



**Submission to the
Standing Committee on Social Policy:**

Bill 48, Safe and Supportive Classrooms Act, 2018

Schedule 1: Early Childhood Educators Act, 2007

Submitted by:

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The College of Early Childhood Educators is pleased to provide the Standing Committee on Social Policy with input during the Committee's consideration of Bill 48, the *Safe and Supportive Classrooms Act, 2018*. These comments are focused on Schedule 1 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 53,000 current members who are trusted to provide education and care to the most vulnerable members of Ontario's population.

Commentary on Schedule 1 of Bill 48

The College recognizes the government's commitment to ensuring that schools and child care centers are safe environments for children and supports the proposed amendments to the ECE Act set out in Schedule 1 of Bill 48.

The vast majority of registered early childhood educators (RECEs) practise the profession in a manner that supports the safety 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. The College has previously advocated that these changes be made to the legislation and is pleased to see them included as a part of these amendments.

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, behavior, or remarks of a sexual nature towards a child.

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. The College's position has always been that mandatory revocation of a certificate of registration is the only appropriate response for **any** sexual abuse of a child by a member. The College has, and will continue to seek revocation in all cases of sexual abuse.

The amendments to the ECE Act proposed in Bill 48 are a clear statement that 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.

Proclamation of Provisions Regarding Funding for Therapy and Counselling

Together with the introduction of the *Safe and Supportive Classrooms Act, 2018*, the government proclaimed the provisions of Part XI of the ECE Act, which require the College to establish and administer a program to provide funding for therapy and counselling for children in relation to allegations of sexual abuse 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 by members of the profession. The College is preparing for the implementation of Part XI of the ECE Act together with related provisions.¹

Proclamation of Provisions Regarding Incapacity of Members

In order to ensure that schools and child care centres truly are safe and supportive learning environments, the College requests that the government also proclaim in force

¹ Namely paragraphs 5 and 6 of subsection 33(4), paragraphs 16.1 and 16.2 of subsection 43(1), paragraphs 35 and 36 of subsection 44(1), and paragraphs (d.2) and (d.3) of subsection 45(1).

provisions contained in section 31 of the ECE Act (together with a related provision²) which relate to the College's ability to address issues related to the incapacity of members. This important step would both protect children and support the health and well-being of RECEs.

The ECE Act requires the College to have a Fitness to Practise Committee with the responsibility for determining whether members are incapacitated by physical or mental disorders. The Fitness to Practise Committee may, after a hearing, find a member of the College to be incapacitated if, in the Committee's 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.

Under the current legislation the College 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. Assessment of the existence, severity, and impact of physical or mental conditions or disorders will almost inevitably require assessments or diagnoses by experts. The authority to order such assessments was omitted from the original drafting of the ECE Act in 2007. After several years of advocacy by the College, the appropriate provisions were added to the ECE Act in May 2018 but have not been proclaimed. Until these provisions are proclaimed, the College lacks the authority to move forward with implementation.

This authority to obtain expert assessments to assist in assessing issues of incapacity is exercised by most other professional regulatory bodies, including those governing lawyers, accountants, human resource professionals, social workers and all regulated health professionals. No professionals other than RECEs deal exclusively with the uniquely vulnerable population of children under 12 years of age, and in most cases,

² Namely paragraph (c.1.1) of subsection 45(1).

under the age of six. It is shocking that RECEs are not subject to the same safeguards as other professionals.

The failure to date to proclaim these provisions of the ECE Act has created 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. 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.

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.

Public interest: The addition of the authority to order mental or physical assessments is critical to protecting the public interest by ensuring that RECEs are fit to practice safely.

Appropriate threshold: An assessment can only be ordered by the Complaints Committee. Before an assessment 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 assessment 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 as yet unproclaimed provisions of the ECE Act explicitly address the confidentiality of personal health information.

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. It may support rehabilitation and facilitate a return to practice under appropriate circumstances.

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 assessment and recommendations tailored to their professional situation that may otherwise be out of reach.

