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Ontario Tables Bill 26 Mandating Post-secondary Institutions to Address Faculty and Staff Sexual Abuse Towards Students in a More Prescriptive Manner

Date: October 28, 2022

On October 27, 2022, the Ontario government tabled Bill 26, [Strengthening Post-secondary Institutions and Students Act, 2022](#). If passed, Bill 26 would amend the *Ministry of Training, Colleges and Universities Act* and the *Private Career Colleges Act, 2005* to provide measures for post-secondary institutions to address faculty and staff sexual abuse towards students.

Amendments to the *Ministry of Training, Colleges and Universities Act (Act)*

Bill 26 would add a new section to the *Act* titled “Sexual abuse by employees.” Sexual abuse, in relation to a student of an institution, is defined as:

- (a) physical sexual relations with the student, touching of a sexual nature of the student, or behaviour or remarks of a sexual nature toward the student by an employee of the institution where,
- (i) the act constitutes an offence under the *Criminal Code* (Canada),
- (ii) the act infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or
- (iii) the act constitutes sexual abuse as defined in the institution’s employee sexual misconduct policy or contravenes the policy or any other policy, rule or other requirement of the institution respecting sexual relations between employees and students, or
- (b) any conduct by an employee of the institution that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

“Institution” is defined as a publicly-assisted university or college of applied arts and technology.

Under these provisions, an employee may be discharged or disciplined if they have committed an act of sexual abuse. The discharge or discipline would be deemed to be for just cause for all purposes, and the employee would not be entitled to notice of termination or termination pay or any other compensation or restitution as a result of the discharge or disciplinary measure. The penalty could not be substituted by a labour arbitrator, arbitration board or other adjudicator, notwithstanding the *Labour Relations Act, 1995* (s. 48(17)), the *Colleges Collective Bargaining Act, 2008* (s. 14(17)) or any provision of a collective agreement or employment contract.

An employee could not be reemployed by an institution which has discharged the employee, or where they have resigned, as a result of committing an act of sexual abuse against a student.

The Bill would further prohibit an institution from entering into an agreement that prohibits the institution from disclosing the fact that a court, arbitrator or other adjudicator has determined that an employee has committed an act of sexual abuse.

These provisions would apply despite any contrary term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity.



The amendments also require institutions to have an employee sexual misconduct policy in place. At a minimum, the policy must include its rules with respect to sexual behaviour that involves employees and students of the institution, and provide examples of disciplinary measures that may be imposed on employees who contravene the policy. The policy may specify acts that constitute sexual abuse for the purposes of the definition of “sexual abuse.” The policy would not need to be a standalone policy, but could be included as part of another policy of the institution.

These provisions would come into force on July 1, 2023.

Amendments to the *Private Career Colleges Act, 2005*

Bill 26 would add a new section to the *Private Career Colleges Act, 2005* and make the same amendments set out above, in relation to students enrolled at a private career college.

These provisions would come into force on July 1, 2023.

Takeaways

If Bill 26 is passed, institutions within the meaning of Bill 26 and private career colleges would be required to prepare or amend their internal policies for compliance. Moreover, Bill 26 would alter how they approach discipline and discharge, and would have a meaningful impact on the potential litigation or resolution of discipline and discharge for sexual abuse.

We will monitor Bill 26 and provide updates as they become available. If you have any questions about the Bill, please contact your [regular Hicks Morley lawyer](#).

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