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## Memo

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Date: February 24, 2020  
To: Members of Council  
From: Paul Picard, OCT  
Interim Deputy Registrar  
Subject: **College Policy – Funding for Therapy and Counselling Program**

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At the December 5-6, 2019 meeting, Council received a policy framework document outlining recommendations for alternative eligibility and cessation criteria applicable to the program to provide funding for therapy and counselling for claimants alleging sexual abuse or a prohibited act of child pornography against a member of the College in the course of his or her practice.

At that meeting, Council approved the framework document with the following motion:

**That Council recommend to the Minister of Education the policy direction outlined in document GC20191205-131 for the development of a Council regulation relating to eligibility and cessation of eligibility criteria to support the establishment and administration of the sexual abuse therapy and counselling funding program.**

The program to provide funding for therapy and counselling came into effect on January 1, 2020. Regulatory development with the Ministry of Education continues and portions of Council's policy direction will be identified in a draft regulation, which is anticipated for Council's review at the June 2020 Council meeting.

While the College awaits regulatory provisions, the policy in the attached document reflects Council's recommendations as approved in December 2019, and will be in place to support the administration of the program.

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Paul Picard, OCT

## Policy Review Template

### Policy Title: Determination of Eligibility for Funding for Therapy and Counselling

Policy #: CC-43	Location: (available after approval)
Reviewed by: Council	
Initial Approval Date: Dec. 5, 2019	Approved by Council: Dec. 5, 2019
Review Cycle: 3 years	Next Review Date: 2023
Version History: December 2019 / March 2020	

#### 1. Policy Statement

In May 2018, the Ontario Legislature passed Bill 31, the *Plan for Care and Opportunity Act (Budget Measure Act), 2018*. The amendments to the *Ontario College of Teachers Act (OCTA)*, contained in Schedule 19 of the Bill, included the establishment of a program to provide funding for therapy and counselling for claimants alleging sexual abuse or a prohibited act of child pornography against a member of the College in the course of his or her practice.

While the College awaits regulatory provisions, this policy will be in place to support the January 1, 2020 implementation of the program as required under the OCTA.

#### 2. Policy Purpose

Determining alternative eligibility requirements for the Funding for Therapy and Counselling Program falls within Council's purview.

Despite subsection 58.1(3) of the OCTA, claimants' eligibility to receive funding pursuant to the program purposes will cease upon the occurrence of prescribed circumstances. Identifying these cessation criteria also falls within Council's jurisdiction.

At the December 5-6, 2019 Council meeting, Council approved a policy framework document setting out its recommendations for alternative eligibility and cessation criteria. This policy document reflects Council's direction.

#### 3. Funding Program Details

Section 58.1 of the OCTA outlines the funding for a therapy and counselling program. Claimants are eligible under subsection (3), if:

- (a) it is alleged in a complaint or report against a member received by the College that the student was the subject of sexual abuse or of a prohibited act involving child pornography and, in the opinion of the College, the student was, at the time of the alleged sexual abuse or prohibited act involving child pornography, a student the member supervised or was responsible for in the course of the member's practice; or
- (b) the alternative requirements prescribed by the regulations made by the Council are satisfied.

Regulation 438/19 is a Lieutenant-Governor-in-Council (LGIC) regulation made under the OCTA. It prescribes additional purposes for which funding may be provided and matters involving funding amounts, such as the maximum amount and the period of time within which funding may be provided.

Additional details of the program include:

- Students are primary claimants.
- Students' parents, guardians and siblings, as secondary claimants, may also claim for therapy or counselling, provided that the purpose of the therapy or counselling is to allow them to support the student.
- A funding determination is not a finding against a College member and cannot be considered by any College committee dealing with the member.
- Claimants are not required to undergo any psychological or other assessment.
- Both the Act and the LGIC regulation set out requirements for, and restrictions on, who can provide counselling and therapy, including Indigenous healers and Elders.
- Reimbursement of therapy/counselling costs is payable to primary and secondary claimants payable to either claimants or treating counsellors/therapists.
- Funding is available for therapy/counselling that has already been provided in respect of the sexual abuse/child pornography.
- Funding will be reduced by the amount OHIP or private insurance is required to pay.
- The College has the right to recover amounts paid from College members who are found guilty of professional misconduct involving sexual abuse or prohibited acts involving child pornography.
- Eligible claimants are not required to testify at recovery proceedings.

#### **4. General Funding Program Requirements**

The College must have received:

- a) a complaint, or
- b) an employer report.

The complaint or employer report must allege:

- a) an act of sexual abuse or a prohibited act involving child pornography within the meaning of the *OCTA* against a member
- b) a student was the subject of the sexual abuse or a prohibited act involving child pornography
- c) the student was, at the time of the sexual abuse or a prohibited act involving child pornography, a student the member supervised or was responsible for in the course of their practice or if the member's practice facilitated the member's relationship with, or access to, the student.

There is no geographic limitation with respect to where the sexual abuse or prohibited acts of child pornography may have occurred.

## 5. Alternative Eligibility Requirements

Claimants who satisfy one or more of the following alternative eligibility criteria would be eligible for funding. All alternative eligibility criteria will rely on evidentiary proof.

