regarding the member to the complainant, including, without limitation, personal health information set out in any report required under subsection (4.6), unless it is in the public interest that the information be disclosed.

The College has included an alternative drafting suggestion utilizing the regulation-making authority in Appendix B.

2. Discipline roster

The College is facing a significant increase in investigations due to the expansion of mandatory employer reporting obligations effected by the *Childcare Modernization Act, 2014*, which will lead to an increased number of discipline hearings. The College wants to ensure that it is not restricted in its ability to proceed with discipline hearings in a timely manner due to difficulties in scheduling panels, and therefore requests the addition of a provision which allows for the creation of a roster from which to draw members of discipline panels, similar to section 17 of the *Ontario College of Teachers Act, 1996*. The creation of a roster would increase the pool of candidates available to serve on panels, but would not change the composition of panels or the Discipline Committee.

Change requested:

19. (5.1) A panel appointed under subsection (4) may include one or more eligible panellists on a roster for the committee established under subsection (5.2).

(5.2) The Council may establish a roster of eligible panellists for a committee mentioned in paragraph 2, 3, 4 or 5 of subsection 19(1), consisting of such persons as the Council considers qualified to serve as members of a panel of the committee.

(5.3) The Lieutenant Governor in Council may appoint such persons to a roster of panellists established under subsection (5.2) as he or she considers appropriate.

(5.4) A person included on a roster for a committee is not a member of the committee by reason of his or her inclusion on the roster or his or her service on a panel of the committee.

44(1) The Council may make by-laws relating to the administrative and domestic affairs of the College, including, but not limited to, by-laws

....

12. respecting conflict of interest rules for members of the Council, for members of committees, for persons included on rosters for committees and for officers and employees of the College;

...

17.1 respecting the establishment of a roster of eligible panellists for a committee established under this Act, and the selection, qualifications and training of eligible panellists;

The College is grateful for the opportunity to provide this submission to the Standing Committee on Finance and Economic Affairs during its consideration of Bill 37, and would be pleased to provide any further information which would be of assistance.

Yours truly,

Beth Deazeley
Registrar & CEO
College of Early Childhood Educators

Lois Mahon, RECE
President
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Appendix A

1. Registrar's authority to remove terms, conditions and limitations imposed on a certificate of registration

Bill 37 changes the current process by amending s. 25 and adding s. 28.1 to provide that applications for removal or amendment of terms, conditions and limitations imposed on a certificate must be made to the Registration Appeals Committee, rather than to the Registrar.

S. 27(1) lists the situations in which the Registrar is required to serve notice of a proposal. Clause 3 refers to a refusal to remove a term, condition or limitation that a member of the College requested be removed. Clause 3 is no longer necessary, as the application would no longer be made to the Registrar.

Change requested:

27. (1) If the Registrar proposes to do one of the following, the Registrar shall first serve notice of the proposal, with written reasons for it, on the applicant:

1. Refuse to issue a certificate of registration.
2. Impose terms, conditions or limitations to which the applicant has not consented on a certificate of registration to be issued.
- ~~3. Refuse to remove a term, condition or limitation that a member of the College requested be removed.~~

2. Notice of disciplinary hearings on the public register

Bill 37 amends the ECE Act by providing, in s. 29(2)(b.3), that the register shall contain "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".

The College is concerned that this wording could be construed as requiring the actual Notice of Hearing (which is generally several pages long) to be somehow included in the register. It is impractical to have the full notice of hearing on the register. However, a summary of the notice of hearing could be (and currently is) provided on the register, together with a link to the full notice of hearing, which is posted on the College's website.

Change requested:

29(2)(b.3) for every hearing of the Discipline Committee, a summary of the notice of hearing ~~and a notice of the day and time of the hearing~~, together with a link to the notice of hearing and notice of the day and time of the hearing as published on the College's website;

3. Removal of notices of disciplinary hearings from the College website

Section 29(2.3) as amended by Bill 37 provides that the Registrar shall post the notices and links referred to in clause (2) (b.3) on the register and on the College's website promptly after the notices are served upon the parties to the hearing, and may remove the information from the register after the proceeding has concluded.

