

TEACHERS AND INVESTIGATIONS

*be wary
be wise*

Police
Childrens' Aid Society
College of Teachers

ONTARIO ENGLISH
**Catholic
Teachers**
ASSOCIATION

Ontario English Catholic Teachers' Association
Counselling and Member Services Department

2002

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INTRODUCTION

Teaching is a fulfilling occupation that has many rewards and challenges. Ontario's 140,000 teachers are nurturers, scholars, and role models who must also understand curriculum, politics and law. But today's schools also present more than educational challenges to teachers. For some, life as a teacher has exposed them to unexpected landmines.

Each year, more and more teachers face investigations by the Children's Aid Society (CAS) and police, as well as the Ontario College of Teachers, following allegations of abuse.

This book and the accompanying video and workshop *Be Wary, Be Wise*, are designed as resources to help answer two important questions:

- How can teachers avoid false allegations?
- What should you do if your conduct is under investigation?

The Counselling and Member Services Department

The Counselling and Member Services Department of the Ontario English Catholic Teachers' Association assists teachers whose conduct is being investigated. The department publishes advice about a variety of problems teachers face in Casebook Diary, a regular column in the OECTA newsletter *AGENDA*. Casebook Diary is also posted on the OECTA website www.oecta.on.ca in the Members' Centre. The Counselling and Member Services Department has produced other booklets and pamphlets to help teachers with various aspects of their professional lives. Ask your local OECTA president for these resources, or download them from the website.

Legislative changes

A number of teachers have been convicted of inappropriate conduct with students. In 1999, the Ontario government appointed Justice Sydney L. Robins to review the events of a highly publicized case of a Sault Ste. Marie teacher who pleaded guilty to sexual abuse of students over many years. The Robins report made 101 recommendations directed at the provincial and federal governments, school boards, the judiciary and the Ontario College of Teachers leading to numerous legislative changes that affect teachers:

- Amendments to the *Child and Family Services Act*. The changes expand the reasons for determining whether a child is in need of protection. It clarifies the duty and responsibility of professionals, including teachers, to report suspected cases of child abuse. The amendments also make it easier for Children's Aid Societies to get information.
- *Safe Schools Act*, regulation 521/01, mandates criminal records checks on all publicly funded school board employees who come in contact with students on a regular basis
- *Student Protection Act* provides for the automatic removal of teachers charged with sexual assault of any other charge, which the employer deems to be posing a risk or injury to students.
- *Quality in the Classroom Act* provides for a standardized provincial teacher performance appraisal process.

No one tolerates teachers who would abuse students, sexually or physically. Such individuals harm innocent students and damage teachers' professional reputation. OECTA is committed to eradicating child abuse at all levels. OECTA is also committed to ensuring that its members receive a fair and just hearing and are considered innocent until proven guilty.

The number of students who allege they have been abused or assaulted by a teacher is rising.

These complaints may arise because of a misunderstanding. If a student or parent does not understand a teacher's actions or intent, the consequences can be far-reaching. One teacher was investigated for sexual assault after writing a thank-you note to a student that helped out after school. The student's mother read the note, misunderstood the context, and called the CAS.

Occasionally, they are the result of a complete fabrication. In one OECTA case, a teacher was arrested and jailed after a female student claimed he had assaulted her. It took a lengthy investigation before the charges were dropped. In another case, a student hit a teacher when the teacher intervened to stop the student from bullying. When the police charged the student with assault, the student's mother threatened to counter-charge if the teacher did not withdraw her complaint – although the teacher was innocent.

Teachers report conflicts and misunderstandings more often, and feel threatened by the possibility that students could make false allegations. While OECTA successfully defends teachers against the majority of allegations, the impact of an investigation is devastating.

OECTA files reveal that

- The number of allegations against teachers has increased tenfold since the early 1990s. Allegations of emotional, physical or sexual abuse are more and more common. OECTA handles between 120 - 150 cases in a typical year.
- The majority of allegations are unfounded. OECTA records indicate that just 1% to 3% of allegations of physical assault/abuse result in a criminal convictions; 5% to 10% of allegations of sexual assault/abuse lead to criminal convictions.

- Increasingly, students and parents regard any kind of physical contact, including a simple tap on the shoulder, as an assault.

Similarly, allegations of sexual harassment and abuse are being made over something as innocent as looking at a student the wrong way.

