

Professional Advisory

Professional Misconduct Related to Sexual Abuse and Sexual Misconduct

The Council of the Ontario College of Teachers approved this professional advisory on September 27, 2002.

This advisory applies to all members of the Ontario College of Teachers, including but not limited to teachers, consultants, vice-principals, principals, supervisory officers, directors of education and those working in non-school-board positions.

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Professional Misconduct Related to Sexual Abuse and Sexual Misconduct

The Council of the Ontario College of Teachers has approved this Professional Advisory. The intent of this advisory is to help members of the College identify the legal, ethical and professional parameters that govern their *behaviour* and to prevent sexual abuse of students and sexual misconduct. This advisory is not to be construed as providing an exhaustive list of unacceptable behaviours, but rather is intended to provide examples and guidance.

The authority of the College to investigate complaints against members of the College and to deal with issues of professional misconduct is stated in the *Ontario College of Teachers Act*. The Investigation Committee and the Discipline Committee of the College may consider this advisory when reviewing allegations of professional misconduct. The Discipline Committee will determine, in each case, whether particular behaviour amounts to professional misconduct.

The term “sexual abuse” is defined by the *Student Protection Act*. That definition is set out below. The term “sexual misconduct” is used in this advisory to refer to any behaviour of a sexual nature which may constitute professional misconduct.

Members of the College should consult their employer’s policies to ensure that they are familiar with all expectations and obligations that may exist in their particular workplaces and communities related to the contents of this professional advisory.

Why an advisory on professional misconduct of a sexual nature?

Public and professional sensitivity to and awareness of sexual abuse and sexual misconduct has increased in recent years, not only in teaching but also in other professions, particularly where people are in positions of trust and moral authority. In April 2000, the provincial government released the report of former Justice Sydney L. Robins *Protecting Our Students: A review to identify and prevent sexual misconduct in Ontario schools*. This report made numerous recommendations for the teaching profession, including a recommendation for the College to clarify and elaborate on members' obligations and professional duties.

Student Protection Act

In June 2002, the Ontario legislature passed Bill 101, the *Student Protection Act*. This Act modified existing legislation and placed new obligations on members of the profession. The College has undertaken to issue this professional advisory as the *Student Protection Act* comes into force.

Building on the standards of practice and the ethical standards

Members of the College demonstrate care for and commitment to students that require them to act in students' best interests and report suspicious behaviour or allegations of professional misconduct of a sexual nature to appropriate authorities. Members must take a student's disclosure of abuse or exploitation seriously, even if some allegations prove to be unfounded. Dealing with victim disclosure requires professional judgement. This advisory provides some criteria to assist members in using their judgement.

Members maintain professional relationships with students and recognize the trust that the public places in them. They are aware of the negative impact of boundary violations on students. They respond professionally to victims' allegations by collaborating with

other professionals such as police, child and family services, and College investigators.

This advisory helps clarify members' responsibilities to the profession — to govern their own conduct and to understand clearly what conduct by other members does not conform to professional standards, provincial law and the Criminal Code.

Understanding the legal, ethical and professional parameters of behaviour is central to a member's successful career. This advisory helps members recognize when they are at risk of breaching those parameters.

Even though many of the behaviours described here may be unthinkable to most members, the College has the obligation to identify them so that the parameters of professional behaviour are clear.

Ignorance of the law or College regulations is not an acceptable excuse. Engaging in sexual abuse of students or sexual misconduct is a form of professional misconduct and will result in an investigation and disciplinary action by the College. Consequences may include the suspension or revocation of a member's certificate of qualification and membership in the teaching profession.

Sexual abuse

Sexual abuse is a form of professional misconduct. The *Student Protection Act* defines sexual abuse of a student and amends the *Ontario College of Teachers Act* to include this definition:

1. sexual intercourse or other forms of physical sexual
2. relations between the member and a student, touching, of a sexual nature, of the student by the member, or
3. behaviour or remarks of a sexual nature by the member towards the student.