While this provision addresses removal of information from the public register, it does not address the removal of the Notice of Hearing from the website after the conclusion of the proceeding. The College would prefer that this be expressly addressed, either in this section or in section 49(7) (see item #5 below).

Change requested:

29(2.3) The Registrar shall post the notices and links referred to in clause (2) (b.3) on the register and on the College's website promptly after the notices are served upon the parties to the hearing, and may remove the information from the register and the College's website after the proceeding has concluded.

4. Authority of the Complaints Committee

Clauses 31(5)(c) and (e) as amended by Bill 37 provide the Complaints Committee with the authority to admonish members of the College for matters that come before them.

The power to admonish is currently a power that is reserved for the Discipline Committee after it makes a finding of professional misconduct. The Complaints Committee is a screening committee and does not make findings of professional misconduct.

As a result, the College believes that it is not appropriate to provide the Complaints Committee with a power that is better utilized after a hearing at which the allegations against a member have been proven and a finding of professional misconduct has been made. The Complaints Committee has the power to caution, advise and issue reminders to a member, which is sufficiently broad to provide for advisory or educational guidance of members.

Change requested:

31(5) The Complaints Committee, in accordance with the information it receives, shall,

(c) require the person complained against to appear before the Complaints Committee to be cautioned ~~or admonished~~; or

(e) take any action it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws including issuing a caution, reminder, or advice ~~or admonishment~~.

31.1 (a) if the Registrar determines, on reasonable and probable grounds and in accordance with any regulations, that the complaint, if proven, would likely result in the member receiving a caution, a reminder, or advice ~~or admonishment~~ from the Complaints Committee under clause 31 (5) (c) or (e).

5. Removal of Information

Subsection 49(7) as amended by Bill 37 states that if certain information is removed from the public register, that information shall also be removed from the College's website and from any other website where the College has published the same information.

The College wants to ensure that other sections in the Act which remove specified information from the public register are captured in this subsection. The addition below is with respect to the removal of information in accordance with the College's by-laws. If item #3 is not addressed, then that should be addressed in this section as well by adding a reference to subsection 29(2.3) in subsection 49(7), in addition to the reference to subsection 29 (2.5).

Change requested:

"49(7) If a notation of a decision or resolution is removed from the register, or other specified information is removed from the register under subsection 29 (2.2) or 29 (2.5), the College shall remove the decision, resolution or other specified information,

- (a) from its website; and
- (b) from any other website on which it has published the information under subsection (4), if required by and in accordance with the regulations."

6. Action taken by Registrar

Subsection 49.2(7) states that the Registrar is required to provide an employer with a written report regarding the action taken by the Registrar in response to a mandatory employer report.

However, under subsection 49.2(6.1) the Registrar has discretion not to refer certain reports to a committee. The College wants to ensure that the obligation to provide a written report is not required if the Registrar does not refer a matter to a committee. This is consistent with the drafting of s. 49.1(6).



Change requested:

49.2(7) Where an employer makes a report to the Registrar under subsection (1), the Registrar shall, as soon as is reasonably possible, provide the employer with a written report respecting the action taken, if any, by the Registrar in response to the employer's report.

Appendix B

Alternative Drafting Suggestion for Physical and Mental Assessments of Members

31(4.4) If the Complaints Committee believes that a member may be incapacitated, it may require a member to submit to physical or mental examinations in accordance with the regulations.

43(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

11.1.1 providing that the Complaints Committee may require a member to submit to physical or mental examinations or both, governing the circumstances in which the committee may require those examinations, providing that the committee may specify the professionals to conduct or order those examinations, establishing a process for providing a report of those examinations to the member and any other committee specified by the Committee, establishing a process for suspending a certificate of a member who fails to submit to the examinations, providing the criteria for lifting the suspension, and prescribing circumstances under which the personal health information of a member may not be disclosed to a complainant;