1. A Discipline Committee panel has made a finding that the College member committed sexual abuse or a prohibited act of child pornography against a student, other than the complainant who filed the initial complaint against the member, provided the need for therapy and counselling resulted from the sexual abuse or prohibited act of child pornography.
2. A member has given an acknowledgment, an undertaking, a statement, an admission to, or enters into an agreement with, the College that the member sexually abused the student and/or the student was the subject of a prohibited act of child pornography, provided the need for therapy and counselling resulted from the sexual abuse or prohibited act of child pornography.
3. There has been an allegation of sexual abuse or prohibited act of child pornography, which has been referred to the Discipline Committee, but there was no hearing because the member:
  - a) has died,
  - b) is incapacitated,
  - c) cannot be located,
  - d) is otherwise unable to testify, or
  - e) has been previously disciplined for the same conduct with another student or person.

The need for therapy and counselling must have resulted from the sexual abuse or prohibited act of child pornography

4. A civil court or another administrative tribunal has found that the College member sexually abused the student or that the student was the subject of a prohibited act of child pornography, provided the need for therapy and counselling resulted from the sexual abuse or prohibited act of child pornography.
5. The College member has been convicted of a criminal offence of a sexual nature or involving child pornography under the *Criminal Code*. The Discipline Committee's rules of procedure explicitly allow a panel to admit into evidence proof of a prior conviction, as well as findings of fact in the prior proceedings, provided the need for therapy and counselling resulted from the sexual abuse or prohibited act of child pornography.
6. A claimant who was otherwise eligible for funding for therapy and counselling under either the general or alternative eligibility criteria would not receive funding if, in the opinion of the Registrar following a review of the evidence related to the circumstances, any of the following occur:
  - a) The need for therapy or counselling no longer results directly from the sexual abuse or prohibited act of child pornography on which the original allegation

- was based; or
- b) The College's resources are insufficient to provide the funding reimbursement amount requested.

## **6. Cessation of Funding**

Funding for the College's therapy and counselling program would cease in any one of the following circumstances:

1. Once the claimant has reached the maximum amount of funding, capped at \$16,060, no further funding will be made available to the claimant.
2. The application is determined to be frivolous, vexatious or an abuse of process, and the claimant has not exhausted the maximum amount of funding.
3. A panel of the Discipline Committee or an appellate court has made a finding of not guilty with respect to the allegations of sexual abuse or prohibited acts of child pornography, and the claimant has not exhausted the maximum amount of funding.
4. Allegations of sexual abuse or prohibited acts of child pornography are withdrawn and a Notice of Hearing proceeds with other allegations, and the claimant has not exhausted the maximum amount of funding.
5. A Notice of Hearing has been withdrawn in its entirety and the College member has not given an undertaking to retire or resign and not teach. The claimant has not exhausted the maximum amount of funding.
6. If a claimant has recovered or received funding from public funding and/or damage awards resulting from their civil or criminal case against the member in connection with the same incident of sexual abuse or prohibited act of child pornography, the College will reduce a claimant's total payment to account for this other source of funding.
7. The Investigation Committee does not refer a complaint of sexual abuse or prohibited act of child pornography to the Discipline Committee based on insufficient evidence to support the allegation.
8. The allegation pertaining to sexual abuse or a prohibited act of child pornography is withdrawn by the subject of the allegation.
9. Acts of sexual abuse or prohibited acts of child pornography must have occurred on or after 1 January 2020 to be eligible for funding.

## **7. Definitions**

Please see attached Appendix 1 for detailed definitions.

## **8. Evaluation**

This policy will be evaluated every three (3) years or earlier as required by Council.

# Appendix 1

## Definitions

The following definitions apply to the Council's policy for the determination of eligibility for the College's funding for therapy and counselling program:

"complaint" means a complaint within the meaning of s. 26 of the College's Act and the bylaws

"prohibited act involving child pornography" means any act prohibited under s. 163.1 of the *Criminal Code* (Canada)

"employer report" means a report made within the meaning of Part IX.1 of the College's Act

"sexual abuse" of a student by a member means,

- (a) sexual intercourse or other forms of physical sexual relations between the member and the student,
- (b) touching, of a sexual nature, of the student by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the student

"student" means

1. A student who, at the time the behaviour, remarks or conduct occurred or were made, was enrolled in a school or private school in Ontario, within the meaning of the *Education Act* and was under 18 years old or, in the case of a student who had special needs, was under 22 years old.
2. A student of any age who, at the time the behaviour, remarks or conduct occurred or were made, was enrolled in a school or private school in Ontario, within the meaning of the *Education Act* if, at that time,
  - i. the member was one of the student's teachers,
  - ii. the member was the principal or vice-principal of the school in which the student was enrolled,
  - iii. the member assisted in extracurricular activities, including coaching in a sport, and the member and the student dealt with each other directly in the course of the extracurricular activities, or
  - iv. the member provided any other school-related service, including a support service directly to the student.
3. Any other child who, at the time the behaviour, remarks or conduct occurred or were made, was under 18 years old or, in the case of a child who had special needs, was under 22 years old.