



British Columbia Teachers' Federation

100-550 West 6th Avenue, Vancouver, BC V5Z 4P2 • 604-871-2283, 1-800-663-9163 • www.bctf.ca
TTY 604-871-2185 (deaf and hard of hearing)

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Teachers' Act (Bill 12) establishes a new college

The Teachers' Act establishes new structures within the Ministry of Education to certify, regulate, and discipline teachers. George Abbott, recommended these changes in order to rectify "problems identified in the Avison Report."

New regulatory structures

The current council is made up of 12 elected and 8 appointed members. The act dissolves the council and divides its responsibilities between the following four new authorities:

British Columbia Teachers' Council

This body will consist of three teachers nominated by the BCTF, five practicing teachers elected from regions (practicing is defined as having taught or supervised educational programs in the last two years), and seven persons appointed by the minister. It is expected that the government appointees will represent each of the educational partner groups. One appointee will have knowledge and experience in independent schools. The final member will be a non-voting member of the council who will report on council activities directly to the minister.

The Teachers' Council will be responsible for establishing standards for teacher education programs, co-operating with the design and evaluation of teacher education programs, establishing qualifications required for certification, establishing standards for conduct and competency, and creating categories of certificates.

Disciplinary and Professional Conduct Board

This board will be appointed by the minister from members of the council. The board will consist of four members from the councillors appointed by the BCTF or elected by teachers and five from the ministry appointees. Individual discipline hearings of public school teachers will be before a panel of three with only one member of a hearing panel being a member of the BCTF.

Commissioner

A commissioner will be appointed to oversee professional conduct and discipline matters. The staff of the commissioner will become employees of the ministry. The commissioner will take over the functions currently performed by the Registrar, the Director of Professional Conduct, and the Preliminary Investigation Subcommittee with respect to discipline matters. All reports regarding discipline, conduct or competency will go to the commissioner to review and determine which require action, the terms of any consent resolution agreements, which matters go to hearing, selection of hearing panels (including appointing individuals who are not members of the council) and issuing pre-hearing suspensions where a teacher poses a risk to the safety of students.

The act gives the commissioner sole authority over all discipline matters that are resolved without a hearing. This is the vast majority of all discipline cases as very few matters require a hearing. It is expected that the commissioner will have judicial or quasi-judicial experience.

Director of Certification

The director will determine whether applicants meet the requirements for certification with respect to both qualifications and good character. The director must provide written reasons for any decision to deny an applicant a certificate of qualification, consider applicant appeals, and enforce the requirements of the Criminal Records Review Act. This work was previously done by a committee whose majority were members elected by teachers. The director of certification will assume sole authority over certification decisions.

Other changes

Teacher registry

The registry of certificate holders will be maintained in a manner very similar to the current public registry and available on a public website.

The employer's registry is retained without any changes. This registry includes a complete list of past employers and does not include any discipline records. It may be accessed only by employers. The intention of the registry is to ensure full disclosure of past employment during the application process.

Public/parent complaints

The bill retains the process for person complaints. Any person can make a complaint directly to the commissioner.

The act creates new rights for complaints for access to information. Complainants are entitled to be copied on any agreements or discipline decisions regarding the complaint.

Procedural rights

The bill contains few procedural protections for teachers. Section 81(k) provides power to the minister to make regulations regarding the commissioner's rules of practice and procedure. Presumably these regulations will contain some requirements for due process and fairness.

The bill expands the authority of those investigating teachers. The commissioner is given broad powers of investigation including the authority to:

- Enter any school or board offices;
- Inspect any records held by boards; and
- Interview any employees, including the person who is the subject of the investigation.

The creation of a commissioner with very broad powers, without any corresponding rights for the teacher being investigated, leaves open the possibility of a process that is inquisitorial to the point of compromising the basic rights of teachers. It will be essential to

have a commissioner that has an understanding and commitment to fair process in order to prevent this from happening.

Right of appeal

Section 40 of the old Teaching Profession Act provided a right to appeal any decision of the college to the courts. Bill 12 removes that right. Section 42 of Bill 12 provides that the decisions of the commissioner and of a panel are final and binding. It would still be possible to seek a judicial review by the courts of decisions, however, the grounds for review would be narrower than a full appeal.

Costs

Under Section 65, the hearing panel's authority to award costs is restricted to cases where the teacher has engaged in improper behaviour during the hearing. Costs may be collected by filing an order in court. Current college rules provide for costs in a broader range of circumstances, but do not contain any means of enforcement.

Professional development

There are no new provisions about currency or professional development.

College staff

The current registrar will cease to hold office immediately upon Royal Assent of the bill. The minister may appoint a transitional registrar until the other provisions of the act come into force.

Other college staff will likely continue with their current duties, but will do so as employees of the ministry rather than the college.

Elimination of the concept of membership

The old act merged membership in the college with certification. Bill 12 eliminates the concept of membership. Certified teachers are referred to as "authorized persons" or "certificate holder." The bill does not, however, return to the regime of non-expiring certificates. Certificates will still be cancelled for non-payment of the annual fee.

Change in the name of the act

It appears that the new title of the act will simply be the "Teachers Act" and will not include the word profession.

BCTF concerns

Public reporting of discipline

The act contains numerous provisions that make discipline proceedings more public. Under Section 61, oral discipline hearings will be open to the public unless the panel orders otherwise. The Federation is concerned about the potential for these to be "show trials". Under Section 54 of the bill, consent resolution agreements will not be confidential. Notice of the agreements must be published on a public website. It is concerning that this does not seem to be limited to agreements that have a disciplinary outcome. Publication of such agreements would seriously compromise the privacy of teachers who are struggling with health problems and other challenges.

Limited right of appeal

Section 40 of the old Teaching Profession Act provided a right to appeal any decision of the college to the courts. Bill 12 removes that right. Section 42 of Bill 12 provides that the decisions of the commissioner and of a panel are final and binding. It would still be possible to seek a judicial review by the courts of decisions. However, the grounds for review would be narrower than a full appeal. The Federation is very concerned about this aspect of the Act.

Annual fee

The annual fee is set by regulation and the act provides that it will be an automatic deduction from all employees' wages. The ministry has announced this will be \$80. This Act has removed teachers' rights of self-regulation. The responsibility for certification has returned to the ministry. The Federation maintains that it is the ministry who should provide funding for their responsibility.

Surplus

The minister has not provided any information on how the current surplus of will be used within the new structure or within the ministry.

Duty to report discipline

There is no change to the matters required to be reported to the Disciplinary and Professional Conduct Board by the employer. The government did not clarify how employment related discipline, such as letters of reprimand, will be dealt with by the employer at the school district level. The BCTF recommended that only serious matters will be referred to and dealt with by the Disciplinary Board. There is no direction in the legislation to define the difference between employment matters and misconduct. The minister did indicate in the House debate that employment matters should be dealt with by the employer—the school district and superintendent.

Gaps in consultation process

While the minister did meet with the full-time table officers of the BCTF several times, there were still items included in the legislation that were never discussed—in particular, he omitted to mention the lack of right to appeal and the public nature of hearings.

Regulations

There are still ministry regulations coming to define several important aspects of the structure and mandate of the Teachers' Council and Disciplinary Board. We have no information at this time about the specifics of such regulations.