

1995 BILL 48

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Third Session, 23rd Legislature, 44 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 48

TEACHING PROFESSION AMENDMENT ACT, 1995

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THE MINISTER OF EDUCATION

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 48

1995

### TEACHING PROFESSION AMENDMENT ACT, 1995

(Assented to \_\_\_\_\_, 1995)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Amends RSA  
1980 cT-3

1 *The Teaching Profession Act is amended by this Act.*

2 *Section 1 is amended*

(a) *in clause (e) by adding "or a person designated by the chief executive officer" after "association";*

(b) *by repealing clause (h) and substituting the following:*

(h) "school board" means a board as defined in the *School Act*;

3 *Section 7(2) is amended by striking out "provisions of the by-laws relating to discipline and approved by the Lieutenant Governor in Council pursuant to section 15(1)" and substituting "disciplinary provisions contained in this Act or the by-laws".*

4 *Section 8(f) is repealed and the following is substituted:*

(f) a code of professional conduct;

(f.1) discipline proceedings, including the following:

(i) the appointment of members or acting members of the Professional Conduct Committee, the Complainant Appeal Committee, the Professional Conduct Appeal Committee and a hearing committee established under section 17;

## Explanatory Notes

**1** Amends chapter T-3 of the Revised Statutes of Alberta 1980.

**2** Section 1(e) and (h) presently read:

*1 In this Act,*

(e) *“executive secretary” means the chief executive officer of the association;*

(h) *“school board” means the board of trustees of a school district, school division or regional division;*

**3** Section 7(2) presently reads:

*(2) Associate members have the right to vote and, subject to the by-laws, have the right to hold office in the association, but are not subject to the provisions of the by-laws relating to discipline and approved by the Lieutenant Governor in Council pursuant to section 15(1).*

**4** Section 8(f) presently reads:

*8 The association in general meeting may pass by-laws not inconsistent with this Act or any Act or regulation of Alberta concerning*

(f) *standards of professional conduct, a code of ethics and the establishment of a discipline committee and the discipline of members for breaches of those standards;*

- (ii) setting a term of office for members of the Professional Conduct Committee, the Complainant Appeal Committee and the Professional Conduct Appeal Committee;
- (iii) the designation of a chair and vice-chair for a committee referred to in subclause (i);
- (iv) establishing the number of members that constitutes a quorum for a committee referred to in subclause (i);
- (v) setting fees and expenses payable to members of a committee referred to in subclause (i) for attending to the business of the association;
- (vi) respecting publication of an order made by a committee referred to in subclause (i);
- (vii) determining costs of an investigation, hearing or appeal for the purpose of section 42(1)(a) or 53(2);
- (viii) providing for the suspension or cancellation of a person's membership in the association for non-payment of fees, dues or levies that are payable to the association;
- (ix) providing for the reinstatement of a person's membership in the association.

5 *The following is added after section 14:*

Annual report

**14.1(1)** The executive council shall submit annually to the Minister, in a form satisfactory to the Minister, a report on those matters of the business and affairs of the association that the Minister requires.

**(2)** The Minister shall, on receipt of the annual report, lay it before the Legislative Assembly if it is then sitting, and if it is not then sitting, within 15 days of the commencement of the next sitting.

6 *Sections 15 to 22 are repealed and the following is substituted:*

Definitions

**15** In this section and in sections 16 to 64,

- (a) "complaint" means a complaint made in writing about the conduct or alleged conduct of a member

**5** Adds a requirement to submit annual report to the Minister.

**6** Discipline sections replaced with more modern provisions.

or about a former member if section 23(4) applies, signed by the person making it;

- (b) "Appeal Committee" means the Professional Conduct Appeal Committee established under section 19;
- (c) "conduct" includes an act or omission;
- (d) "hearing committee" means a hearing committee established in accordance with section 17;
- (e) "indictable offence" means an offence under the *Criminal Code (Canada)*, the *Narcotic Control Act (Canada)*, the *Food and Drugs Act (Canada)* or the *Young Offenders Act (Canada)* that proceeds by indictment;
- (f) "investigated person" means
  - (i) a member, or
  - (ii) if section 23(4) applies, a former memberwith respect to whose conduct an investigation is conducted or a hearing is held under this Act;
- (g) "investigator" means the person appointed by the executive secretary to conduct a preliminary investigation under this Act;
- (h) "Registrar" means the Director of Teacher Certification and Development for the Department.