The impact of an investigation

The impact of an allegation on an innocent teacher is enormous. The teacher is usually sent home during the investigation, which can take anywhere from one day to months (or years, if the allegation actually goes to trial.) If there are charges, the teacher's name may be published. During this time the teacher is often stigmatized and isolated by family, friends, neighbours and colleagues. This can be aggravated when the OECTA lawyer advises the teacher not to discuss the case.

The stress of a false allegation is overwhelming for many teachers. They report that they feel their reputations have been permanently tarnished, even after they have been completely exonerated by a thorough investigation.

Helping a colleague

Do not judge. Although many people falsely believe that the accused must be guilty if the police have laid charges, evidence shows this is not the case. Everybody is innocent until proven guilty. Almost all allegations are unfounded.

Continue regular social activities with your colleague. He or she needs to know of your support. Keep in touch. Sitting at home waiting for a meeting with the CAS or worse, a court date is a lonely and terrifying experience. Anyone can be a victim of false allegations.

Avoiding false allegations

There is nothing a diligent teacher can do to avoid becoming the target of a malicious allegation or fabrication. While such allegations are extremely rare, most arise from a misunderstanding or misinterpretation of the teacher's intent. Cautious, professional conduct is the best prevention:

- Maintain professional boundaries and avoid relationships that become personal. Close relationships with students often lead to misunderstandings. As an adult and a professional, you are responsible for your behaviour and conduct as well as your student's behaviour.
- A teacher's duty is to be a role model, not a best friend.
- Teachers hold a position of trust and are expected to maintain a higher standard of care and conduct than most members of the public. What may be acceptable for non-teachers may not be acceptable for teachers. This is true 12 months of the year, 7 days of the week. A teacher is always a teacher. Teachers' after-school behaviour can be challenged.
- Avoid meeting students outside of school.
- Avoid driving students in your personal vehicle. The responsibility for student transportation belongs to the school board.
- Avoid touching students when reprimanding or disciplining them. When emotions by either party are heightened, any kind of touch or physical contact can be misinterpreted.
- Do not email students. Once you send email you lose control of the message. It can be forwarded and amended. Attachments can be added. Your email address is no longer private. An email message is as private as a postcard and more easily passed on.
- Avoid mixing socially with students, especially if alcohol is involved.
- Ensure there is adequate adult supervision of both sexes on field trips or other activities outside of school.

- Never date students, even adult students.
- Don't play favourites. Many teachers know students who need extra care and attention. Be careful with dealing with these students. Show your concern and care in a steady professional manner that does not make exceptions.
- Be careful when giving students gifts. The best gift for a student is professional attention.
- Reflect on your actions. Avoid conduct you would be embarrassed to report. If in doubt, don't do it.
- Avoid keeping a student alone in the classroom for long periods of time after dismissal.
- Avoid situations where you are alone with a particular student.
- Avoid physical demonstrations of concern, such as hugs, unless in public view of colleagues or other students. Students are often needy. Show your concern by listening to them attentively.
- Do not cover the window of your classroom door. If your door has no window, leave it open.
- Avoid writing cards or letters to a particular student. Ask yourself how other people could misinterpret the comments years later. Once something is written, it cannot be deleted or retracted.
- Practise effective communication skills.

Reflect on your practises and examine your teaching style. Be careful and professional but do not let undue fear undermine your effectiveness as a teacher.

There is no "type" of teacher who is victim of a false allegation.

INVESTIGATIONS

The Children's Aid Society

The investigation process

The Children's Aid Society (CAS) may be called in to investigate a complaint by anyone: student, parent or school administrator. The CAS investigates all complaints, no matter how frivolous or vexatious they seem. The CAS has the authority to question and investigate any allegation of abuse, in search of evidence of abuse.

The investigation process will depend on the local CAS and any protocols that may exist between the Society, the school board and the police. At one time the principal or other school board officials investigated a complaint of abuse before calling the CAS. This rarely happens today. School board officials will call the CAS with any complaint even if it appears to be unfounded.

Under the revised *Child and Family Services Act*, a teacher, or any individual working in an educational institution MUST report concerns directly to the CAS where there are "reasonable grounds to suspect a child has suffered abuse or is at risk of suffering abuse." There are no exceptions to the duty to report. For a copy of the complete Act go to http://192.75.156.68/DBLaws/Statutes/English/90c11_e.htm

What to do if the CAS investigates your conduct

The CAS may inform you of an investigation directly or through a school board official, usually the principal. An investigation by a CAS caseworker may take anywhere from one day to six months. Most investigations take one or two weeks. If you are informed in any way of a CAS investigation of your conduct, you should

immediately seek advice from OECTA's Counselling and Member Services Department. Call 1-800-268-7230.

