

Update

Cavalluzzo Hayes Shilton
McIntyre & Cornish

JUNE 2001

HARRIS GOVERNMENT LEGISLATES MANDATORY TEACHER RE-CERTIFICATION

BILL 80: STABILITY AND EXCELLENCE IN EDUCATION ACT, 2001 First Reading

On Tuesday 12 June 2001, the Harris Government introduced Bill 80, the *Stability and Excellence in Education Act, 2001* for First Reading in the Legislature.

TABLE OF CONTENTS

A. College's Objects	2
B. Statutory Framework	2
1. Overview	2
2. Professional Learning Committee	3
3. Minister's Transitional Powers	4
4. College's Duties	4
5. Mandatory Professional Learning Requirements	5
6. Notice of Professional Learning Status	6
7. Registration Appeal Committee Review re Inability to Complete Requirements within Five Year Period	6
8. Suspension of a Member's Certificate	7
9. Cancellation of a Member's Certificate	8
10 Registration Appeals Committee Review re Suspension or Cancellation of Certificate	9
11 Right of Appeal to Court	10
12 Council's Regulation-Making Power	10
13 Cabinet's Regulation-Making Power	10

14 College By-Laws 11

CAVALLUZZO HAYES SHILTON MCINTYRE & CORNISH

Barristers & Solicitors

43 Madison Avenue

Toronto, Ontario M5R 2S2

Ph. (416) 964-1115 Fax. (416) 964-5895

www.cavalluzzo.com

If you have any questions, contact:

Fay Faraday (416) 964-5512

ffaraday@cavalluzzo.com

Bill 80 amends both the *Education Act* and the *Ontario College of Teachers Act, 1996*. The amendments to the *Education Act* are set out in Schedule A to Bill 80. The amendments to the *Ontario College of Teachers Act* are set out in Schedule B.

In particular, Bill 80 does the following:

- * introduces mandatory teacher re-certification;
- * repeals some of the unproclaimed provisions from last year's Bill 74 regarding co-instructional activities;

certificates of qualification and registration. [emphasis added]

- * makes amendments to the *Education Act* in relation to how secondary teachers' activities may be counted towards meeting their 6.67 program workload; and
- * prescribes that all new collective agreements must expire on 31 August 2004 and requires that after this date all collective agreement must run for three-year terms.

This summary reviews the changes to the *Ontario College of Teachers' Act* which introduce mandatory teacher professional learning and re-certification. A separate and accompanying document reviews the amendments to the *Education Act*.

MANDATORY RE-CERTIFICATION FOR TEACHERS

Bill 80 makes teacher professional learning and re-certification mandatory by amending the *Ontario College of Teachers Act, 1996* to

- * expand the scope of the College's mandate; and
- * introduce a new Part III.1 to the Act which prescribes the framework for mandatory professional learning and re-certification.

College's Objects Now Include Mandatory Re-Certification

While s. 3(1) para. 6 of the *Ontario College of Teachers Act* had previously identified one of the College's objects as being "to provide for the ongoing education of members of the College", Bill 80 replaces this with the following object which broadens the College's objects in relation to professional learning. Bill 80 makes it part of the College's objects

"To provide for the ongoing education of members of the College, including professional learning required to maintain

Statutory Framework for Mandatory Professional Learning and Re-Certification

Bill 80 introduces Part III.1 to the *Act* which sets out the statutory framework for mandatory professional learning and re-certification.

1. Overview

A new Professional Learning Committee will approve courses that can be considered "professional learning courses" and will approve those persons and entities that can provide professional learning courses ("providers").

Under this framework no course shall be approved as a professional learning course unless it meets the minimum course criteria, which will be established by regulation. No person or entity may provide a professional learning course unless they are approved as a "provider": s. 24.4.

Under the mandatory professional learning provisions, in order to qualify for re-certification, every five years each teacher will be required to successfully complete 14 professional learning courses: 7 elective courses and 7 mandatory courses. Cabinet will make regulations establishing standards for measuring the outcomes expected of members who take professional learning courses.