Professional  
Conduct  
Committee  
established

**16** There is hereby established the Professional Conduct Committee composed of

- (a) not fewer than 17 members of the association who are appointed by the executive council in accordance with the by-laws, and
- (b) 3 members of the public who are not members of the association and who are appointed by the Lieutenant Governor in Council after the Minister has consulted with the executive council.

Hearing  
committees

**17(1)** The executive secretary may establish any hearing committees he considers necessary.



(2) If a hearing committee is to deal with a complaint relating to a member who is charged with an indictable offence, the hearing committee must be composed of

(a) not fewer than 2 and not more than 4 members of the Professional Conduct Committee appointed under section 16(a), and

(b) one member of the Professional Conduct Committee appointed under section 16(b).

(3) A hearing committee that is to deal with any other type of complaint must be composed of not fewer than 3 and not more than 5 members of the Professional Conduct Committee appointed under section 16(a).

(4) A hearing committee referred to in subsection (3) may include one member of the Professional Conduct Committee appointed under section 16(b) and in that event one fewer member shall be appointed under subsection (3) to that committee.

(5) Each member of a hearing committee must be appointed by the executive secretary in accordance with the by-laws.

Complainant  
Appeal  
Committee

**18(1)** There is hereby established the Complainant Appeal Committee composed of

(a) not fewer than 2 members of the association who are appointed by the executive council in accordance with the by-laws, and

(b) one member of the public who is not a member of the association and who is appointed by the Lieutenant Governor in Council after the Minister has consulted with the executive council.

(2) A person who is appointed as a member of the Professional Conduct Committee is not eligible to be appointed as a member of the Complainant Appeal Committee.

Professional  
Conduct  
Appeal  
Committee

**19(1)** There is hereby established the Professional Conduct Appeal Committee composed of

(a) not fewer than 3 and not more than 5 persons, the majority of whom are members of the association, appointed by the executive council in accordance with the by-laws, and



(b) one member of the public who is not a member of the association and who is appointed by the Lieutenant Governor in Council after the Minister has consulted with the executive council.

(2) A person who is appointed as a member of the Professional Conduct Committee is not eligible to be appointed as a member of the Professional Conduct Appeal Committee.

Public  
members

**20(1)** A member of the public appointed to the Professional Conduct Committee, the Complainant Appeal Committee or the Professional Conduct Appeal Committee continues to hold office after the expiry of his term until he is reappointed or a successor is appointed.

(2) The Minister may pay to a member of the public appointed to a committee referred to in subsection (1) travelling and living expenses incurred by that member for attendance at a meeting of the committee away from the member's usual place of residence and fees in an amount prescribed by the Minister.

(3) The Lieutenant Governor in Council may, after the Minister has consulted with the executive council, revoke the appointment of a member of the public.

(4) The powers, duties and operation of a committee referred to in subsection (1) are not affected by

(a) the fact that no member of the public is appointed as a member of the committee,

(b) the revocation of the appointment of a member of the public, or

(c) the resignation from the committee of a member of the public.

(5) Subject to the by-laws prescribing a quorum, the failure of a member of the public appointed to a committee referred to in subsection (1) to attend a meeting of the committee does not affect or restrict the committee in exercising any powers or performing any duties under this Act or the by-laws at that meeting.

Continuation  
of term to  
conclusion of  
a hearing

**21** A member of the Professional Conduct Committee, the Complainant Appeal Committee or the Professional Conduct Appeal Committee whose term of office expires before the committee concludes the hearing or review of a matter, as the case may be, shall continue to act as a member of the



Unprofessional  
conduct

committee until that matter is concluded, notwithstanding that in the meantime another person has been appointed to fill that member's position on that committee.

