

Government of Alberta

“Code of Professional Conduct for Teachers and Teacher Leaders Discussion Guide, September 2022”

Response of the Alberta Teachers’ Association

Introduction and Overview

The unilateral decision of the government to remove from the Alberta Teachers’ Association (ATA) and the Profession responsibility for upholding standards of conduct for teachers and teacher leaders fundamentally changes the context within which the previously existing Code of Professional Conduct must be understood and how a successor code mandated by government may potentially impact the lives of teachers and the larger community served by the provincial education system. (Note that unless otherwise qualified, the term *teachers* in the context of this commentary includes teachers, principals other school-based administrators as well as certain central-office administrators who, by election or given the nature of their work, are members of the Association, all of whom hitherto have been subject to professional regulation by the ATA).

Under the new regime imposed by Bill 15, the interpretation and application of the provisions of the government’s code of conduct in specific cases no longer will be the responsibility of the Profession but have been taken over in their entirety by the Ministry of Education. The design of the process to be implemented in Alberta is quite distinct from regulatory processes that are in place for other professions and for teachers elsewhere in the country. In particular, the Minister has given herself in legislation the sole responsibility to appoint a Commissioner and the members of the panel from which various hearing committees will be struck. She has also given herself the ability to alter at whim the findings of a hearing committee or any penalty imposed by a committee, either on first instance or upon appeal.

This immediately undermines claims that the process set out in legislation is arm’s length from government and protected against political interference. Having seen this Minister systematically attack and cynically misrepresent the Association’s own regulatory processes over the last three years, teachers and members of the public are entitled to question the legitimacy of the government’s proposed mechanisms and means for upholding standards of professional conduct and practice.

Furthermore, all the processes, including those directed by the Commissioner, will be housed inside the Department of Education and are potentially subject to political direction from the Minister, the minister’s office and other senior department staff. Nor does the Commissioner actually head up a commission of any description! Instead, the Commissioner is effectively a government official who has no independent standing (unlike, for example, the Information and Privacy Commissioner, the Auditor General and other independent officers of the legislature) and, like most senior officials in Alberta Education these days, is not required to be (or ever have



been) a member of the profession or possess any experience or expertise in education or teaching.

The recent appointment of the Commissioner highlights this reality—while she may have relevant experience as a lawyer, the only background relevant to public education that Julia Sproule appears to bring to her role is membership on a school council. Generally, none of the expected protections for maintaining the independence of the professional regulation are provided for in legislation governing her role, and many of the practices and procedures for administering the new regulatory processes remain to be defined.

While Ministry officials have claimed that the model they are implementing is essentially the same as that in place in British Columbia, this ignores several significant differences. In British Columbia, there is an arm's-length Commission with guaranteed representation from the British Columbia Teachers' Federation, teachers at large and public members appointed by government. The Commission in British Columbia is designed to function apart from the regular structures of government, and decisions in individual cases are not subject to ministerial interference, only to judicial review.

In addition to issues relating to the general administration of the code, it is apparent that the proposed content for the government code set out in the survey may be difficult to apply in the same way to teachers occupying these various roles in diverse situations—code provisions may have considerably different application to and relevance for the superintendent of a large urban public school authority, a principal in a rural Catholic school setting or a teacher working in a private school. Some potential examples of this issue are cited below.

Focusing on the proposed content of the code, we note that despite drawing upon the ATA's Code of Professional Conduct for much of its content, the "concepts" being tested in the government survey depart from and expand in significant and troubling ways the understanding of the responsibilities embodied in the current ATA code. Of course, we do not know what the final content of the government code will be, and so some of the specific issues identified in this response may yet be addressed and satisfactorily resolved. Unfortunately, the experience of teachers with respect to other similar surveys and consultations undertaken by this government is that they appear mainly intended to provide cover for decisions that have already been made. We remain cautiously optimistic.

