



Ontario Teachers' Federation

THE ONTARIO TEACHERS' FEDERATION

is the advocate for the teaching profession in Ontario and for its 160,000 teachers. OTF members are full-time, part-time and occasional teachers in all publicly funded schools in the province — elementary, secondary, public, Catholic and francophone.

Presentation to the Governing Council
of the Ontario College of Teachers re
Proposed Amendments to the College of
Teachers Bylaws, Specifically Section 26

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Good afternoon. I wish to thank the Governing Council for hearing our presentation today. I am Michael Foulds, President of the Ontario Teachers' Federation. I am speaking on behalf of Rémi Sabourin, president of l'Association des enseignantes et des enseignants franco-ontariens; Sam Hammond, President of the Elementary Teachers' Federation of Ontario; Ann Hawkins, President of the Ontario English Catholic Teachers' Association; and Paul Elliott, President of the Ontario Secondary School Teachers' Federation. Together, we represent the teachers who work in our public schools and who you license and regulate. We are here today to present our concerns on the proposed amendments to the College Bylaws, specifically Section 26.

The College has a difficult balance to maintain in fulfilling the duty to investigate and resolve complaints about College members. On the one hand is the need to protect the public interest through transparency and to uphold the standards demanded by the public of members of the profession. On the other is the right of College members to due process and fairness. As College Registrar Salvatori stated in your September media release outlining the College's recommendations for changes to the *Protecting Students Act*, "In the rare cases where discipline is required, teachers, parents and students will know that a fair and transparent process will be in place." That is the crux of our concerns. We believe the proposed Bylaw amendments tip that

balance of fairness and transparency towards a transparency that diminishes the fair treatment of teachers who have been disciplined.

I was present in December when Minister of Education Hunter addressed the Council. You will no doubt remember that, at the time, the *Protecting Students Act* had received Royal Assent. Minister Hunter acknowledged your concerns about the *Protecting Students Act*, specifically about the removal of disciplinary decisions from the College's website. But, she also recognized that, under the current Bylaws, the College may exercise judgement to keep disciplinary decisions public for a longer period, should the behaviour warrant it and if necessary to serve the public interest. She also pointed out that the *Protecting Students Act* addresses former Ontario Chief Justice Patrick LeSage's key concerns about transparency. Moreover, she emphasized that the disciplinary system needs to be fair to everyone by providing the opportunity for teachers to make amends.

Currently, under Section 26 of the College Bylaws, we believe there is an appropriate balance of transparency and fairness.

As outlined in the College briefing notes on these amendments, "The removal of a reprimand or Terms, Conditions or Limitations (TCL) notation from a teacher's public register page after three years reflects the belief that

teachers learn from their past mistakes and improve their practice." That is fair. Minister Hunter acknowledged the same rehabilitative spirit of the *Protecting Students Act* when she stated, "The disciplinary system needs to be fair... by providing the opportunity for teachers to make amends." As well, Justice LeSage was very clear in his report and I'm quoting, "I recommend that, unless the Committee orders a longer period, the finding is to be removed from the register if at least three years have elapsed." The Legislature considered both your recommendation and Justice LeSage's recommendation and the *Protecting Students Act* confirmed that some decisions should not continue to be on the College website.

The proposed change to the Bylaw does not align with the advice of LeSage or the intent of the Act. And now, again quoting from page three of the College briefing notes, "The proposed Bylaw amendments are necessary to keep all College discipline decisions on the College website." As members of the Governing Council, you need to ask yourselves, "Why are the proposed amendments described as 'necessary' when the intent of the law is to remove those decisions?"

One point of view is that the amendments are an attempt to preserve a record of a member's wrongdoing and that, without these Bylaw changes, the decision would cease to exist at all. The *Protecting Students Act* requires the removal of decisions from the College website but it does not necessitate a deletion of the Discipline Committee decision from a non-public database used to preserve a record, should the member re-offend. The College needs to be very careful not to allow a technological capacity issue to interfere with the fair and balanced approach it takes in disciplining teachers. Removing notations

from the public register and some minor discipline cases from the website simply allows teachers to continue to practice their profession without the weight of a single error in judgement or an unfortunate incident to cloud forever their career and interactions with their students, parents and administrators.

In OTF's view, the amendments being contemplated fly in the face of the Act's intent, Justice LeSage's recommendations and the rehabilitative goal of discipline in the first place.

I would also remind the Council that teachers who are being disciplined sometimes come before the Discipline Committee with an "Agreed Statement of Facts and Guilty Plea." Some of these members, accused of professional misconduct, have done so with the advice of counsel that decisions which set a TCL and a reprimand will have notations removed from the public register after three years. These teachers are waiting for the fair treatment they were advised would occur. Are Councillors convinced that these Bylaw changes will not retroactively impact a member who has, in good faith, expected their notation to be removed? Changes made retroactively would simply be unfair.

My final point is that the current Bylaw is adequate. It meets the concerns of the Registrar and the Chair, as expressed in their November 2nd letter concerning maintaining some decisions on the website. It also aligns with the Minister's statements at that December meeting about exercising judgement. Under Section 26.01 (a) iii, "the finding... shall be removed from the register, subject to any order of the Discipline Committee." Should the Discipline Committee decide that a member's actions warrant

that a decision should remain on the College website for a period longer than three years, they have that discretion under the current Bylaw and under the *Protecting Students Act*. There is no need to make amendments to protect the public interest if the actions of a member are egregious enough to warrant the Discipline Committee making that judgement.

And this brings me to the issue of fairness again. Teachers expect their profession will be regulated in the public interest. They also expect and deserve fair judgement and treatment by the regulator in cases where they are being disciplined. They expect that discipline, in the rare cases where it is necessary, will be meted out with the goal of rehabilitation of the member as well as protection of the public interest. These Bylaw amendments remove that fairness.

I and my fellow Presidents urge you to vote against these amendments or, at the very least, to table them until such time as the Council is able to more carefully consider, along with education stakeholders, the complexities of the proposed amendments and their impact.