**22(1)** Any conduct of a member that, in the opinion of a hearing committee,

- (a) is detrimental to the best interests of
  - (i) students as defined in the *School Act*,
  - (ii) the public, or
  - (iii) the teaching profession,
- (b) contravenes sections 15 to 64 or a by-law made under section 8(f) or (f.1), or
- (c) harms or tends to harm the standing of teachers generally,

whether or not that conduct is disgraceful or dishonourable, may be found by a hearing committee to constitute unprofessional conduct.

**(2)** If a member has been convicted of an indictable offence,

- (a) the conduct of the member on which the conviction is based is deemed to constitute unprofessional conduct, and
- (b) the member shall inform the association of the conviction forthwith.

**(3)** The association shall not use sections 15 to 64 to discipline a member for conduct that relates to

- (a) collective bargaining,
- (b) the administration of a collective agreement, or
- (c) any matter under the jurisdiction of the Labour Relations Board

or that arises under sections 77 to 85 or 92(1) of the *School Act*.



Making a complaint

**23(1)** Any person may make a complaint to the executive secretary and the complaint shall be dealt with in accordance with this Act and the by-laws.

**(2)** A superintendent who has reason to believe that a member has been or may have been convicted of an indictable offence shall

(a) make a complaint to the executive secretary relating to that belief, and

(b) advise the Registrar of that belief.

**(3)** Notwithstanding anything contained in the by-laws, a member who believes that another member is guilty of conduct that contravenes sections 15 to 64 shall make a complaint forthwith to the executive secretary relating to that conduct.

**(4)** If after a person's membership in the association lapses or has been suspended or cancelled

(a) a complaint is made about the former member, and

(b) the complaint relates to conduct occurring before the lapse, suspension or cancellation,

the complaint may be dealt with under this Act as if the lapse, suspension or cancellation had not occurred, if the complaint is made to the executive secretary within 5 years after the date of the lapse, suspension or cancellation.

**(5)** In subsection (2), "superintendent" does not include a teacher appointed by a school board as the chief deputy of the superintendent.

Referral to investigator

**24** The executive secretary shall, not later than 30 days after receiving a complaint, refer the complaint to an investigator.

Preliminary investigation

**25(1)** An investigator shall, within 30 days after receiving a complaint from the executive secretary, commence a preliminary investigation of the complaint.

**(2)** An investigator may require the investigated person or any other member to produce any records in his possession or under his control and may require the attendance of the investigated person or any other member or an employer or employee of any of them at the investigation.



(3) The association may apply ex parte to the Court of Queen's Bench for an order

- (a) directing any person referred to in subsection (2) to produce to an investigator any records in his possession or under his control if it is shown that the person failed to produce them when required by the investigator, or
- (b) directing any person to produce to an investigator any records that are or may be relevant to a complaint being investigated.

(4) If a member does not co-operate with an investigator, the investigator may make a complaint to the executive secretary, and the failure or refusal to co-operate may be found by a hearing committee to constitute unprofessional conduct.

(5) An investigator may investigate any other matter relating to the conduct of the investigated person that arises in the course of a preliminary investigation, whether associated with the original complaint or investigation or not.

(6) If the member who is the subject of the complaint is alleged to have been convicted of an indictable offence, the investigator shall attempt to confirm whether or not the member has, in fact, been convicted of an indictable offence and immediately on doing so shall prepare a report to that effect.

Investigator's  
report  
considered

**26(1)** The investigator, on concluding a preliminary investigation and preparing a report, shall provide the report to the executive secretary.

(2) On reviewing the report, the executive secretary

- (a) may, except in a case where it has been confirmed that a member has been convicted of an indictable offence, refer the matter to a mediator or to another dispute resolution process provided for in the by-laws,
- (b) may refer the matter to a hearing committee whether or not there has been a referral or a settlement reached under clause (a), or
- (c) may direct that the matter will not be referred to a hearing committee if the executive secretary is of the opinion that



- (i) the matter is frivolous, vexatious or without merit,
- (ii) there is insufficient evidence of unprofessional conduct to warrant a referral to a hearing committee, or
- (iii) there has been a settlement reached through mediation or another dispute resolution process provided for in the by-laws and there is no need to refer the matter to a hearing committee.