Highlighted below are our comments with respect to proposed content and concepts included in the government's discussion guide; not all of the questions posed in the survey are addressed and comments made with respect to some content may be applicable to other content. This is a high-level response, and the Association would anticipate having much more to say if provided an opportunity to review the penultimate draft of the Government's proposed code.



Reponses to Proposed Content

The way a teacher or teacher leader conducts themselves while they are off duty can also affect the level of trust and influence they have in the community.

In administering the ATA Code of Professional Conduct, the Association has always adopted the position that a teacher is a teacher, 24/7/365, and that therefore, certain misconduct by an active member outside the circumstances of their employment might be subject to professional sanction. This is certainly the case where a nexus can be established that links a teacher's conduct outside the school setting to students or to in-school activities and responsibilities of the teacher. Furthermore, it is established in legislation and in the precedents of the decisions of hearing committees, that conduct resulting in criminal convictions, even those unrelated to a person's identity or role as a teacher, constitutes unprofessional conduct and is liable to penalty, up to and including suspension or cancellation of membership.

That said, the Association has also recognized that teachers are entitled to a personal life outside of school and has not upheld complaints where there is no established link to a person's identity or function as a teacher. This would include complaints about teachers as "mean landlords" or "unfaithful spouses" or "bad neighbours." It seems that teachers who live in smaller communities or rural areas are particularly subject to scrutiny of their out-of-school lives.

The difficulty with the potential inclusion of this concept in the government's code of professional conduct is that, without qualification, it is over-reaching and teachers can have scant comfort that complaints would be adjudicated by professional colleagues with an understanding of their exposure in their communities.

Teachers and teacher leaders are expected to behave in a manner that honours the dignity, welfare, rights and best interests of students, parents, their teacher or teacher leader colleagues, their employer and the status of the teaching profession

The first and most obvious thing to be said about soliciting responses from the public to this "content" is the poor design of the item stem and the dubious validity of the responses that it might solicit. The survey asks respondents to indicate their level of support for a statement that encompasses without differentiation or prioritization students, parents, teachers, teacher leaders and employers as well as the teaching profession in its entirety. It is entirely possible that a respondent might have different beliefs as to the responsibilities of teachers toward each of these different interested parties, but no provision is made for differentiated responses.

In contrast, the Association's Code of Professional Conduct is careful to separate out into distinct parts and sections the specific obligations that a teacher has to students (Sections 1 to 7), to school authorities (8 to 11), to colleagues, both teachers and administrators (12 to 17), and to the profession itself (18 to 22). Critically, the very first provision in the Association's code speaks to "respecting the dignity and rights of all persons," but situates this as being in relation to pupils.



The effect of this structure in the Association's code is to prioritize the professional obligations a teacher has toward the students who are in their care above all other responsibilities.

The proposed expansion of teachers' professional obligations by imposing a general and undifferentiated requirement upon teachers to "honour" rather than simply "respect" the "welfare [and] best interests" of a collection of parties that now includes parents and employers is highly problematic.

"To honour" suggests a higher standard of deference and accommodation than "to respect." Already teachers are expected to be respectful and considerate of students and mindful of their circumstances. Requiring teachers to additionally "honour" the "welfare [and] best interests" of parents and the employer imposes a standard and an expectation of proactivity that will be impossible to achieve and that invites inappropriate intrusion into the classroom.

Teachers know that classrooms are increasingly contested spaces and that different parents will often have strongly held and contradictory views on a broad range of political, social, moral, pedagogical and procedural issues that may conflict with requirements of curriculum, sound educational practice, the consensus of informed opinion and teachers' exercise of their professional judgment.

Teachers are already called to respond to parents who express beliefs about instruction concerning human sexuality, gender identity, religious practices/beliefs, aspects of history, Truth and Reconciliation, vaccination and infection control, student evaluation, support for inclusion, approaches to reading, math instruction, participation in sports, physical activity and the arts that are at variance with the content of the program of studies or the civic values of public education. These parents would not hesitate to frame their views as genuinely representing their own best interests and those of their children. While teachers and school administrators will typically make good-faith efforts to meet the expectations of parents, it is difficult enough to navigate the diverse demands imposed upon them. Requiring teachers and administrators, as a matter of professional conduct, to somehow be aware of and then honour these competing "best interests" is setting them up for failure and harassment, all legitimized, facilitated and encouraged by the government's code.