Accordingly, members should avoid:

- sexual relations or sexual intercourse with a student
- any form of sexual touching of a student
- any sexual contact including behaviour or remarks of a sexual nature, regardless of the age of the student or any apparent consent by the student.

Professional misconduct

Professional misconduct includes, but is not limited to, sexual abuse of a student by a member. Professional misconduct of a sexual nature could involve a member's own students, other students or children, or even adults, if the Discipline Committee of the College determines that the behaviour amounts to an act defined as professional misconduct.

There may be forms of professional misconduct that do not fall within the definition of sexual abuse but which may be considered sexual misconduct. These behaviours could nonetheless fall within the definition of sexual misconduct and constitute professional misconduct. These behaviours may include sexual harassment and sexual relationships with students or any conduct which may lead to an unprofessional and inappropriate relationship with a student. The latter is often called grooming behaviour.

The College deals with complaints made by members, employers and the public. Written complaints of alleged sexual abuse of a student or sexual misconduct have to be investigated by the College if they fall within the definition of professional misconduct.

Ultimately, the determination of whether particular behaviour constitutes professional misconduct will be made by the Discipline Committee based on the definition of sexual abuse, as well as the other definitions of professional misconduct contained in Regulation 437/97 - The Professional Misconduct Regulation — including:

- 1(5) failing to maintain the standards of the profession
- 1(7) abusing a student
 - 1(7.1) abusing a student physically
 - 1(7.2) abusing a student psychologically or emotionally
 - 1(7.3) abusing a student sexually
- 1(14) failing to comply with the [Ontario College of Teachers] Act, the regulations or the bylaws
- 1(15) failing to comply with the *Education Act* or the regulations made under that Act, if the member is subject to that Act
- 1(16) contravening a law if the contravention is relevant to the member's suitability to hold a certificate of qualification and registration
- 1(17) contravening a law if the contravention has caused or may cause a student who is under the member's professional supervision to be put at or to remain at risk
- 1(18) an act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional
- 1(19) conduct unbecoming a member.

Sexual harassment

Inappropriate behaviour or remarks of a sexual nature which may constitute professional misconduct include, but are not limited to, conduct that would amount to sexual harassment or sexual discrimination under the *Ontario Human Rights Code*. These need not be overtly sexual but may nonetheless demean or cause personal embarrassment to a student, based upon a student's gender, race or sexual orientation.

Members should avoid even a single event that may constitute sexual harassment, including but not limited to:

- objectionable conduct or comments incompatible with the role of a member, regardless of whether the affected students appear to be offended by the conduct or comments
- sexual harassment of non-students or of co-workers
- reprisals or threatened reprisals for rejecting sexual advances.

Sexual relationships

Regardless of the age of a student and whether there are any criminal law considerations, a member engaging in or attempting to establish a sexual relationship with a student is unacceptable.

Professional misconduct includes but is not limited to any sexual relationship with:

- (i) a student, regardless of the student's age
- (ii) a former student under the age of 18
- (iii) a former student who suffers from a disability affecting his or her ability to consent to a relationship.

Responsibility for ensuring that a member-student relationship is professional and appropriate rests with the member and not with the student. This remains the case even when it is the student who attempts to initiate an inappropriate relationship. Any conduct directed to establishing such a relationship may constitute professional misconduct.

It is not necessary that the student be in the member's own class. A student may be a student who is in the school or school system where the member is employed, or in relation to whom a member is otherwise considered to hold a position of trust and responsibility.

Members should not engage in activity directed to establishing a sexual relationship. This includes, but is not limited to:

- sending intimate letters to students
- making telephone calls of a personal nature to students
- engaging in sexualized dialogue through the Internet with students
- making suggestive comments to students
- dating students.

Such conduct is inappropriate even if the conduct does not result in the establishment of a relationship.