(3) In a case where it has been confirmed that a member has been convicted of an indictable offence, the executive secretary shall forthwith refer the matter to a hearing committee.

(4) The executive secretary shall serve on the investigated person a notice of his decision and shall notify the complainant of his decision.

By-laws

**27(1)** The association may make by-laws

- (a) prescribing other dispute resolution processes for the purposes of section 26;
- (b) prescribing the conditions, rules and procedures that apply to a dispute resolution process prescribed under clause (a).

(2) A by-law made under subsection (1) does not come into force unless

- (a) it is approved by the association in accordance with the by-laws made under section 8, and
- (b) it is approved by the Lieutenant Governor in Council.

Complainant's request for review

**28(1)** The complainant, within 30 days of receiving notice that the matter will not be referred to a hearing committee, may by notice in writing to the executive secretary request a review of that decision by the Complainant Appeal Committee.

(2) A request under subsection (1) must include reasons why the complainant believes the matter should be referred to a hearing committee.

(3) On receiving notice under subsection (1), the executive secretary must notify the investigated person and the



Complainant Appeal Committee that he has received a request for a review.

(4) The Complainant Appeal Committee shall, on receiving notice under subsection (1), review the decision of the executive secretary and determine whether the matter should be referred to a hearing committee.

(5) The Complainant Appeal Committee shall notify the complainant and the investigated person

(a) of the date, time and location of the review, and

(b) of their right to make representations to the Complainant Appeal Committee.

(6) If new information is available to the Complainant Appeal Committee that was not available to the investigator who conducted the preliminary investigation, the Committee may in making its decision consider the relevance of the new information.

(7) The Complainant Appeal Committee shall notify the complainant, the investigated person and the executive secretary in writing of its decision.

Temporary  
suspension

**29(1)** Notwithstanding anything in this Act, the executive secretary may suspend a person's membership in the association pending the conclusion of a preliminary investigation or the decision of a hearing committee.

(2) An investigated person whose membership in the association is suspended under subsection (1) may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the executive secretary, apply for an order staying the decision of the executive secretary until the conclusion of a preliminary investigation or the decision of a hearing committee.

(3) When a membership in the association is suspended under this section, the executive secretary shall notify the superintendent, the Registrar and the investigated person in writing of the suspension.

(4) In subsection (3), "superintendent" does not include a teacher appointed by a school board as the chief deputy of the superintendent.



Notice of hearing

**30(1)** A hearing committee shall, on referral to it of a matter in accordance with this Act, hold a hearing.

(2) A hearing under subsection (1) shall be commenced within 120 days of the date on which the matter is referred to the hearing committee or within any other period set by the executive council, unless subsection (4) applies.

(3) At least 15 days before the date set for a hearing, the executive secretary shall serve on the investigated person a notice stating

(a) the date, time and location of the hearing, and

(b) reasonable particulars of the matter to be heard.

(4) A hearing that relates to the conviction of a member of an indictable offence must be held forthwith and in that event the 15-day period required under subsection (3) does not apply.

Representation before hearing committee

**31(1)** The investigated person may be represented by counsel at a hearing before a hearing committee.

(2) A hearing committee and the association may each be represented by counsel at a hearing before a hearing committee.

Public hearing

**32** A hearing before a hearing committee must be open to the public unless

(a) the complainant requests that the hearing be held in private because of the confidential nature of the matters to be heard, or

(b) in the opinion of the hearing committee, the interest of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

Further investigation

**33** If any other matter concerning the conduct of the investigated person arises in the course of an investigation or hearing, the hearing committee may

(a) hear the other matter, but in that event the hearing committee shall declare its intention to hear the other matter and shall permit the investigated person reasonable opportunity to prepare an answer to the other matter, or



- (b) adjourn the hearing to allow the association to assess the other matter and make recommendations concerning it to the hearing committee.