Failure to successfully complete the required courses within the prescribed five year period will result in the teacher's certification being suspended. If the member fails to complete the outstanding courses within 10 months of his or her certificate being suspended, the member's certificate will be cancelled.

Bill 80 sets out procedures by which a member can ask that a notice of intention to either suspend or cancel the member's licence be reviewed by the Registration Appeals Committee. A decision by the Registration Appeals Committee can be appealed to the Divisional Court.

Starting in September 2001, 40,000 randomly-selected teachers who are currently teaching, all newly certified teachers, and teachers from out-of-province who are teaching on an interim certificate will be required to commence the five-year cycle of mandatory professional learning and re-certification.

Starting in September 2002, all the remaining College members, who are members on 1 January 2003, will begin their five-year cycle of professional learning and re-certification.

The amendments regarding professional learning come into effect on the day Bill 80 receives Royal Assent.

This statutory framework is discussed in more detail in the sections below.

2. Professional Learning Committee

Bill 80 establishes the College's Professional Learning Committee: s. 24.1(1).

This Committee will be composed of

- * not more than five persons who are appointed by the Minister; and
- * six persons who are appointed by the Council. Of these six Council appointees, two persons must be individuals elected to Council by the College membership; two persons must be persons appointed to the Council by Cabinet; and two persons must be members of the College who are not members of Council: s. 24.1(2).

While s. 24.1(2)(a) gives the Minister the authority to appoint up to five persons to sit on the Committee, the Minister is not required to appoint any committee members under this power: s. 24.1(3).

With respect to the first appointments to the Committee, the Minister shall set a date by which all appointments must be made: s. 24.1(5).

However, if the Council does not make all its appointments to the Committee by the prescribed

deadline, the Minister shall appoint the number outstanding. If the Minister makes these appointments, the three prescribed categories of appointees (i.e. elected Council members, appointed Council members, non-Council members) do not apply: s. 24.1(6).

Where the Minister appoints members to the Professional Learning Committee, these members shall be paid by the Minister: s. 24.1(14).

As set out in s. 24.1(8), the duties of the Professional Learning Committee are

- * to approve persons or entities as providers of professional learning courses;
- * to approve courses as professional learning courses;
- * to establish a procedure for applying for approval as a provider and for approval for a professional learning course;
- * to conduct regular reviews of providers and professional learning courses to ensure that providers and professional learning courses continue to meet the current criteria for approval; and
- * to perform such additional duties as are prescribed by the regulations.

The Minister will set a date by which the Committee must establish the procedure for applying for approval as a course provider and for approval of a professional learning course. By the same prescribed date, the College must make the procedures and criteria for approval available to the public by any method it considers appropriate: s. 24.1(10).

Bill 80 sets out a number of powers that the Professional Learning Committee may exercise: s. 24.1(11) and (12). These powers include the following:

- * to establish criteria for approval of persons or entities as providers and criteria for approval

of courses as professional learning courses in addition to the minimum course criteria;

- * to impose terms and conditions on approvals of providers and professional learning courses and establish the period for approval;
- * to determine the procedure for withdrawing its approval of a provider or course;
- * to establish standards for measuring the outcomes expected of members who take a professional learning course; and
- * to exercise such additional powers as are prescribed by the regulations.

Where regulations are made in respect of either the duties or powers of the Committee, the Professional Learning Committee shall perform its duty and exercise its power in accordance with the regulation: s. 24.1(9) and (13).

If the Professional Learning Committee does not approve a person or entity as a “provider” or a course as a professional learning course, regulations made under Bill 80 will allow the Committee’s decision to be reconsidered by the person or body specified in the regulations and to be reconsidered in accordance with the procedure set out in the regulations: s. 24.2.