The introduction of the *Safe and Supportive Classrooms Act, 2018* provides an opportunity to finish work that was left undone to enhance the safety and well-being of the youngest Ontarians. To this end, the College strongly urges the government, for the reasons set out above, to proclaim the provisions of the ECE Act related to the incapacity of members.

College Governance and Appointment of Public Members by the Lieutenant Governor in Council

The ECE Act sets out a simple governance structure for the College: a Council composed of 14 RECEs elected by the profession, and 10 individuals who are not members of the profession and are appointed by the Lieutenant Governor in Council ('public members'). This structure has served the College effectively throughout its 10 year history.

The College takes the privilege of self-regulation seriously, and takes all possible steps to ensure that the public interest is, and is seen to be, at the forefront of all decision-making.

For example, in order to prevent any conflict with the College's mandate to regulate in the public interest, the College has passed by-laws restricting the eligibility of certain RECEs to be elected to Council by making the following individuals ineligible to serve as elected members of Council:

- any employee or member of the executive of any collective bargaining unit representing early childhood educators
- employees or board members of any professional association representing early childhood educators or advocacy group focused on child care and early learning

These provisions are further strengthened by the presence of public members on Council.

The inclusion of public members in the College's governance is a hallmark of effective self-regulation. While all members of Council are responsible for ensuring that the College acts in the public interest and does not favor the profession's interests, the participation of public members ensures that the public interest is constantly at the forefront of Council deliberations.

In addition to the public perspective, public members are a vital source of diversity on Council, and bring valuable skills and experience which complement the perspective of members elected from the profession.

The ECE Act requires public members to serve on all of the Committees mandated by the Act, and provides that any panel of Committee members formed to consider complaints or discipline matters must include a public member. In addition, the College has gone well beyond this legislated requirement by passing by-laws which require public members to serve on *all* of the College's committees.

In 2016, the College voluntarily underwent an independent governance review conducted by Richard Steinecke, a leading lawyer and expert in professional regulation. As a result of this review, the College revised its by-laws to ensure that public members are eligible to serve in any office, including that of College President.

However, there is a risk related to the model of governance set out in the Act, which is that vacancies in the Council positions designated for public members can prevent the effective functioning of governance and disciplinary functions. This risk is particularly acute in the case of the Complaints and Discipline Committees which require public members in order to function.

For example, the crucially important Bill 48 amendments in relation to mandatory revocation for sexual abuse will be of no use to protect children if a sufficient number of public members have not been appointed so as to allow the College to form a panel of its Discipline Committee.

The College currently has only five of the ten public members required. A previous vacancy took more than a year to fill.

To help address the risk related to delays in the appointment or re-appointment of public members, the College requests an amendment to the ECE Act to allow for public members to remain in their appointed positions until their successors take office. Such a provision exists in the legislation governing at least one other profession, to address exactly this concern.³

The proposed amendment would enable the College to continue to conduct its governance and regulatory affairs without interruption despite sometimes unavoidable delays in government appointments.

³ s. 3(5.1) of the *Professional Engineers Act*:

(5) In each year, the persons to be appointed by the Lieutenant Governor in Council shall be appointed for one year, two year or three year terms in order that one-third, or as near thereto as possible, shall be appointed in each year.

(5.1) On the expiry of a term referred to in subsection (5), the person whose term expired is deemed to have been reappointed until his or her successor takes office.

Conclusion

In summary:

- the College firmly supports the proposed amendments to the ECE Act found in Schedule 1 of Bill 48;
- the College looks forward to the coming into force of the provisions of Part XI of the ECE Act (together with related provisions) mandating the establishment of the program to provide funding for therapy and counselling for children in relation to allegations of sexual abuse by members;
- the College strongly urges the Government to proclaim the provisions of the ECE Act related to the incapacity of members; and
- the College requests an amendment to the ECE Act to allow for each public member to remain in their appointment until their successor takes office.

The College is grateful for the opportunity to provide this submission to the Standing Committee during its consideration of Bill 48, and would be pleased to provide any further information which would be of assistance.

Yours truly,

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