**Evidence**

**34** Evidence may be given before a hearing committee in any manner that the hearing committee considers appropriate, and the hearing committee is not bound by the rules of law respecting evidence applicable to judicial proceedings.

**Compellable witness**

**35(1)** Subject to section 40(3), the investigated person and any other person who, in the opinion of the hearing committee, has knowledge of the matter being heard are compellable witnesses in any proceeding under this Act.

(2) A witness may be examined under oath on anything relevant to the hearing before a hearing committee and shall not be excused from answering any question on the ground that the answer might tend to

- (a) incriminate him,
- (b) subject him to punishment under this Act, or
- (c) establish his liability
  - (i) to a civil proceeding at the instance of the Crown or of any other person, or
  - (ii) to prosecution under any Act,

but if the answer so given tends to incriminate him, subject him to punishment or establish his liability, it shall not be used or received against him in any civil proceedings, in a prosecution under section 65 or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

**Commission evidence**

**36** For the purpose of obtaining the testimony of a witness who is out of Alberta, a judge of the Court of Queen's Bench, on an ex parte application by the association, may direct the issuing of a commission for obtaining the evidence of the witness, and the commission shall be issued and the evidence taken pursuant to the Alberta Rules of Court.

**Notice to attend and produce records**

**37(1)** The attendance of witnesses before a hearing committee and the production of records may be enforced by a notice issued by the executive secretary requiring the witness to attend and stating the date, time and location at which the witness is to attend and the records, if any, that the witness is required to produce.



(2) On the written request of the investigated person or that person's counsel or agent, the executive secretary shall, without charge, issue and deliver to that person or his counsel or agent any notices that that person requires for the attendance of witnesses or the production of any record.

(3) A witness, other than the investigated person, who has been served with a notice to attend or a notice for the production of any record under subsection (1) or (2) is entitled to be paid the same fees as are payable to a witness in an action in the Court of Queen's Bench.

Civil contempt proceedings

**38(1)** Proceedings for civil contempt of court may be brought against a witness

(a) who fails

(i) to attend before a hearing committee in compliance with a notice to attend, or

(ii) to produce records in compliance with a notice to produce them,

or

(b) who refuses to be sworn or to answer any question that he is directed by a hearing committee to answer.

(2) The chair of a hearing committee may make a complaint with respect to the failure or refusal of a member under subsection (1), and the failure or refusal may be found by a hearing committee to constitute unprofessional conduct.

Proceedings in absence of investigated person

**39** A hearing committee, on proof of service in accordance with this Act of the notice of hearing on the investigated person, may

(a) proceed with the hearing in the absence of the investigated person, and

(b) act and decide on the matter being heard in the same way as if the investigated person were in attendance.

Finding of hearing committee

**40(1)** A hearing committee may find that the conduct of an investigated person constitutes or does not constitute unprofessional conduct.

(2) Where the investigated person has been convicted of an indictable offence, a hearing committee must determine the question of penalty and has no authority



Orders of  
hearing  
committee

- (a) to find that the conduct of the member on which the conviction is based does not constitute unprofessional conduct, or
- (b) to investigate the conduct of the member on which the conviction is based except for the purpose of deciding the penalty.

(3) No person shall require the attendance as a witness at a hearing before the hearing committee of any person who attended as a witness at the court that convicted the member of the indictable offence.

**41(1)** If a hearing committee finds that the conduct of an investigated person constitutes unprofessional conduct, the hearing committee may do any one or more of the following:

- (a) cancel the investigated person's membership in the association;
- (b) suspend the investigated person's membership in the association for any period it considers proper;
- (c) recommend that the Minister cancel or suspend the teaching certificate of the investigated person;
- (d) make any further or other order it considers appropriate.

(2) If a hearing committee is satisfied that an investigated person has contravened an order made under subsection (1)(d), it may, without the necessity of a further hearing, cancel or suspend the investigated person's membership in the association, subject to any terms it considers appropriate.