Special note should be made of the requirement that teachers should honour "the dignity, welfare, rights and best interests of ... their employer." Throughout the "concepts" being advanced by Government for potential inclusion in the code are provisions that would provide employers with additional means of coercing teacher compliance under the guise of good conduct. School authorities already have ample capacity to manage their employees under their contracts of employment, collective agreements, provisions for supervision and evaluation, and employment law generally. What purports to be a code of professional conduct need not additionally privilege employers.



The requirements identified in the code of conduct are minimum standards teachers and teacher leaders must meet – not an exhaustive list of all conduct requirements.

This proposed content manages to be both right and wrong simultaneously. It is true that a code of conduct does set a minimum standard, albeit in the case of teachers, a relatively high one. More aspirational expectations are better set out in formative documents, such as the Teaching Quality Standard and supported by professional development, supervision, mentorship and personal professional growth strategies, the content and intent of which should be clearly distinguished from matters reflecting on professional conduct.

The suggestion that there are other conduct requirements left unstated, for which a teacher might potentially be held accountable through the government's discipline process is Kafkaesque and an affront to democratic jurisprudential standards. Furthermore, given the generality of other provisions suggested for inclusion in the code, it is unnecessary.

A breach of the code of conduct could result in disciplinary action potentially impacting a teacher or teacher leader's continued suitability to hold a certificate of practice issued by the Minister of Education and Registrar in the province of Alberta.

It is odd that this content would be included in a code of conduct as it does not inform or direct teacher conduct or practice. Instead, it relates to the enforcement of the code, which is more properly addressed separately in legislation and regulations.

While it is appropriate that certain serious violations of the code of conduct may merit penalties that include the suspension or cancellation of certification, hearing committees and, under certain circumstances, the Commissioner's process would be expected to result in the imposition of a range of sanctions, including formal direction, reprimands of various descriptions, time-certain suspensions, requirements for restitution, and mandated professional development (there appears to be no authority for the levying of fines—this has the potential to be highly problematic in practice). These other consequences and penalties, however, are not recognized in the proposed content.

Under the current system, Association hearing committees will make such recommendations to the Minister of Education when they deem it appropriate concerning the suspension or cancellation of membership. The fundamental flaw highlighted by this provision, however, is that under the newly amended legislation, the Minister may unilaterally and arbitrarily vary or set aside a decision of a hearing committee. While the Minister of Education has had the ability to disregard Association hearing committee recommendations with respect to certification (but not membership in the Association), except during the tenures of Ministers Johnson and LaGrange, this power was rarely exercised. We are concerned that now that the process is entirely within the control of government, the arbitrary and politically motivated interference in the adjudication of professional conduct may become more commonplace.



For clarity and by way of contrast, under the Association's process, the findings of Professional Conduct Committees (PCCs) cannot be varied by the Executive Secretary, President or Provincial Executive Council or any other office holder. If, after review and having given the deference due to the Committee, Provincial Executive Council believes that a finding and/or penalty is unreasonable, the only option available to it is to refer the case to an independent Professional Conduct Appeal Committee, the decision of which is final and subject only to judicial review.

Teachers and teacher leaders are expected to teach or lead in a manner that is consistent with applicable professional practice standards, government legislation and the policies of Alberta Education.

Professional conduct and professional competence are two very different constructs that should not be conflated. Yet incorporating into a code of professional conduct content referencing practice standards does exactly that and demonstrates fundamental conceptual and category confusion.

