



Regulatory Framework for Teachers' Review

WHAT WE HEARD FROM SECTOR PARTNERS

April 2023

Manitoba Education and Early Childhood Learning

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Overview

In November 2022, the Manitoba government announced its commitment to enhance the current framework for addressing and preventing teacher misconduct in Manitoba. This encompassed the following proposed changes:

- establishing an independent body to receive and address reports of teacher professional misconduct
- exploring measures to improve information and public reporting processes including the development of a teacher registry
- defining teacher professional misconduct that needs to be reported to the department of Education and Early Childhood Learning
- standardizing mandatory training and professional learning requirements

From November 2022 to March 2023, the department conducted two rounds of engagement with education sector partners, including school administrators, teachers, students, and parents/guardians, to hear their concerns and priorities related to the regulatory framework for teacher misconduct. Engagements were held with:

- Manitoba's school divisions
- Manitoba School Boards Association
- Manitoba Association of School Superintendents
- Southern Chiefs' Organization
- Assembly of Manitoba Chiefs
- Manitoba First Nations Education Resource Centre
- Indigenous Inclusion Directorate – Manitoba Education and Early Childhood Learning
- Manitoba Federation of Independent Schools and Independent Schools
- The Manitoba Teachers' Society
- Council of Deans of Education in Manitoba
- Manitoba Student Advisory Council
- Manitoba Association of Parent Councils
- Manitoba Advocate for Children and Youth
- Canadian Centre for Child Protection
- Stop Educator Child Exploitation
- Adult Learning Centres – Manitoba Advanced Education and Training

This report provides a high-level overview of the feedback received from the sector.



First Round of Engagements— November to December 2022

During the first round of consultations, the department outlined the key features of various professional conduct regulatory models in place in Canada, gathered feedback on proposed approaches to improving the framework for addressing teacher misconduct, and answered frequently asked questions about the current and future state of addressing teacher misconduct.

What We Heard: Overarching Themes

We heard broad agreement among education partners, advocacy groups, and stakeholders that improving the regulatory model for addressing teacher misconduct is imperative to ensuring the safety and well-being of students while providing quality learning environments for all.

Transparency and Accountability

During the engagement sessions, it was clear that the current process to address teacher misconduct is perceived as lacking in transparency and accountability. Reforming the regulatory model for addressing teacher misconduct provides an opportunity to enhance public confidence in this process.

The establishment of an independent body to address teacher misconduct in tandem with the implementation of a teacher registry were commitments announced during the 2022 Speech from the Throne. These initiatives were welcomed by education partners, advocacy groups, and stakeholders, who made specific recommendations related to concerns with transparency, accountability, privacy, and public representation that are discussed in more detail later in this paper.

Comprehensive Definition of Professional Misconduct and Report Requirements

Compared to other Canadian jurisdictions, participants noted that Manitoba does not have a comprehensive definition of misconduct and clear examples of what professional misconduct entails. Currently, Manitoba legislation only requires school divisions to report to the department if they have knowledge of any teacher employed in a school who has been charged with or convicted of an offense relating to the physical or sexual abuse of children under the Criminal Code of Canada. While the legislation only

requires school divisions to report these specific cases, the department has encouraged all employing authorities of teachers to report any misconduct that they believe calls into question a teacher's suitability to continue to hold a teaching certificate.

There was consensus among participants that expanding and clarifying the legal definition of misconduct and the employers' reporting requirements would provide significant benefits for all parties involved in addressing teacher misconduct.

Fostering a Student-Centred Approach

We consistently heard from the groups that were consulted that the main purpose of strengthening the regulatory framework is to protect the safety and well-being of students in Manitoba. They recommended that the changes that result from this work be student-focused.

Participants suggested that a student-focused approach includes proper training for staff in schools and the independent body; clear definitions of misconduct; clear roles for all parties involved in the misconduct process, including students, the department, employers, and the independent body; advocacy support for students; and student directed information on how to make and follow up on a complaint to the independent body.