(3) If the decision of a hearing committee

- (a) relates to an investigated person who has been convicted of an indictable offence, and
- (b) does not contain a recommendation that the Minister cancel or suspend the teaching certificate of the investigated person,

the decision must include reasons why such a recommendation has not been made.



Costs and fines

**42(1)** A hearing committee may, in addition to dealing with the conduct of an investigated person in accordance with section 41, order that the investigated person pay

- (a) all or part of the costs of the investigation, hearing or appeal determined in accordance with the by-laws,
- (b) a fine not exceeding \$10 000 for each finding of unprofessional conduct, or
- (c) costs under clause (a) and a fine under clause (b),

to the association within the time and in accordance with the conditions set by the order.

(2) Where the investigated person's membership in the association has been suspended, a hearing committee may, in addition to an order under subsection (1), order that the membership remain suspended until the fine or costs, or both, have been paid.

Publication of decision

**43(1)** If the investigated person's membership in the association has been cancelled or suspended, notice of the cancellation or suspension shall be published in the form and manner prescribed in the by-laws.

(2) No notice shall be published in accordance with subsection (1) until

- (a) an appeal has been heard and a decision made on the appeal, or
- (b) if no appeal is commenced, the time for commencing an appeal has expired.

Fine and costs are debt

**44** A fine or costs ordered to be paid by an investigated person under this Act are a debt due to the association and may be recovered by the association by civil action for debt.

Written decision

**45** A hearing committee shall, within 60 days after the conclusion of a hearing, make a written decision on the matter, in which it shall

- (a) describe each finding of unprofessional conduct made by it,
- (b) state the reasons for each finding made by it, and
- (c) state any order made by it.



Service of  
decision

**46(1)** A hearing committee shall forward to the executive secretary

- (a) the decision, and
- (b) the record of the hearing, consisting of all evidence presented before it, including
  - (i) all exhibits,
  - (ii) all documents, and
  - (iii) all testimony given before it, whether recorded electronically, mechanically or in handwritten form.

**(2)** The executive secretary shall, on receiving the decision of a hearing committee and the record of the hearing referred to in subsection (1),

- (a) serve a copy of the decision on the investigated person,
- (b) forward a notice of the decision to the complainant,
- (c) forward a notice of the decision to the executive council, and
- (d) forward a copy of the decision to the Registrar.

**(3)** The investigated person and the executive council may examine the record or any part of the record of the proceedings before a hearing committee and hear any recording or examine any mechanical or handwritten record of evidence given before the hearing committee.

**(4)** The decision of a hearing committee must be available to the public on request and free of charge.

Order remains  
in effect

**47(1)** The decision of a hearing committee remains in effect until the Appeal Committee makes a decision on an appeal.

**(2)** An investigated person may apply to the executive secretary for a stay of the order of a hearing committee, and if the executive secretary considers it appropriate he may stay the implementation of the hearing committee's order pending the conclusion of an appeal to the Appeal Committee.



Appeals to  
Appeal  
Committee

**48(1)** An investigated person or the executive council may by notice in writing to the executive secretary appeal a finding or order, or both, of a hearing committee to the Appeal Committee.

- (2) A notice of appeal under subsection (1) must
- (a) describe the finding or order or both being appealed, and
  - (b) state the reasons for the appeal.
- (3) A notice of appeal under this section must be served on the executive secretary within 30 days after the date on which the decision of a hearing committee is
- (a) served on the investigated person, if the investigated person appeals the decision, or
  - (b) forwarded to the executive council, if the executive council appeals the decision.
- (4) On receiving a notice of appeal under this section, the executive secretary shall
- (a) send a copy of it to the investigated person, if the executive council is the appellant,
  - (b) send a copy of it to the executive council, if the investigated person is the appellant, and
  - (c) give to each member of the Appeal Committee a copy of the notice of appeal and make the decision of the hearing committee and the record of the hearing available to each member of the Appeal Committee.