An OECTA staff officer will assess your situation and provide direction and advice. A lawyer may contact you depending on the circumstances and whether or not the allegations relate to your duties as a teacher.

DO NOT discuss the complaint with anyone else, even your principal or vice-principal before you have been advised by OECTA or a lawyer. They are management and operate according to a protocol that requires them to report what is said.

A teacher under investigation is usually removed from the classroom during the investigation, and may be reassigned to home or to an alternate location such as the school board office until the investigation is over. This reassignment is NOT disciplinary and includes full pay and benefits. Any variation of this should be discussed with your local unit president or OECTA Provincial staff member.

If a CAS caseworker arrives at school to question you, or if your principal asks to speak with you regarding a CAS investigation, ask politely to delay the interview until you have had an opportunity to speak with legal counsel through OECTA. Explain that this is OECTA's direction.

If the CAS insists on a meeting and you have not had an opportunity to call OECTA Provincial or to speak with OECTA legal counsel, you are NOT obliged to attend the meeting or make any statement. You are obliged to attend a meeting with your principal or supervisory officer if requested, but you are NOT obliged to make a statement or answer questions without the benefit of legal counsel.

There is no such thing as "off-the-record." Every comment can or will be used in the investigation. There is no such thing as an "informal" CAS investigation.

While OECTA encourages every teacher to cooperate with CAS investigations, it also advises teachers to exercise their rights. Always call OECTA if you are the subject of an investigation.

Your employer, the school board, may also decide to investigate your conduct following the CAS investigation. If this happens, you should seek the advice of a lawyer and work with your local unit president to ensure your employment rights are protected.

What to do if a colleague is investigated by the CAS

Everyone is innocent until proven guilty. Do not judge. Understand that this is a traumatic experience for your colleague.

Teachers who are questioned as witnesses about a colleague's conduct by the CAS do not need legal counsel. If you have questions or concerns call your local President or OECTA's Counselling and Member Services Department at the Provincial office. Answer questions truthfully. Do not ever speculate or offer an opinion. Limit your remarks to the facts. Opinion offered can be taken out of context. If have no factual information, resist pressure to make a statement.

Under the 18(1)(b) of the *Teaching Profession Act*, a teacher is required to provide a written statement of what has been reported about a member of the teaching profession if the comments constitute an adverse report. If the allegation involves allegations of sexual abuse 18(1)(b) or if the CAS specifically requests that you not to adhere to the Act, you will be excepted.

Beware!

The police may also investigate the complaint after the CAS investigation is complete. They may also investigate simultaneously. this is known as a Joint abuse Investigation. Nothing precludes a parent, or a student from contacting the College of Teachers before, during or after a CAS investigation.

Police

The investigation process

The police may investigate any complaint of possible criminal activity that is brought to their attention. Allegations of abuse that are investigated simultaneously by the police and CAS are known as Joint Abuse Investigations. Usually, a "complaint of abuse" as defined under the Child and Family Services Act, is investigated by the police first if there is a suspicion of criminal abuse.

The police question many individuals before charges are laid. They often characterize this as an "informal" investigation and do not refer to an investigation as "formal" until charges are laid. However, all information gathered during either of these stages of an investigation is admissible in court.

What to do if the police investigate your conduct

The CAS and police investigation process is similar. Do not make any admissions before you speak to an OECTA representative.

If you are the subject of a criminal investigation, *contact OECTA immediately*. If the allegations relate to your duties as a teacher, OECTA will put you in touch with a lawyer that specializes in teachers and the law immediately.

Do not speak to anyone else about the allegations. The Crown attorney in a criminal trial can subpoena anyone. A lawyer can take innocent comments out of context during a trial. It is easy to incriminate yourself while trying to explain a seemingly innocent situation.

Nothing is "off-the-record." Everything you say can and will be used in the investigation. Sometimes the police tell you that they are, "just asking some questions." This is when teachers mistakenly talk openly to the police thinking they can avoid a 'misunderstanding.' OECTA strongly advises against this.

Under Canada's *Charter of Rights and Freedoms*, the police are not obligated to caution you regarding your right to remain silent and your right to legal counsel until *after* you have been charged with a criminal offense.

You do have the right to remain silent and consult a lawyer before speaking with the police. If the police wish to question you before you have spoken with an OECTA representative or lawyer, politely inform them that you will be cooperative but wish to contact a lawyer through OECTA prior to answering any questions.

