



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

**Bill 31, Plan for Care and Opportunity Act
(Budget Measures), 2018**

Schedule 8: Early Childhood Educators Act, 2007

Submitted by:

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April 26, 2018

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 31, the *Plan for Care and Opportunity Act (Budget Measures), 2018*. These comments are focused on Schedule 8 to the Bill, which amends the *Early Childhood Educators Act, 2007*.

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 Ministry). The College has over 52,000 current members who are trusted to provide education and care to the most vulnerable members of Ontario's population.

The ECE Act was amended in 2015 by the *Child Care Modernization Act* and in 2016 by the *Protecting Students Act*. Both Acts introduced changes to enhance the College's ability to protect children, while increasing the efficiency and transparency of discipline processes. The College has implemented those changes.

Commentary on Schedule 8 of Bill 31

The College supports the proposed amendments to the ECE Act set out in Schedule 8 of Bill 31. 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.

The vast majority of registered early childhood educators (RECEs) practise the profession in a manner that supports the health and well-being of children. However, the College's primary concern is always the protection of the public interest, and for that reason the College supports the government's willingness to strengthen provisions in the ECE Act that relate to the sexual abuse of children.

I. Provisions related to sexual abuse of children

a) List of acts / conduct resulting in mandatory revocation

The College supports the proposal to amend the ECE Act to expand the list of acts of sexual abuse which would result in mandatory revocation of a member's certificate of registration. However, the College is concerned that the proposed amendments do not go far enough to send a clear message regarding public protection, considering the uniquely vulnerable population that the College's members serve.

The College requests that the ECE Act be amended to provide that **any** act of sexual abuse of a child by a member would result in mandatory revocation.

There is no other profession whose members deal exclusively with such a uniquely vulnerable population – children under 12 years of age, and in most cases, under the age of six years. There are no acts of sexual abuse of a child which are consistent with a member retaining their ability to practice the profession. A more stringent provision is appropriate due to the unique nature of the profession.

Subsection 1(1) of the ECE Act defines sexual abuse of a child by a member as follows:

- (a) sexual intercourse or other forms of physical sexual relations between the member and the child,
- (b) touching, of a sexual nature, of the child by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the child;

With the proposed amendments, conduct under part (a) of the definition, and certain acts under part (b) of the definition would trigger the mandatory revocation provisions. None of the conduct captured in part (c) of the definition of sexual abuse would trigger mandatory revocation consequences.

The College is firmly of the position that there is no situation in which a professional in a position of trust should retain their membership and their professional designation after

having been found guilty of any sexual touching, or behaviour or remarks of a sexual nature towards a child. Therefore, all conduct under the definition of sexual abuse, not just the narrower list from the *Regulated Health Professions Act (RHPA)*, should trigger mandatory revocation.

The College recognizes that it is always open to the Discipline Committee to direct the revocation of a member's certificate of registration, regardless of whether the conduct is captured under the mandatory revocation provisions of the legislation, and the College has, and will continue to seek revocation in all cases of sexual abuse.

Nevertheless, a clear statement by the government, that all acts of sexual abuse of a child will result in the revocation of a member's certificate, sends an important message to members and to the public that the safety and well-being of children is paramount, and that there is absolutely no tolerance or place in the early childhood education profession for persons who commit such acts.

b) Mandatory suspension for other acts of sexual abuse

In the event that amendments to the ECE Act do not provide for mandatory revocation of a member's certificate of registration for all acts of sexual abuse of children, as requested above, the College supports the proposed amendment to provide for mandatory suspension of a member's certificate of registration following a finding by the Discipline Committee of sexual abuse that does not lead to mandatory revocation.

c) Interim suspension following a finding of guilt leading to mandatory revocation

The College supports the proposed amendment to the ECE Act to require immediate suspension of a member's certificate of registration following a finding by the Discipline Committee of professional misconduct for any act of sexual abuse or child pornography that would lead to mandatory revocation.

d) Interim suspension to prevent harm to children

The College supports the proposed amendment to the ECE Act which would align with the RHPA by providing the authority to impose an interim order to suspend or impose terms, conditions or limitations on a member's certificate of registration during an investigation, if the actions or conduct of a member are likely to expose a child to harm or injury, while requiring the investigation to be undertaken expeditiously.

e) Regulation making authority to prescribe additional conduct of a sexual nature that would result in mandatory revocation

The College supports the proposed amendment to the ECE Act to allow for the prescription by regulation of other types of conduct of a sexual nature that would result in mandatory revocation.

f) Funding for therapy and counselling for children who have been sexually abused by members

The College recognizes and supports the need for funding to facilitate access to therapy and counselling for children who have been sexually abused. However, the College has concerns about the financial viability of a program which is wholly dependent on funding to be obtained from the members of the profession. The College is committed to working with government to implement an appropriate solution.

II. Provisions related to physical or mental examinations of members

The College wholeheartedly supports the proposed amendments to the ECE Act to provide the authority to order physical or mental examinations of members in order to determine their fitness to practise, and commends the government for taking this important step in order to protect children and support the health and well-being of RECEs. This is consistent not just with the provisions of the RHPA, but also the legislation

governing other regulated professions such as lawyers, accountants, human resource professionals, and social workers.

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 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.

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. RECEs are entrusted with educating and caring for Ontario's children and youngest learners. In addition to education, they are responsible for the safety and well-being 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.

Assessment of the existence, severity, and impact of physical or mental conditions or disorders will almost inevitably require assessments or diagnoses by experts. The College is confident that the provision of the authority to order such expert assessment provides the appropriate balance of interests and includes appropriate safeguards for the reasons that follow.

Appropriate 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 threshold, and notice must be provided to the member.

No forcible assessment: No member can be assessed against their 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 Committee 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. The proposed amendments to the ECE Act explicitly address the confidentiality of personal health information.

Public interest: The addition of the authority to order mental or physical examinations is in the public interest. It both protects the public and supports the rehabilitation of members and facilitates their return to practise under appropriate circumstances.

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 for the identification of the root cause and development of 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.

Accessibility: 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 tailored to their professional situation that may otherwise be out of reach.



For these reasons, the College strongly supports these proposed amendments to the ECE Act.

Conclusion

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 31, and would be pleased to provide any further information which would be of assistance.

Yours truly,

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