Notice of  
appeal hearing

**49(1)** The Appeal Committee shall begin hearing an appeal within 90 days after the service of the notice of appeal in accordance with section 48(3) or within a longer period that is agreed to by the appellant, unless subsection (3) applies.

(2) At least 15 days before the date set for the hearing of the appeal, the executive secretary shall serve on the investigated person and the executive council a notice stating the date, time and location of the hearing.

(3) A hearing that relates to the conviction of a member of an indictable offence must be held forthwith and in that



event the 15-day period required under subsection (2) does not apply.

Representa-  
tion before  
appeal hearing

**50** The investigated person, the executive council and the Appeal Committee may each be represented by counsel at a hearing before the Appeal Committee.

Public hearing

**51** A hearing before the Appeal Committee must be open to the public unless, in the opinion of the Appeal Committee, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

Powers of  
Appeal  
Committee

**52(1)** The appeal to the Appeal Committee must be founded on the decision of the hearing committee and the record of the proceedings before the hearing committee.

(2) The Appeal Committee may

- (a) grant adjournments of the proceedings or reserve the determination of the matters before it for a future meeting of the Appeal Committee,
- (b) on granting special leave for the purpose, receive further evidence, and
- (c) draw inferences of fact and make a decision or finding that, in its opinion, ought to have been made by the hearing committee.

(3) Sections 34 to 39 apply to proceedings before the Appeal Committee.

Decision on  
appeal

**53(1)** The Appeal Committee shall, after the conclusion of all proceedings before it,

- (a) make any finding or order that in its opinion ought to have been made by the hearing committee,
- (b) quash, vary or confirm a finding or order of the hearing committee or substitute or make a finding or order of its own, or
- (c) refer the matter back to the hearing committee for further consideration in accordance with any direction that the Appeal Committee may make.

(2) The Appeal Committee may make an award as to the costs of an appeal determined in accordance with the by-laws.



	<p>(3) Section 41(3) applies to a decision of the Appeal Committee.</p>
Written decision	<p><b>54(1)</b> The Appeal Committee shall, within 60 days after the conclusion of the proceedings before it, make a written decision on the matter and shall forward the decision to the executive secretary.</p> <p>(2) The executive secretary shall, on receiving the decision of the Appeal Committee,</p> <ul style="list-style-type: none"> <li>(a) serve a copy of the decision on the investigated person,</li> <li>(b) forward a copy of the decision to the executive council, and</li> <li>(c) forward a copy of the decision to the Registrar.</li> </ul> <p>(3) There is no appeal from the decision of the Appeal Committee.</p> <p>(4) The decision of the Appeal Committee must be available to the public on request and free of charge.</p>
Notice of decision to Minister	<p><b>55</b> The executive secretary shall forward to the Minister</p> <ul style="list-style-type: none"> <li>(a) the decision of the Appeal Committee, or</li> <li>(b) if there has been no appeal to the Appeal Committee, the decision of a hearing committee</li> </ul> <p>in each case where</p> <ul style="list-style-type: none"> <li>(c) the decision includes a recommendation that the Minister cancel or suspend the teaching certificate of the investigated person, or</li> <li>(d) the decision relates to an investigated person who has been convicted of an indictable offence.</li> </ul>
Judicial review	<p><b>56</b> An application for judicial review of a decision made by a hearing committee or the Appeal Committee must be commenced within 15 days after the date the decision was made.</p>
Reinstatement	<p><b>57</b> If the investigated person's membership in the association has been cancelled, the membership shall not be reinstated except by order of the executive council or by a court of competent jurisdiction.</p>



Employer to recognize sanctions

**58** No employer or other person shall knowingly require the investigated person to perform a service or undertake any work that would result in the contravention by the investigated person of an order or direction of a hearing committee or the Appeal Committee.

Notice to employer

**59** When the investigated person's membership in the association is suspended or cancelled, the executive secretary shall forthwith notify the investigated person's employer of the cancellation or suspension.