What We Heard: Specific Considerations

Comprehensive Spectrum of Behaviours that Warrant Misconduct Reporting

We heard from all stakeholder groups that a comprehensive spectrum of behaviours that warrant misconduct should be clearly defined and communicated amongst students, teachers, stakeholders, and the general public.

Several groups provided examples of how misconduct should be defined, most of them underlining the importance of being as broad and prescriptive as possible in order to include most, if not all, possible scenarios that might constitute teacher misconduct and compromise student safety and well-being. This could be achieved by explicitly including sexual, racist, and discriminatory behaviour; inappropriate online actions/communications; and professional boundaries transgressions among behaviours that employers should be obligated to report.

Concerns were raised regarding how the definition could protect vulnerable students that might be subject to misconduct during intimate care, while also allowing the teacher to perform their professional responsibilities in a manner that is pedagogically appropriate.

Participants noted that committing to a clear and broad definition of behaviours that characterize misconduct will provide students, stakeholders, and the general public with a better understanding of what must be reported to the independent body that will address teacher misconduct.

Expanding Legal Obligation to Report Misconduct

All groups were supportive of expanding the legal reporting obligations to all employers required to hire certified teachers, including school divisions, funded independent schools, and adult learning centres. Currently, only school boards have a legislated obligation to report.

Several concerns were raised regarding the process of reporting, including the need for clarity regarding when an employer is expected to report on teacher misconduct (i.e. prior to or after the employer initiates an investigation), and the necessity of having clear lines of communication between employers and the independent body to avoid duplication of work.

We also heard support for an obligation to report misconduct perpetrated by third party employees (i.e. WHRA school clinicians working in a school environment). Some groups stressed that there should be penalties in place for employers and persons who fail to report misconduct.

Extending Requirements to the Broader Education Sector

Several stakeholders articulated the need to extend the enhanced regulatory framework for misconduct to non-teaching employees (educational assistants, administrative support, custodial/maintenance, bus drivers, and community members such as coaches). Suggestions included a recommendation that the independent body receive and respond to misconduct of any school staff to maintain the safety and well-being of all students throughout the continuum of education services and supports.

Manitoba Education and Early Childhood Learning noted that expanding the misconduct framework to non-teachers is challenged as the department is not the regulator or employer of these staff. However, the department noted that it has already implemented several measures to prevent and address misconduct for non-teaching staff, including:

- implementing two provincial directives to ensure non-teaching personnel are aware of requirements for professional conduct, and maintaining student safety. This includes:
 - requiring all school personnel to complete the Respect in School or Commit to Kids training and all school coaches to complete Respect in Sport
 - requiring all schools/divisions to update policies respecting professional boundaries and individualized interactions between school personnel and students

- mandatory requirements for schools to report allegations of abuse and neglect to appropriate legal and/or child protection authorities
- mandatory requirements for a satisfactory background check, including a Child Abuse Registry check and vulnerable sector search, as part of teacher certification applications
- mandatory requirements pursuant to The Public Schools Act for all schools to provide a safe and caring school environment that fosters and maintains respectful and responsible behaviours, including a code of conduct

The department will continue to explore options to enhance the framework to address misconduct among non-teaching staff within the government's scope of authority.

Establishing a Provincial Teacher Registry

All groups expressed strong support for the creation of a public registry of teachers. Most groups support a comprehensive registry that includes the name and status of the teacher, a summary of disciplinary decisions taken against the teacher and links to the decision documents, when available.

Concerns were raised about how to manage the registry to protect teachers from privacy issues once their information is publicly available (i.e. identity theft), and to prevent inappropriate publications, such as names of deceased people.

These concerns will be considered and responded to as the work on the registry progresses.

