

Ontario introduces sexual abuse legislation for Ontario colleges and universities

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On October 27, 2022, the province of Ontario introduced a bill that, if passed, will require Ontario public colleges and universities and Ontario private career colleges to implement new policy to address the sexual abuse of students by employees.

Bill 26, the Strengthening Post-secondary Institutions and Students Act, 2022 will amend the Ministry of Training, Colleges and Universities Act and the Private Career Colleges Act, 2005. **The amendments will target “sexual abuse,” a new and narrower concept than that of “sexual violence,” the concept that governs post-secondary institutions’ existing obligations to students.**

Sexual abuse:

- **Is conduct by an employee “in relation to” a student**
- Encompasses physical sexual relations, touching of a sexual nature and behavior **or remarks of a sexual nature made “towards” a student**
- Encompasses reprisals for the rejection of sexual solicitations and advances

Bill 26 will give institutions some latitude in defining precisely what kind of physical sexual relations, touching and remarks will constitute sexual abuse. However, the statute will define as sexual abuse any such conduct that violates the Criminal Code and any sexual solicitation or advance. Likewise, the statute will define as sexual abuse any reprisal for the rejection of sexual solicitations and advances.

Most significantly, Bill 26 will deem sexual abuse to be just cause for a discharge or for any discipline that an institution imposes on an employee who has committed sexual abuse. Institutions may still decide on the appropriate penalty, subject to other legal obligations that include those arising under the Human Rights Code, but Bill 26 will immunize penalty decisions from review. The bill stipulates that no employee is entitled to any compensation or restitution as a result of discipline or discharge for committing an act of sexual abuse. It also stipulates that no adjudicator shall substitute a penalty for a penalty imposed by an institution.

The only issue in any discipline and discharge litigation, then, will be whether the institution has proven sexual abuse.

Settlement agreements for such cases must not prohibit the institution or “any person related to the institution” from disclosing information about the employee, including to other institutions. This prohibition is narrow, however. It only bars settlements that include a prohibition on disclosing “the fact that a court, arbitrator or other adjudicator has determined that an employee of the institution has committed an act of sexual abuse of a student of the institution.” It does not prohibit settlements that include a bar on disclosing any other information, including information about the reasons for an employee’s discharge.

Finally, Bill 26 will require every institution to have an employee sexual misconduct policy that includes, at a minimum, “the institution’s rules with respect to sexual behaviour that involves employees and students” and “examples of disciplinary measures that may be imposed on employees who contravene the policy.”

The above-described provisions will come into force on July 1, 2023 if the bill receives royal assent before this date.

This is very strong legislation intended to protect students of post-secondary educational institutions from sexual abuse. The insulation of discipline and discharge decisions from review is unprecedented, and will likely invite a strong response from employees and their associations and unions. We will track the development of this important new bill and invite you to contact us with your inquiries.

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