What are my rights if I am arrested?

The police will lay criminal charges if they think that there is enough evidence to support a conviction at trial. In addition, the Crown attorney may proceed to trial if there appears to be enough evidence.

The police must identify themselves, tell you that you are under arrest, why you have been arrested and make it clear you are not free to leave.

The police can search you if you have been arrested or if they believe you may be in possession of illegal alcohol drugs or weapons.

You have the right to remain silent and consult a lawyer.

Can a teacher be jailed?

Teachers arrested on serious charges may be detained. If you have been arrested and jailed, you must be brought before a judge or justice of the peace within 24 hours of the arrest, even on the weekend. Do not sign anything while in custody. An OECTA lawyer will do everything possible to obtain your release. However, the legal system moves slowly.

Can a teacher be charged and not arrested?

In cases of less serious crimes, you could be charged and not arrested. There are different legal forms to instruct you when and where to appear in court. If you do not appear at the designated place at the time specified, you could be charged with "failing to appear."

Understand your rights

Do not depend on the police to inform you of your rights. You have the right to a lawyer and must be given a reasonable opportunity to find one. The police cannot limit your phone calls if you are trying to find a lawyer.

If you are arrested, call your local unit or the Provincial office at 1-800-268-7230. If you are unable to contact an OECTA representative, obtain a lawyer of your own choice or a legal aid lawyer with police assistance. Phone the OECTA Provincial Office as soon as possible, even if you have spoken to another lawyer, so that the appropriate OECTA lawyer can be obtained and the Association's regular procedures implemented. OECTA works with experienced lawyers who specialize in teachers and the law.

Beware!

The police may investigate and determine that there was no criminal activity or they may determine there isn't enough evidence to support a conviction at trial. In this case they keep your file open in the event that further information comes to light. They may also share information with the employing board, the Children's Aid Society or the College of Teachers.

The Ontario College of Teachers

The investigation process

The Ontario College of Teachers (OCT) investigates when there is a written complaint about a teacher who is a member of the College. The Registrar of the College or any member of the public can initiate a complaint. An intake officer at the College discusses the complaint with the complainer or complainant. If this person proceeds to make a formal complaint, an investigator is assigned to the case. College staff cannot refuse to investigate a formal complaint.

Bill 101, *An Act to Protect Students From Sexual Abuse*, requires employees to report teachers charged with certain convictions under the *Criminal Code* (Canada) to the OCT. It also requires a similar report where the employer terminates the member's employment or restricts the member's duties for reasons of professional misconduct, or if the member resigned while the employer was in the process of documenting a teacher for the purpose of terminating the member's employment. These reports to the College of Teachers become The Registrar's complaint for purposes of the investigation.

The College Investigator usually telephones to inform the teacher of the complaint. If this happens, contact OECTA for assistance. The actual complaint is mailed to the teacher. It will indicate the exact allegations and provide a brief explanation of the investigation process.

The teacher is asked to respond to the complaint within a certain time period. A response should not be detailed. Any information you provide may be used later if the matter proceeds. A denial is also considered a response.

The teacher's response is provided to the complainant who may then amend the original complaint.

The investigator may interview you as a witness while investigating a colleague. If this happens, contact OECTA for assistance. Any information a witness provides may be used later if the matter proceeds. Responses should not be detailed. A denial is an acceptable response. Teachers should be aware that failure to respond within a reasonable time to a written inquiry from the College is a violation of the College's *Professional Conduct Regulations*. A copy of the current regulations is available on the College's website at www.oct.on.ca

Once the investigation is complete the investigator forwards a report to the investigation Committee. The report includes all responses and notes, but does not make a recommendation.

The Investigation Committee receives the report and can:

- Dismiss the complaint if it does not fall within the mandate of the OCT or if the complaint is frivolous, vexatious or an abuse of process.
- Refer the matter back to the investigator for further information.
- Fine, reprimand or admonish the teacher if they believe the complaint was substantiated but is a minor offence and does not warrant discipline.
- Refer the matter in whole or in part to the Discipline Committee for a hearing if the information, if true, suggests professional misconduct or incompetence.
- Refer the matter to the Fitness to Practise Committee for a hearing if the investigation Committee has concerns that there may be a health-related issue affecting the member's ability to teach.