Creating an Independent Provincial Body to Address Professional Misconduct

All groups expressed significant support for the establishment of an independent body that is not self-regulated to address professional misconduct of teachers. Participants further recommended that the independent body should be able to receive reports and complaints from any person (i.e. employers, students, general public); independently investigate and adjudicate on matters of misconduct; and identify avenues for consent resolutions. There was strong support for increasing public participation in the misconduct process (i.e. by enhancing public representation on adjudicating bodies), as is the case in other jurisdictions across Canada.

Some groups were in favour of the independent body allowing anonymous complaints as a way to protect the identity of the complainant; however, select participants had concerns with this approach due to the challenges in developing a proper defense if the complainant is not identifiable.

We heard that staff from the independent body, especially investigators, should receive proper training on sexual abuse prevention and teacher misconduct, and a trauma-

informed approach to investigations. We also heard that legislation should be clear when defining investigative powers and timelines of the misconduct process.

Concerns were raised about clearly differentiating between matters of teacher misconduct and matters of incompetence, as is currently done in other jurisdictions, usually through the establishment of professional standards. There were also questions of whether the independent body would address competence issues, or if this responsibility would remain under the department. There was more support among the groups for a single body addressing both misconduct and competence, in order to avoid a two-tiered approach.

Concerns were also raised in regards to the independent body being able to provide services in French, and the need to increase the participation and representation of Indigenous partners in the process of developing and establishing this independent body. These considerations will be brought forward as part of future planning.

Mandatory Professional Conduct Training Requirements for Certification

We heard strong support amongst all groups for implementing mandatory pre-service training on sexual abuse prevention. Concerns were raised that the cost of such courses might be prohibitive for teacher candidates. Participants suggested that government or employers provide such courses at no cost for teacher candidates.

Some groups recommended that such trainings should be re-done regularly (i.e. every four years). We also heard that such trainings should be mandatory for all school staff, including non-teachers. Currently the department has directed the Respect in School training for all school staff. Commit to Kids training may also be taken instead of Respect in School, and both trainings are being offered by Manitoba Education and Early Childhood Learning at no cost for all school staff and teacher candidates through their practicum courses.

Pathways and Supports for Students

Students and youth advocates highlighted the need to ensure that there are alternative and anonymous reporting pathways accessible to all students. This consideration is premised on the understanding that many students may be apprehensive to report inappropriate behaviour committed by teachers or administrators given the inherent power imbalance. Further, participants recommended that the reporting, investigation, and adjudication process should adopt and reflect a trauma-centred approach in which student voices and perspectives are prioritized; and mental health and victim supports are readily available.

Participants also recommended that students receive proper training on how the independent body will function, the avenues for making a complaint and what to expect from this process, including timelines, hearing participation, and consent resolutions.



Second Round of Engagements— February to March 2023

During the second round of engagements (same stakeholders as first round), the department provided details on a proposed new legislative framework to address teacher misconduct, now known as Bill 35 – The Education Administration Amendment Act (Teacher Certification and Professional Conduct). The legislative framework was built upon initial suggestions from the sector and regulatory models of the teacher profession from other jurisdictions across Canada. The framework includes:

- the establishment of an independent Commissioner to investigate, adjudicate, and otherwise respond to matters of teacher misconduct and competency, including the ability to enter in consent resolution agreements and refer matters to a hearing panel for adjudication
- hearings that will be open to the public and hearing panels with equal representation between teachers, employers and the general public, increasing public accountability and the transparency of the process
- the establishment of a publicly accessible registry of certified teachers to provide information on teachers' certificate status, including when they have faced consequences for professional misconduct
- the establishment of avenues for the Commissioner to address issues of competency and fitness to practice in the future; the development of professional standards for teachers in partnership with the sector; the ability to require further mandatory trainings; and the development of a certification renewal process that can include obligatory background checks and other requirements to be satisfied at the time of renewal

What We Heard: Focused Feedback

In the second round of consultations we heard general support among education partners, advocacy groups, and stakeholders for the proposed framework. The department responded to questions about the new model and gathered focused feedback from our sector partners, as follows.