A code of conduct provides a mechanism for clarifying and enforcing basic ethical and moral principles that are fairly cut and dried and that should be self-evident. A teacher organically possessed of empathy, good judgment and a basic understanding of their role as a professional should be able to proceed through their career with little concern about contravening provisions of a code of conduct. It has been the experience of the Association that most teachers who are the subject of legitimate complaints relating to their conduct will immediately acknowledge that they have failed, oftentimes in the moment or perhaps in difficult circumstances, but rarely are surprised that their behaviour might be deemed to be problematic and potentially unprofessional. We even have instances where teachers have reported their own behaviour to the Association as being in contravention of the code.

Quality standards, however, are more situational. It may be the case that a teacher might fail to meet one element of the standard but successfully meets others. A teacher may be deemed to be "incompetent" in a particular teaching situation but might be entirely competent in another. This is why the review of professional practice includes consideration of the teacher's fit for their assignment, given their professional education and experience, as well as contemplating opportunities to support and remediate the teacher's practice. Ultimately, practice review processes are properly focused not on the question of the individual's performance in a particular circumstance but rather their capacity to meet the teaching quality standard generally and in any capacity.

It should not be surprising, then, that practice review proceedings have not been common at all. Teachers who are or who become incompetent may be more effectively dealt with by other means. First and most commonly is a program of supervision and evaluation culminating in the provision of professional development and mentorship opportunities intended to address areas



where the teacher's skills or knowledge are lacking. Alternatively, a change of assignment or designation may address issues of concern and provide a teacher with opportunities for successful practice. If these approaches are not successful, then further remedies exist in employment.

Further to this point, it is false to claim that employers cannot "get rid of bad teachers." It is, however, necessary that employers do their homework, respect their own policy and abide by established principles of fairness and natural justice. Given the differential in power between the teacher and the employer generally, the fact that school districts tend to be monopoly employers in their geographic area, and the potentially life-altering implications of termination for the teacher, these expectations are neither onerous nor an unreasonable expectation. Nor are they in any way different from the obligations owed by any employer in any other situation or sector to their employees.

Also, teachers who are experiencing difficulty in their practice will often self-select out of teaching even without the intervention or encouragement of their employer. Teaching is intellectually, physically, emotionally and organizationally demanding work that requires one to be fully visible to students, other teachers, administrators and parents all the time. By its nature, the work of a teacher extends into their personal and family life, after hours and on weekends and holidays. Those who find that they are not up to the demands of the job will often simply remove themselves from the profession. In this light, the relatively high rate of attrition, particularly in the early years of teaching, ought not to be regarded as entirely negative. Others, if they are able and at an appropriate point in their career, will accelerate their retirement plans, collecting their pension earlier than they might have originally planned or expected.

Those teachers who have demonstrated competent practice previously but are now struggling to do so may be suffering from health and wellness issues more appropriately dealt with by utilizing sick leave and extended disability provisions that provide an opportunity for treatment, recovery and, ideally, a return to work. Where this is not possible, there are provisions in collective agreements and associated employee benefit programs that enable teachers who are no longer able to practice to receive an ongoing income while on indeterminate leave and/or, where appropriate, to be facilitated in resigning their employment to pursue other occupational paths more suited to their current capabilities.

Considering all the situations described above and because there exist multiple means by which issues of competence might be more effectively managed, superintendents who have had responsibility for acting as its gatekeepers have very rarely found it necessary to even consider pursuing remedies that employ the practice review process. Linking competence to conduct in the manner proposed is a potential invitation for employers to shortcut their responsibilities by offloading alleged cases of teacher competence onto the processes and mechanisms designed to respond to conduct. This potentially may create a significant volume of business for the Commissioner, business that the Commissioner and her processes are ill equipped to manage.



In addition to reading into the code of conduct provisions related to the quality standards, the proposed content creates the expectation that teachers' compliance with legislation and policies is a matter of conduct. The contents of legislation and policy are particular and potentially arbitrary and politicized. They are also more subject to change and their content and application in particular cases may be legitimately contested. The government and the employer acting as agent of government have other ways of enforcing legislation and policies and should take direct responsibility for doing so rather than foisting this off onto the processes primarily designed and intended to uphold professional conduct. The inclusion of this provision will be viewed by teachers as providing government with a means to suppress the exercise of their professional judgment and as an affront to their rights and identity as citizens.