3. Minister’s Transitional Powers to Approve Courses and Providers

Under Bill 80, the Minister is given transitional powers to approve and withdraw her or his approval of both course providers and professional learning courses. However, Bill 80 states that these transitional powers do not affect the duty of the Professional Learning Committee to approve providers and professional learning courses: s. 24.3(4). It appears, then, that for an initial period, the Minister and the Professional Learning Committee may both be authorized to exercise these powers.

The Minister’s transitional powers are as follows.

On or before 30 June 2002 or such other date as is prescribed by regulation, the Minister may

approve persons or entities as providers of professional learning courses and approve courses as professional learning courses: s. 24.3(1).

The Minister may set terms and conditions upon his or her approval and may also withdraw such approval: s. 24.3(2), (6).

Any provider or course approved by the Minister under this power shall be deemed by have been approved by the Professional Learning Committee: s. 24.3(3).

The Minister’s decision to approve or not approve a provider or course is not subject to reconsideration: s. 24.2(2).

The Minister shall make available to the public a list of the providers/courses that he or she has approved or shall direct the College to make that list available: s. 24.3(5).

The Minister may in writing delegate any of his or her powers under s. 24.3 to be exercised by the Deputy Minister or any other officer or employee in the Ministry or to be exercised by the Chair of the College Council. The Minister may in writing limit such a delegation of power as he or she considers advisable: s. 24.3(7) to (9).

4. College’s Duties

Subject to the regulations, the College shall make available to the public the current procedure for applying for approval as a provider and for approval of a professional learning course and shall make available a current list of providers and professional learning courses that have been approved by the Professional Learning Committee: s. 24.5(1) and (2).

As set out in more detail below, the College is also required to keep a record of the professional learning courses completed by each member.

5. Mandatory Professional Learning Requirements

The mandatory professional learning requirements are set out in the new s. 24.6 of the *Act*.

In order to maintain his or her certificate of qualification and registration, every member shall successfully complete, in accordance with the Act and the regulations, the following courses every five years:

- * seven elective professional learning courses; and
- * seven core professional learning courses consisting of one professional learning course from each of the seven categories of professional learning courses established by regulations. In its news releases, the Government identifies these seven categories as focussing on
 - * curriculum knowledge;
 - * student assessment;
 - * special education;
 - * teaching strategies;
 - * classroom management and leadership;
 - * use of technology; and
 - * communicating with parents and students.

As set out in the new s. 64 of the *Act*, the first group of teachers to be subject to this mandatory professional learning and re-certification process will consist of

- * 40,000 randomly-selected members of the College who are currently involved in classroom teaching;
- * members who hold a new certificate of qualification and registration and will be teaching in a classroom in Ontario for the first time with that certificate as of the school year starting September 2001; and
- * members from out-of-province who hold an interim certificate of qualification and are teaching in a classroom in Ontario for the first time with that certificate as of the school year starting September 2001.

The 40,000 randomly-selected current teachers will be selected by the College before 1

September 2001 and the College will notify each such member in writing without delay: s. 64(2) and (3).

For this first group, the five-year period for mandatory professional learning and re-certification commences on 1 September 2001 and ends on 31 December 2006: s. 64(1).

For all other members of the College, the first five-year period of mandatory professional learning and re-certification will commence on 1 September 2002 and end on 31 December 2007.

After these initial five-year periods, the five-year re-certification period will commence on 1 January of the appropriate year: s. 24.6(3).

If a member does not fulfil the mandatory professional learning requirements set out above, the Registrar shall, subject to sections 24.7 to 24.11 and the regulations, suspend or cancel the member's certificate of qualification and registration and shall do so in accordance with those sections and the regulations: s. 24.6(4).

6. Notice of Professional Learning Status

The College shall, in respect of each member, keep a record of each core and elective professional learning course that the member has successfully completed and update the record annually: s. 24.5(3).

The Registrar shall give a member, at the member's request, a copy of each document the College has that is relevant to the member's professional learning status: s. 24.5(4).