Independent Commissioner and Hearing Panels

We heard strong support from the sector for the establishment of an independent Commissioner to address teacher misconduct matters, including the introduction of public hearings presided over by a panel with a balanced representation from teachers,

employers, and the general public. These actions were perceived as a substantive response to calls for increased transparency and accountability.

We heard from some partners that although they were supportive of the independent Commissioner model, they would prefer that an entirely independent body be created, similar to the Office of the Auditor General, which has its own resources and staff. The proposed organizational model will allow the Commissioner to use existing resources from Manitoba Education and Early Childhood Learning, including staff. This is similar to the model used in British Columbia and Alberta, and will enable a direct line of communication and information between the Commissioner and the Director of Teacher Certification and Standards, who will update the teacher registry and take necessary actions on teachers' certificates.

Some partners were concerned that the membership of hearing panels may be too public heavy, and thought that hearing panels comprised mostly of teachers would take stricter actions against their own colleagues. Other partners were highly supportive of a greater public representation on hearing panels, and thought that this would increase transparency and accountability, and prevent potential conflicts of interest in panels' decisions. One partner suggested that panels consist solely of professionally trained department staff. We also heard that panel members should be bilingual.

There were some concerns raised regarding the lack of Manitoba Association of School Superintendents' representation in hearing panels. That said, the department also heard from stakeholders the importance of maintaining balanced representation between employers and employees and incorporating the public, as well as maintaining a panel size that allows for timely scheduling of hearings. As such, the Manitoba School Boards Association was designated with authority to identify the employer representatives.

Some partners noted that the Commissioner should have a teaching background. Others felt that the Commissioner should have a legal background, as is the case in other Canadian jurisdictions.

Complaints and Reports

The sector generally provided strong support for any person being able to file a complaint to the Commissioner, and the expansion of reporting obligations to include not only school boards, but also funded independent schools and adult learning centres.

Partners raised the importance of providing a simple and easy avenue to submit complaints complemented by clear messaging to students, parents, and the general public on how to properly file a complaint with the Commissioner. They noted that the complaint process should be victim-centered and provide a safe space for complainants to tell their stories. They also recommended that the Commissioner's staff be properly trained in trauma-centered approaches so that they can better serve victims.

Some partners asked that the Commissioner have the ability to receive anonymous complaints. Department staff noted that this could create significant challenges for investigated teachers to develop a proper defense if the complainant is not identifiable. Further, no other Canadian jurisdiction that receives and addresses public complaints related to teacher misconduct allows for anonymous complaints.

We heard from some partners that teachers who witness their colleagues committing professional misconduct should be obligated to report the matter, as is the case in British Columbia. We also heard recommendations for the Commissioner to receive complaints and reports regarding alleged misconduct by non-teaching staff. As Manitoba Education and Early Childhood Learning does not have authority to regulate non-teaching classifications, matters of misconduct involving non-teaching staff are currently addressed by the employer, child protection agencies, or law enforcement, similar to other sectors. The department will continue to explore options to enhance the framework to address misconduct among non-teaching staff within the government's scope of authority.

Professional Misconduct Definition

There was significant support from the sector for the proposed definition of professional misconduct, which included any acts concerning a student or other child under the teacher's care or supervision, that involves: sexual abuse, sexual exploitation, sexual misconduct, physical harm, significant emotional harm, and child pornography. It also provides an avenue to further expand the professional misconduct definition through regulation at a later date.

Concerns were raised by some partners that including emotional harm in the misconduct definition could potentially increase the number of frivolous claims. Other partners were concerned that only very serious misconduct would be addressed by this definition and that lesser, but still damaging conduct may not meet the threshold to be addressed by the Commissioner. Department staff noted that the new misconduct definition provides a much broader scope than the previous definition and that this new process is not meant to replace the employer's responsibility to address misconduct issues with their employees and for the overall maintenance of a safe school environment. This Act does not change any of the local human resources processes that are in place to address allegations of misconduct.