Alternative dispute resolution

The OCT may decide that the complaint is appropriate for Alternative Dispute Resolution or mediation. This is a voluntary process that may occur before or during the investigation process. Although it is a confidential process, the Investigation Committee must ratify any settlement reached during mediation. There are many benefits to this problem solving exercise. The OECTA staff officer and legal counsel can help the teacher determine whether this process is appropriate.

The Discipline Committee

Serious complaints are referred to the Discipline Committee, which holds a quasi-judicial discipline hearing. Three members of the Discipline Committee make up a panel that hears the case and makes a determination. Lawyers represent both the College and the teacher. For the first time in the process, there is full disclosure of evidence. Witnesses may be called and lawyers have opportunities to cross-examine them. The hearings are open to the public and are posted on the College website approximately two weeks prior to the hearing.

Following a hearing, the panel makes a determination. If there is a finding of professional misconduct or incompetence, the College may impose one or more of the following:

- an order to revoke or suspend a teacher's certificate
- terms or conditions on a member's certificate that may include taking certain courses or receiving counselling
- a reprimand or admonishment
- a fine up to \$5,000.
- costs of the case

The panel determines whether the case will be published in whole or in part. The member's name may appear in the 'blue pages' in

Professionally Speaking, the College's magazine. The decision is registered on the teacher's certificate.

Fitness to practise

If the Investigation Committee has concerns that there may be a health-related issue affecting the member's ability to teach, the matter may be referred to the Fitness to Practise Committee for a hearing. These are closed to the public. This Committee has the same authority as the Discipline Committee and may impose the same penalties although their penalties tend to impose conditions on a member's certificate.

What to do if the College investigates your conduct

Contact your local OECTA president or call the Counselling and Member Services department at the Provincial office if the College investigates your conduct. An OECTA staff officer will ask you to fax the written complaint you receive from the College to the office. If the allegations relate to your duties as a teacher, assistance may be provided. In many cases legal counsel will assist.

The College has authority to suspend or revoke your teaching certificate. You should take all complaints seriously.

What to do if a colleague is investigated by the College

Under the *College of Teachers Act Professional Regulations 22*, members must co-operate in a College investigation. If approached by an Investigator, answer the questions truthfully. Do not offer conjecture or opinion.

You are required under 18(1)(b) of the *Teaching Profession Act* to provide a colleague with a written statement of what you have reported if the comments constitute an adverse report. The exceptions are related to allegations of sexual abuse 18(1)(c).

Beware!

Penalties imposed by the College for minor offences vary. Penalties for more serious offences are more consistent. The College's Discipline Committee imposed harsh penalties for offences relating to anything remotely connected to boundary violations such as meeting with students after school, letter writing and email messages, conversations in internet chat rooms and telephone calls.

Between 1997 and 2001, 48 teachers had their certificates were revoked. Forty-one of these were for inappropriate boundary violations with students.

Reporters monitor College discipline. These hearing dates and allegations are published on the College web site a couple of weeks before the hearing date.

The College has taken the position that "grooming" is not tolerated. Grooming is a term coined by Justice Robins in his 1999 report to describe as any type of non-sexual activity or behaviour between a teacher and a student where the teacher is allegedly "grooming" the student for a future relationship. OECTA cautions that many innocent activities could fall within this very broad definition.

OECTA CAN HELP

According to the OECTA by-laws, Article VII – Legal Assistance to Members

- 2. Where it is alleged that a member is guilty of unprofessional conduct or where a member is in difficulty arising out of the performance of duties as a teacher, the Association shall investigate the matter and shall provide the member with legal advice where appropriate.*
- 3. Legal counsel may be provided when the provincial executive deems it appropriate.*

It is very important for teachers to seek direction from OECTA as soon as they are aware of any investigation or allegation of misconduct. Many problems can be avoided with early and appropriate legal intervention. There is often no way to predict how an investigation will conclude. Every situation must be taken seriously. This is your career and livelihood.

In addition to providing legal advice and counsel, OECTA also offers conflict resolution services and career counselling.

Most school boards have an Employee Assistance Program (EAP), available free to teachers. They offer a range of services including counselling and stress management. If you are the subject of an investigation, this service is a great help. The trauma you experience is real and can have serious consequences on your personal and professional life.

You will need a lawyer to address a myriad of legal issues. However, do not ignore your emotional needs. Staff in the

Counselling and Member Services department or your local OECTA president can help during this difficult time. Consult OECTA's booklet Healthy Tips for Teachers. It has many useful ideas and strategies to help you cope. Your local unit and the Provincial office are here to help.

Remember that you are not alone.

be wary, be wise