Not later than 30 June prior to the end of the five-year period by which a member must complete their professional learning requirements, the Registrar:

- * shall send to the member a copy of the record the College has kept of the number and description of core and elective professional learning courses that the

member has successfully completed and shall identify the professional learning courses that the member shall successfully complete before the end of the five-year period in order to maintain his or her certificate of qualification and registration; and

- * shall send to the member a notice that the member may
 - * provide evidence satisfactory to the Registrar to correct an error in the record; and
 - * request a review by the Registration Appeals Committee if
 - * the Registrar does not find the member's evidence satisfactory; or
 - * the member wishes to provide the Committee with an explanation as to why he or she will not be able to successfully complete the outstanding professional learning courses by the end of the five-year period: s. 24.7.

7. Registration Appeals Committee Review re Inability to Complete Requirements within Five Year Period

Where a member requests a review by the Registration Appeals Committee because the member wishes to explain why he or she will not be able to complete the outstanding professional learning courses by the end of the five-year period, the member must make the request in writing and must serve it on the Registrar not later than 31 October: s. 24.8(1) and (2).

The request for review must be accompanied by the fee prescribed in the by-laws for that purpose, although the Registration Appeals Committee may order that the fee be returned where, in the opinion of the Committee, to do so would be appropriate in all of the circumstances: s. 24.8(2) and (14).

The request for review may be accompanied by written submissions: s. 24.8(3).

Where a member requests a review, the Registration Appeals Committee shall conduct the review unless, in its opinion, the request for review is frivolous, vexatious or an abuse of process: s. 24.8(4) and (5).

The Registration Appeals Committee may extend the time for requesting a review where it is satisfied that there are apparent grounds for granting relief and that there are reasonable grounds for applying for the extension: s. 24.8(6).

The Registration Appeals Committee may give such directions to the member, the Registrar or both as it considers appropriate consequent on the extension and these directions may be given either before or after the Registration Appeals Committee conducts its review: s. 24.8(7) to (8).

The directions that may be given to the Registrar under these provisions include but are not limited to directions to impose specified terms, conditions or limitations on the member's certificate of qualifications and registration: s. 24.8(9).

The Registration Appeals Committee shall ensure that the person requesting the review is given an opportunity to examine and make written submissions on any documents that the Committee intends to consider in making its decision on the review: s. 24.8(10).

Before making a decision or giving a direction, the Registration Appeals Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions (except for those written submissions from the member that may accompany the original request for review, and the written submissions in relation to documents the Committee intends to rely upon): s. 24.8(11).

After considering the request for review, the Registration Appeals Committee may make an order doing one or more of the following:

- * directing the Registrar to impose specified terms, conditions or limitations on the member's certificate subject to

removal upon evidence satisfactory to the Registrar that such terms or conditions have been met or that such limitations are no longer necessary; or

- * directing the Registrar that the issuance of any notice of intention to suspend or cancel or the suspension or cancellation of the member's certificate be postponed for a specified period and such notices not be issued or such actions not be taken if, upon evidence satisfactory to the Registrar, the specified terms or conditions are met within that period: s. 24.8(12).

In making an order above, the Registration Appeals Committee shall not reduce the number or change the type of professional learning courses required in respect of the five-year period: s. 24.8(13).

8. Suspension of a Member's Certificate

Subject to s. 24.9 and 24.11 and the regulations, the Registrar shall suspend a member's certificate of qualification and registration if the member fails to fulfil the professional learning requirements. That suspension shall be made in accordance with s. 24.9, s. 24.11 and the regulations: s. 24.9(1).

The Registrar shall not suspend the member's certificate without first giving the member two-months notice of the member's failure to fulfil the professional learning requirements and of the Registrar's intention to suspend: s. 24.9(2).

The Notice must state that

- * before the expiration of the two-month notice period, the member may provide the Registrar with evidence that he or she has successfully completed the outstanding professional learning courses specified in the notice and that the Registrar shall withdraw the notice of intention to suspend if the Registrar is satisfied with such evidence; or

- * the member may request a review by the Registration Appeals Committee: s. 24.9(3) and (4).