Public Registry of Teachers

The establishment of a public registry of teachers received broad support. Department staff noted that the registry was based on similar registries in other Canadian jurisdictions and that it will contain the status of all certified teachers from Manitoba, including any records of suspensions, cancellations, conditions, and/or limitations on their certificates. Staff further noted that consent resolution agreements and hearing

decisions on matters of teacher misconduct will remain on the registry indefinitely. Furthermore, the Commissioner will have the ability to dismiss complaints that they find to be unfounded after a preliminary investigation; complaints that are dismissed by the Commissioner will not be publicly reported.

The public registry was perceived by the sector as significantly enhancing the accountability and transparency of the misconduct process.

Specific concerns were raised regarding ways of enhancing communications with First Nations partners who are not currently on the distribution list for notices of action when a certified teacher has their certificate suspended or cancelled.

Privacy issues were raised as a concern (i.e. previous legal names, names of deceased people), and we also heard that indefinitely maintaining records of misconduct decisions for teachers when complaints/reports are dismissed by a panel, may have negative impacts on their careers. Privacy considerations will be further explored as part of implementation planning.

Competency Issues and Professional Standards

We heard from most of our sector partners that it would be beneficial for complainants and employers if the Commissioner was able to address not only misconduct, but also competency issues in order to avoid a two-tiered approach to actions taken on a teacher's certificate. This creates a single door and avoids duplications and gaps that may occur when operating two different systems.

We also heard concerns from a small number of stakeholders that competency matters should be outside of the Commissioner's scope, as complaints on competency may disproportionately impact teachers in the early stages of their careers and are better addressed by the employer.

The proposed model will allow for the Commissioner to address matters of competency in the future, in accordance with regulations developed with sector partners including the Manitoba School Boards Association and The Manitoba Teachers' Society. This approach was generally well received by the sector. It is acknowledged and recognized that the development of standards will proceed in advance of proclaiming sections of the Act related to competence. The K to 12 Education Action Plan has identified that this work is currently scheduled to be initiated after April 2024.

Concerns were raised about the importance of clearly informing the public on what constitutes misconduct versus competency issues, in order to avoid a high number of out-of-scope complaints made to the Commissioner, who will initially only address misconduct matters. The department will look to the experiences in other provinces as it develops a strategy to clearly communicate these changes to all stakeholders.

Mandatory Training

We heard consensus support from the sector regarding the establishment of mandatory training on sexual abuse prevention for certification and post-certification purposes. Currently, the department requires pre-service training on sexual abuse prevention, and the proposed framework opens avenues for regular post-certification trainings in order to maintain a certificate in good standing.



Conclusion and Next Steps

After extensive consultations with a broad range of sector partners, the proposed new legislative framework to address teacher misconduct was generally very well received by the sector.

Bill 35 – The Education Administration Amendment Act (Teacher Certification and Professional Conduct) was drafted with the support and feedback of our sector partners, and had its first reading in the Legislative Assembly of Manitoba on March 14, 2023. Once the Bill passes all legislative stages, including a 90-day public consultation, and receives royal assent, it will come into force in stages through selective proclamation. Portions of the Bill related to establishing the Commissioner and their supporting office will be proclaimed first, along with those related to the teacher registry and the provisions that deal with teacher misconduct.

Over the coming months, the department will proceed with the work needed to support the implementation of the Bill, including the development of policies and a detailed public communication strategy. Stakeholders will receive regular updates throughout this process, and further consultations with the sector will take place to collectively develop the professional standards for the teaching profession, which will be used to guide teacher practice. Once this work on professional standards is complete, Bill 35 provisions dealing with teacher competency will be proclaimed, allowing for competency issues to be reviewed by the Commissioner.

Manitoba Education and Early Childhood Learning would like to thank all education, Indigenous, and sector partners for their continued engagement in developing this new legislative framework for addressing teacher misconduct.