



Stop Educator Child Exploitation

EDUCATOR SEXUAL MISCONDUCT AND ASSAULT

A Crisis in the Canadian School System
in Need of Comprehensive Reform

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ABOUT (SECE) STOP EDUCATOR CHILD EXPLOITATION

Stop Educator Child Exploitation (SECE) is a grassroots organization composed of survivors of sexual abuse and violence at the hands of teachers in Canadian Schools. SECE, whose members come from across Canada, advocate for national leadership in combating sexual abuse in schools. SECE advocates for the establishment of national/provincial independent body(s) to investigate teacher-on-student sexual exploitation, restitution for the thousands of existing survivors and is calling for a national inquiry into the abuse of school children at the hands of teachers.

INTRODUCTION

The current state of policies, procedures, and institutional structures do little to protect children from sexual misconduct or abuse by teachers and/or school staff.

While some good practices exist, the system lacks independence and consistent application. Recently, there have been some notable improvements but much more reform is needed.

Federal and Provincial leadership is required to drive comprehensive reform.

PART 1 of this report is a broad examination of the current situation in Canada based on the findings of a literature review, the hands-on experience of those working in this field and survivors of teacher abuse.

PART 2 contains an outline of the key components required of an independent body that would operate in a manner that protects children based on fair, open, transparent, and accountable procedures and practices. This model is based on the features of truly independent bodies that report directly to legislatures or parliament, such as auditors general or the Federal Integrity Commission.

PART ONE: CURRENT LEGAL AND SOCIAL CONTEXT

Over the past five years, there has been a significant shift in how sexual crimes have been viewed and responded to by society. Recently, many institutions in Canada and internationally have been called out for their failure to protect those to whom they owe a duty of protection from sexual misconduct or abuse. The military, churches and universities are notable examples.

Additionally, victims of sexual abuse themselves are increasingly finding their voice within a context of greater societal acceptance and increasing awareness of the harms of sexual assault.

Legislators have recognized the long-term impact of sexual crimes by the removal of statutes of limitation and courts have reframed the concept of consent. The Supreme Court of Canada strongly warned against characterizing sex offences against children as free from psychological or physical violence. Additionally, courts have recognized in *C.O. v Williamson and Trillium Lakes District School Board* that school boards and other like institutions are vicariously liable for abuse of students by teachers and staff in their employ.

While there are many laws that exist at the provincial and national level designed to protect children, there is no clear focus on what should happen in schools.

In 2015, the US passed a national law entitled *Every Student Succeeds Act* (ESSA) designed to prevent perpetrators from quietly leaving schools. The US mandates states to collect offender data into a national database, and USA authorities are increasingly taking legal action against principals and school administrators who fail to report and/or protect children.

Canada is lagging behind.

In this context, it is surprising that there has been so little discussion and debate about the problem of educator sexual misconduct or abuse in Canadian schools.

Why has this issue flown under the radar for so long?

PROVINCES AND TERRITORIES ARE ULTIMATELY RESPONSIBLE FOR PROTECTING CHILDREN IN SCHOOLS

Pursuant to the Canadian Constitution, provinces and territories are legally responsible for education systems and the children who, by law, are obligated to attend school. The law defines the relationship between teachers and students as in “loco parentis” or “like that of a parent.”

Via statute, provinces have created school boards, teachers’ colleges, registrar functions, and provincial committees to carry out these related responsibilities on their behalf. Because of this, it is ultimately the provinces that are responsible to ensure children are safe in schools.

Recent court decisions recognizing that school boards have vicarious liability for harms suffered by victims of educator sexual misconduct and abuse, reinforce this responsibility.

Additionally, two specific duties, which flow from common law, exist to protect children:

- The duty to protect.
- Standards of care.

While these duties trump education acts, this is poorly understood by school administrators and school staff who are responsible for their application.

Even more alarming, in practice, these legal obligations are frequently trumped by much more 'visible' disciplinary policies, which in some cases are encoded in collective bargaining agreements. In some instances, disciplinary guidelines and codes of conduct even encourage teachers who suspect abuse to speak to the potential abuser first.

Further, many of the systems in place for detection and correction of teacher sexual abuse/misconduct are insular and rely on teachers governing themselves. They are marked by conflicts of interests, bias and lack of specific expertise and diversity of perspectives.

DATA ON FREQUENCY OF ABUSE

There is **no data** on the frequency of teacher-on-student abuse.

There is **no** national systematic collection of data in Canada.

There is no national database that lists teachers fired or disciplined.

When trying to understand the scope of this issue, researchers must resort to requesting data from individual school boards and teachers' colleges, (which may or may not collect and/or share data in a systematic fashion), and count cases from media reports. The result is unreliable and severely understated data.