### General Provisions

Delegation to table officers

**60(1)** The executive council may delegate any of its powers and duties under sections 15 to 64 to the table officers.

**(2)** In this section, "table officers" means the officers of the association as designated in the by-laws.

Document of executive secretary

**61** A document purporting to be signed by the executive secretary stating that a named person was or was not, on a specified day or during a specified period,

(a) a member, or

(b) an officer of the association or a member of the executive council or of a committee established under this Act or the by-laws,

shall be admitted as prima facie proof of the facts stated in it without proof of the appointment or signature of the executive secretary.

Protection from liability

**62(1)** No action lies against

(a) the executive secretary, an investigator, a mediator or other person conducting a dispute resolution process provided for in the by-laws or a member of a committee established by or under this Act or the by-laws, the executive council or the association or any person acting on the instructions of any of them, or

(b) any officer or employee of the association

for anything done by him in good faith and in purporting to act under this Act or the by-laws.

**(2)** No action for defamation may be founded on a communication that consists of or pertains to an act or



omission of a member if the communication is published to or by

- (a) the association or an officer of the association,
- (b) a member of the executive council or of a committee established by or under this Act,
- (c) an investigator, a mediator or another person conducting a dispute resolution process provided for in the by-laws, or
- (d) a person acting on the instructions of any person or entity referred to in clauses (a) to (c),

in good faith in the course of investigating the conduct or in the course of any proceeding under this Act or the by-laws relating to the conduct.

Service of documents

**63** When this Act or the by-laws require that a document or notice be served on any person, the document or notice is sufficiently served

- (a) if it is served personally on that person or sent to that person by registered mail or courier at the address last shown for that person on the records of the association, or
- (b) if personal service or service by mail is not reasonably possible, by publishing the document at least twice, not more than a week apart, in a local newspaper circulated at or near the address last shown for that person on the records of the association.

Commissioner for oaths

**64** For the purpose of an investigation, hearing or review under this Act, an investigator and each member of the Professional Conduct Committee, a hearing committee, the Complainant Appeal Committee and the Appeal Committee are conferred with the powers of a commissioner for oaths under the *Commissioners for Oaths Act*.

### Offences and Penalties

Penalties

**65(1)** Every person and every officer, employee or agent of a corporation or firm who contravenes this Act is guilty of an offence and liable

- (a) for a first offence, to a fine of not more than \$2000,



- (b) for a 2nd offence, to a fine of not more than \$4000, and
- (c) for a 3rd and every subsequent offence, to a fine of not more than \$6000 or to imprisonment for a term of not more than 6 months, or to both fine and imprisonment.

(2) A prosecution under this section may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

### Transitional Provisions

Transitional

**66(1)** *Any complaint made, whether by request for an investigation or by charge, or discipline proceedings commenced but not concluded before the coming into force of sections 15 to 64 as enacted by section 6 of the Teaching Profession Amendment Act, 1995 shall be concluded under the former provisions as though the Teaching Profession Amendment Act, 1995 had not come into force.*

(2) *Any complaint made after the coming into force of sections 15 to 64 as enacted by section 6 of the Teaching Profession Amendment Act, 1995 that relates to conduct occurring all or partly before the coming into force of those sections shall be dealt with under those sections.*

(3) *In this section, "former provisions" means*

- (a) *sections 15 to 22 of this Act as they read before the coming into force of section 6 of the Teaching Profession Amendment Act, 1995, and*
- (b) *the by-laws relating to discipline made under section 8 of this Act as it read before the coming into force of section 6 of the Teaching Profession Amendment Act, 1995.*

Transitional

**67(1)** *A by-law referred to in section 8(f.1) or 27(1) may, until September 1, 1997, be made by the executive council without the approval of the association or the Lieutenant Governor in Council.*

(2) *A by-law made by the executive council under subsection (1) ceases to have effect*

- (a) *on September 1, 1997, or*
- (b) *on the coming into force of a by-law made by the association under section 8(f.1) or 27(1),*



*whichever occurs first.*

*7 This Act comes into force on Proclamation.*

**7 Coming into force.**