Teachers and teacher leaders should provide a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging.

Teachers and teacher leaders should not harm or abuse any student whether verbally, physically, sexually, psychologically or emotionally. (A similar concept appears in a regulation in Ontario.)

Teachers and teacher leaders should not engage in or allow students to engage in illegal activities. (Similar related concepts appear in standards and regulations in Ontario, British Columbia and Saskatchewan.)

While the content proposed in the items above would be relatively uncontroversial, the individual items taken collectively illustrate an inconsistency in the level of specificity of the code. Some of the statements are broad and aspirational; others are very specific; still others are to be found in the relevant Quality Standards. Some reflect content and requirements already set out in provincial and federal legislation, including the Criminal Code of Canada. The new code should strive for consistent tone and scope across its component sections and should not duplicate the content of other relevant legislation.

Teachers and teacher leaders should not teach or lead in a manner that exploits their relationship with students, while in a position of authority, for ideological, material or other advantage.

(A similar concept appears in professional standards established by the British Columbia Teachers' Council and the code of ethics established by the British Columbia Teachers' Federation.)

Notwithstanding the observation above about consistency of tone and scope, the content above purports to be similar but in fact departs significantly from the referenced provision within the *Professional Standards for BC Educators*: "Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage." It is difficult to understand the effect of the differences (e.g., deletion of references to "abuse" and "sexual [exploitation]" and the introduction of the condition "while in a position of authority"), isolated from the context of



the entire code. This points to the necessity of re-evaluating the draft code in its entirety before it is finalized and not presuming that the response from the survey is definitive.

Teachers and teacher leaders should make efforts to establish a relationship of trust and be respectful in all forms of communication with parents and about parents.

Teachers and teacher leaders must provide parents with accurate evaluations of their child's progress.

Teachers and teacher leaders are expected to treat information received from parents with professional discretion.

Teachers and teacher leaders should not discuss other students with parents except where the matter being discussed is relevant to their child and only to the extent that it is necessary in the judgment of the teacher or teacher leader.

Previous observations concerning inconsistency in the level of specificity of the potential content being suggested for inclusion in code apply here. Again, some of the statements are broad and aspirational; others are very specific. The new code should strive for consistent tone and scope across its component sections. A specific concern relating to the identification of a responsibility to report to parents (understanding that the term encompasses other guardians) relates to reporting on students who are emancipated or of the age of majority.

Teachers and teacher leaders should not undermine students' confidence in other teachers or teacher leaders.

Teachers and teacher leaders should not criticize the professional competence or professional reputation of another teacher or teacher leader, except in confidence to proper officials, and only after the other teacher or teacher leader has been informed of the criticism.

NOTE: The exception to this rule is if the complainant is filing a formal complaint against a teacher colleague using the established legislated process, in which case the complainant is not required to inform the teacher colleague first.

When making any kind of report on the professional performance of another colleague, teachers and teacher leaders must do so in good faith and, prior to submitting the report, provide the teacher with a copy of the report, unless they are filing a complaint under legislation.

Teachers and teacher leaders must not take steps to have another teacher or teacher leader disciplined or dismissed due to animosity or personal advantage.



These sections are consistent with the existing Association code and are not problematic in themselves; however, “teacher on teacher” matters are probably best investigated and ultimately adjudicated by persons with experience in the profession. Ideally, they should be submitted to the professional organization to resolve using a variety of approaches available to facilitate dispute resolution. It remains to be seen whether this will be possible under the new regulatory regime.

Teachers and teacher leaders should report the conduct of a colleague to an appropriate authority (e.g., their employer or the Alberta Teaching Profession Commission) if they suspect that a colleague is abusing a student physically, sexually, psychologically, or emotionally. (A similar concept is included in Saskatchewan’s standards.)