Engaging in a sexual relationship with a person who is under the age of 18, or in relation to whom the member holds a position of trust or authority, may also constitute professional misconduct, regardless of whether the person is a student or former student.

Knowing the limits - the responsibility of each member

There are situations, activities and actions where members should be cautious. Even though an action or event may seem to be in a student's best interest, members need to consider thoroughly the implications and appearance of the action or event beforehand.

Members have an additional responsibility to avoid activities that may reasonably raise concerns as to their propriety. Keeping this in mind can help members avoid complaints to either their employer or to the College, and can help protect students by detecting and preventing sexual abuse or sexual misconduct by others.

Using good judgement

Members understand that students depend on teachers to interpret what is right and wrong. This judgement can be difficult when certain acts seem innocent, but may be considered later as a prelude to sexual abuse or sexual misconduct.

In the interests of student safety, when members use their professional judgement about their own or others' activities they should be mindful of these and other considerations:

- whether the activities are known to, or approved by, supervisors and/or parents or legal guardians
- whether the student is physically isolated from other observers, for example, behind closed doors
- whether the circumstances are urgent or an emergency (providing transportation in a blizzard, for example)
- whether the educational environment might be detrimentally affected by the activities
- whether the activity would reasonably be regarded as conduct intended to promote or facilitate an inappropriate personal relationship with a student
- the extent to which the activities might reasonably be regarded as posing a risk to the personal integrity or security of a student, or as contributing to any student's level of discomfort
- whether the conduct would reasonably be regarded as being in the best interests of the student.

Members should avoid:

- inviting individual students to their homes
- seeing students in private and isolated situations
- exchanging personal notes, comments or e-mails
- becoming personally involved in students' affairs
- giving personal gifts to students
- sharing personal information about themselves
- making physical contact of a sexual nature.

When meeting with students, members should, whenever possible, ensure that:

- classroom and office doors are left open
- a third party is present or aware of the meeting
- the student is not physically isolated from other observers, for example, behind closed doors
- they are not alone with an individual student except in urgent or emergency circumstances.

Reporting suspected or alleged inappropriate sexual behaviour

If a member of the College has reasonable grounds to suspect sexual abuse of students or sexual misconduct, a member has a responsibility to report suspected or alleged cases to appropriate authorities. This include one or more or all of the following: child and family services, police, the employer and the Ontario College of Teachers.

Adverse report and anti-reprisal provisions

The *Student Protection Act* also amended the *Teaching Profession Act*. A member who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not provide him or her with a copy of the report or with any information about the report.

Members of the College may not engage in, or threaten to engage in, reprisals against anyone who discloses, reports or otherwise provides information with respect to alleged or suspected professional misconduct of a sexual nature.

Employer responsibilities

Similarly, employers were previously required to report to the College members who had been convicted of an offence under the Criminal Code involving sexual conduct and minors. The *Student Protection Act* stipulates that employers must now report to the College at the time a member is charged with a sexual offence.

Responsibility of the Ontario College of Teachers

The Investigation Committee of the College is responsible for investigating complaints relating to a member's alleged professional misconduct, incompetence or incapacity. Allegations of misconduct may result in charges under Regulation 437/97 made under the *Ontario College of Teachers Act*. If the Investigation Committee refers a case to the

Discipline Committee, a panel of the Discipline Committee will conduct a hearing to determine whether the alleged conduct constitutes professional misconduct.

If members of the College or the public have questions about the content of this advisory, please contact the College at 416-961-8800 or toll free in Ontario at 1-888-534-2222, or e-mail info@oct.ca.

Legislative references

Ontario College of Teachers Act
Education Act
Regulation 437/97, Professional Misconduct made under the Ontario College of Teachers Act
Teaching Profession Act
Child and Family Services Act
Ontario Human Rights Code

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Cette publication est également disponible en français sous le titre
*Recommandation professionnelle – Faute professionnelle liée aux
mauvais traitements d'ordre sexuel et à l'inconduite sexuelle*

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