Where the member requests a review, again the request must be made in writing, must be served on the Registrar within 60 days after the notice of intention to suspend is served on the member and must be accompanied by the prescribed fee: s. 24.9(5). The fee may be returned where the Registration Appeals Committee is of the opinion that it is appropriate in all the circumstances: s. 24.11(11).

The request for review may be accompanied by written submissions: s. 24.9(6).

The Registrar shall suspend the member's certificate where

- * the member does not, within the two months stated in the notice, provide the Registrar with evidence satisfactory to the Registrar that the member has successfully completed the outstanding professional learning courses; or
- * does not request a review by the Registration Appeals Committee within the 60 day time limit for doing so: s. 24.9(7).

The Registrar shall give a member written notice of a suspension: s. 24.9(8).

A person whose certificate has been suspended by the Registrar is entitled to have the suspension removed if, prior to cancellation of the certificate, the Registrar receives evidence satisfactory to the Registrar that the member has completed the outstanding professional learning courses specified in the notice of intent to suspend: s. 24.9(9).

The outstanding professional learning courses referred to in the notice of suspension and successfully completed under s. 24.9(9), cannot be applied towards the member's next five-year period: s. 24.9(10).

Section 34 of the *Act* which allows the Council or Executive Committee to reinstate a member without a hearing does not apply to a member whose certificate was suspended under Part III.1: s. 24.9(11).

9. Cancellation of a Member's Certificate

If a member's certificate of qualification and registration has been suspended under s. 24.9 or s. 24.11(6) or (9), and the suspension has not been removed, the Registrar shall, subject to s. 24.10, s. 24.11 and the regulations, cancel the member's certificate 10 months after the date of the suspension. The cancellation shall be done in accordance with s. 24.10, s. 24.11 and the regulations: s. 24.10(1).

The Registrar again will give the member two months' notice of the member's failure to fulfil the professional learning requirements and the Registrar's intention to cancel their certificate: s. 24.10(2).

The Notice shall state that

- * before the expiration of the two month period stated in the notice, the member may provide the Registrar with evidence that the member has successfully completed the outstanding professional learning requirements and that the Registrar shall withdraw the notice of intention to cancel if the Registrar is satisfied with such evidence; or
- * the member may request a review by the Registration Appeals Committee: s. 24.10(3) and (4).

The request for a review by the Registration Appeals Committee must be made in writing, be served on the Registrar within 60 days after the member is served with the Notice, and must be accompanied by the prescribed fee: s. 24.10(5). The fee may be returned where the Registration Appeals Committee is of the opinion that it is appropriate in all of the circumstances: s. 24.11(11).

The request for review may be accompanied by written submissions: s.24.10(6).

Under s. 24.10(7), the Registrar shall cancel the member's certificate where

- * the member does not provide the Registrar with satisfactory evidence of having successfully completed the outstanding professional learning courses before the expiry of the two month period stated in the notice; or
- * the member does not request a review by the Registration Appeals Committee.

The Registrar shall give the member written notice of the cancellation of their certificate: s. 24.10(8).

If a member's certificate is cancelled under s. 24.10(7) or under s. 24.11(6) or (9), the member may apply for certificate under s. 18(1) of the *Act*: s. 24.10(9).

The outstanding professional learning courses that are set out in the notice of intention to cancel a member's certificate that are successfully completed by a member, cannot be applied towards the member's next five-year period: s. 24.10(10).

10. Registration Appeals Committee Review re Suspension or Cancellation of a Certificate

Where in response to a notice of intention to either suspend or cancel the member's certificate, a member requests a review by the Registration Appeals Committee, the Registration Appeals Committee shall conduct the review unless, in its opinion, the request for review is frivolous, vexatious or an abuse of process: s. 24.11(1) and (2).

The Registration Appeals Committee may extend the 60 day period for requesting a review under either s. 24.9(5) or s. 24.10(5) where it is satisfied that there are apparent grounds from granting relief and that there are reasonable grounds for applying for the extension: s. 24.11(3).