It is odd that this potential content of the code should be normatively framed using the word “should,” particularly given that there is a positive duty to report child abuse in other legislation. The failure to include police among the parenthetical examples of “appropriate” authorities suggests that this responsibility is absolved once a report is made to the employer or the Commission—if this is in fact government’s intention, then this should be made explicit.

Teachers and teacher leaders should respect the authority of their employer and school administration.

Teachers and teacher leaders should behave in a manner that maintains the good reputation of the school or school authority.

Teachers and teacher leaders should behave in a manner that respects the values of the school and school authority.

Teachers and teacher leaders should follow proper channels of communication and the policies of their school or school authority when expressing operational concerns. (School authority means the governing body of the school, such as the board)

While they must follow proper channels of communication and the policies of their school or school authority, teachers and teacher leaders still have a duty to protest administrative policies and practices that they cannot accept in good conscience.

Teachers and teacher leaders should have opportunities to express their opinions and bring forward suggestions about the administration of the school.

Teachers and teacher leaders should notify their school administration or employer if they are assigned duties that make it difficult to teach or carry out other related duties.

Teachers and teacher leaders are expected to fulfill the terms of their employment contract.



As was commented upon previously, the proposed content for the government's code conflates conduct with practice. The section above adds to the general conceptual confusion by proposing to include matters strictly related to employment (and properly dealt with using employee management processes and remedies). The result is to undermine the legitimacy of the proposed code by turning it into a bludgeon to be used by employers and the government to coerce teacher compliance, even when such compliance may be contrary to the professional judgment of teachers.

Again, if employers are of the opinion that an employee has violated their fiduciary obligations, then there are mechanisms to impose sanctions (and mechanisms for the employee and their representative union to defend against same). The provisions that teachers should maintain the "good reputation" and "respect the values of" are deeply disturbing and in some circumstances may be at odds with the personal professional judgment of the teacher and the public interest. Furthermore, I doubt that the Commissioner would want to become engaged with upholding the reputation and values of school boards whose reputation and values might be problematic in the context of a free and democratic society.

Teachers and teacher leaders should not engage in activities that would negatively affect the quality of their professional service.

This seems to be rather over-reaching and, potentially, an intrusion into the personal lives of teachers. Outside the school, teachers have a right to engage in activities even if doing so might be seen by others as diminishing the quality of their professional service. The issue that is relevant is whether the quality of professional service provided is acceptable when measured objectively against the criteria set out in the Teaching Quality Standard and the teacher's contract of employment. If there is an issue that emerges, then it can be dealt with by the employer using processes in place for that purpose.

Teachers and teacher leaders are expected to complete required professional development training. (A similar concept is included in Saskatchewan's conduct standards.)

This is a novel provision that begs the question "required by whom?" By the employer? By the government? And what obligations does that now impose upon employers and government should they "require" professional development? We wonder whether this signals the intention of government to impose in a top-down fashion continuing professional development requirements that may not reflect the priorities of individual teachers.

As noted before, if some course of professional development is a requirement of the teacher's job, then the employer can pursue sanctions if the teacher fails to complete it—this is not an issue of conduct or, for that matter, competence.



Conclusion

The comments above capture and expand upon general observations made in the one conversation that occurred between government and Association officials about the Code of Professional Conduct in the context of Bill 15 prior to the release of the public consultation. Generally, it is difficult to respond meaningfully to a patchwork of potential content. As indicated in the conversation, the Association is prepared to respond further once government has arrived at a draft code.

Nothing, however, that government is likely to do at this juncture will address the fundamental insult to the profession entailed by removing from teachers the responsibility of determining the contents of the code of conduct that will govern them. Whatever platitudes might be spouted, the manner in which the government has undertaken this process stands in stark contrast to the treatment that has been historically accorded other professions, few of which would be able to match the 85-year record of the Association in protecting the public interest through the discipline processes it has administered effectively and with the support of its members, to the satisfaction of successive governments and in accordance with legislation.