The Registration Appeals Committee may give such directions to the member, the Registrar or

both, that it considers appropriate consequent on the extension and may do so either before or after it conducts the review: s. 24.11(4) and (5).

Directions that may be given to the Registrar include but are not limited to the following:

- * directions to continue or reinstate the member's certificate pending the Registration Appeals Committee's review;
- * directions to impose specified terms, conditions or limitations on the member's certificate; or
- * directions to suspend or cancel the member's certificate: s. 24.11(6).

The Registration Appeals Committee shall ensure that the person who requested the review is given an opportunity to examine and make written submissions on any documents that the Committee intends to consider in making its decision on the review: s. 24.11(7). However apart from these written submissions and the written submissions that may accompany the member's request for review, the Registration Appeals Committee need not hold a hearing or afford to any person an opportunity for a hearing or an opportunity to make oral or written submissions before the Committee makes its decision or gives a direction under s. 24.11: s. 24.11(8).

After considering the request for review, the Registration Appeals Committee may make an order doing one or more of the following:

- * directing the Registrar to remove a suspension or cancellation and reinstate a member's certificate;
- * directing the Registrar to remove a suspension or cancellation and reinstate the member's certificate upon the member providing the Registrar with specified information;
- * directing the Registrar to impose specified terms, conditions or limitations on the member's certificate which are subject to

removal upon presenting evidence satisfactory to the Registrar that such terms, conditions or limitations have been met;

- * directing the Registrar to suspend or cancel the member's certificate: s. 24.11(9).

In making a direction or order under s. 24.11, the Registration Appeals Committee may not reduce the number or change the type of professional learning courses required in respect of the five-year period in question: s. 24.11(10).

The Registration Appeals Committee shall give its decision in writing with reasons and shall serve them on the person who requested the review: s. 24.11(12).

11. Right of Appeal to Court

Under s. 35 of the *Act*, a person who requests a review by the Registration Appeals Committee under s. 24.8, s. 24.9 or s. 24.10 is entitled to appeal the Registration Appeals Committee's decision to the Divisional Court.

12. Council's Regulation-Making Powers

In s. 40 of the *Act*, the College Council may, subject to the approval of Cabinet, make regulations with respect to a list of matters.

By Bill 80, the Council's regulation-making powers in s. 40 are amended to clarify that while the Council continues to have the power to make regulations with respect to the matters listed in s. 40, this power does not include the ability to make regulations in respect of professional learning requirements, professional learning courses, or the Professional Learning Committee.

13. Cabinet's Power to Make Regulations on Professional Learning Requirements

Instead, Bill 80 enacts a new s. 42.1 which gives Cabinet exclusive authority to make regulations in relation to professional learning requirements. Cabinet is given the authority to make regulations

in relation to 20 different aspects of the *Act's* new professional learning requirements. Among these are the power to make regulations in respect of:

- * practice and procedure of the Professional Learning Committee;
- * additional duties and powers of the Professional Learning Committee;
- * the approval of persons or entities as providers of professional learning courses;
- * the approval of courses as professional learning courses;
- * the minimum criteria that a course shall meet in order to be approved as a professional learning course;
- * establishing standards, or requiring the Professional Learning Committee to establish standards, for measuring the outcomes expected of members who take a professional learning course;
- * prescribing members who or certificates that are exempt from the requirement to fulfil the mandatory professional learning courses;
- * establishing the seven categories of mandatory core professional learning courses; and
- * including a general power to make regulations "respecting the Professional Learning Committee and professional learning requirements" that are not otherwise itemized in s. 42.1.

In addition, the Minister has the power to make policy directives with respect to matters relating to professional learning course content and curriculum and to require the Professional Learning Committee to comply with the directives: s. 42.2.

14. College By-Laws

Finally, Bill 80 gives the College Council authority to make by-laws requiring members to provide the College with information about their participation in ongoing education programs, other than information about professional learning courses that members have not successfully completed.