Notwithstanding these limitations, recent research compiled by the Canadian Centre for Child Protection (C3P) shows there were at least 750 incidences in Canada between 1997 and 2017. On November 2, 2022, C3P released updated case numbers showing that at least 548 students were subjected to teacher on student sexual misconduct over a 5 year period from 2017 to 2021. This represents a sharp increase from an average of at least 37 cases per year from 1997 to 2017, to an average of at least 110 cases per year from 2017 to 2021.

Cases frequently go unreported

The number of abuse cases is further understated because of low reporting rates. Schools and school boards frequently have no visible policy regarding reporting abuse to guide students, parents, and teachers.

Further, teachers and school staff **often do not understand their legal responsibility to report**.

Beyond that, **fear of reprisal is a major deterrent** to reporting suspected abuse. School staff fear retribution from colleagues, principals, and unions, and parents fear that their children will be bullied by teachers and other students if they report.

Even when there is a willingness to report, school staff and parents lack awareness of the signs of misconduct/abuse, and initial warnings signs that, if recognized, could lead to prevention or disruption of abuse are not noticed or understood. There is **little or no training of student teachers or school staff** on how to recognize potential signs of abuse or teacher misconduct.

Finally, many victims who have been groomed by skillful serial abusers, are too uninformed, afraid or confused to report until years after their experiences.

It is crucial to understand that child sexual predators go into professions that provide them with easy access to, and power over, children. While most teachers are honest, caring people, there will always be sexual predators in our schools. **When no abuse cases are ever reported, that does not mean that there have been no cases of abuse.** It can often mean that those predators have successfully evaded detection mostly due to weak institutional structures and processes.

CONSEQUENCES FOR VICTIMS

Many people are unaware of the unique damage done to young people who are victims of assaults by their teachers. They experience a fundamental breach of trust by an adult in a powerful and influential position in their lives, and that breach of trust has a significant impact on victims.

Researcher, David Finkelhor, notes that the same sense of betrayal and shame attached to incest is found in sexual abuse by teachers where the “pseudo parental relationship has been sexualized.” (Shakeshaft, Educator Sexual Abuse, 2001)

It is well-documented that children who experience educator sexual abuse and/or misconduct experience life-long consequences, including high rates of mental illness, substance abuse, poorer educational and career outcomes, chronic illness, and suicide.

Victims need to heal. Sadly, there is almost nothing available in the current system for victims to do so. Worse, often the interaction with school officials, institutions and the legal system has resulted in more harm and retraumatization. There is no better example of a complete lack of understanding of the grooming and abuse tactics used by predators than demonstrated in a recent CBC story where an Ontario School Board filed a third-party claim against a victims parent, alleging her “conduct fell below the standard of a reasonable parent/guardian in the circumstances.” This is a shameful display of schools not wanting to take responsibility and blaming a parent for the teacher’s conduct. This type of aggressive action can only result in more harm and prevent victims from coming forward. This could ironically leave predators in place to continue to abuse other students.

TRUST IN OUR SCHOOLS

The failure to keep children safe from educator sexual misconduct erodes trust in our school system. Public trust is further eroded when cases are mismanaged, downplayed or covered up in an attempt to protect the school’s reputation.

Attempts to avoid consequences often results in ‘passing the trash’; the practice of moving high-risk teachers from one school to another, in the same way as the Catholic church did with priests.

FINANCIAL COSTS

The financial costs for educator sexual misconduct and abuse are beginning to mount.

- Vicarious liability has been clearly established.
- Limitation periods have been lifted.
- Consent has been redefined.
- The Supreme Court of Canada has emphasized that sexual assault against children is never free from harm.
- Historical awards are subject to compounding interest, and
- The medical cost and loss of productivity linked to victim harm is significant.

It is unquestionably within the interest of governments to take strong measures to prevent, detect and correct cases of abuse in a timely manner to prevent greater costs down the road.

CURRENT PREVENTION GUIDELINES

There are many actors who have interests in this issue, including provinces and territories, licencing bodies (such as colleges), school trustees, school boards, schools, insurance companies, parent groups, teacher unions, child welfare agencies, law enforcement and the courts. The multiplicity of organizations involved has led to confusion and lack of clarity, both for the victims and for anyone trying to monitor the issue.

Existing prevention programs are hard to assess because of disaggregated school systems and universities in each province and territory. With few exceptions, each entity has its own policies and approaches, many of which are not clearly identifiable or accessible to the public.

Moreover, the Canadian Centre for Child Protection and others have told us that it is difficult to get school districts to focus on this issue and explicitly recognize and manage it head on. The Centre has developed high-quality free training products suitable for students, teachers and student teachers; however, they have told us uptake is slow and uneven. Even when cases emerge it often difficult to get schools to accept outside help.

There have been a couple of examples of positive steps forward: Ontario College of Teachers implemented mandatory training in 2022; and several provinces, such as Alberta, have visible and accessible prevention material online.

However, it is nowhere near adequate.

CODES OF CONDUCT

In many cases, provinces, schools, and unions all have different codes of conduct. This can create confusion. Further, **few of the codes of conduct deal directly with the issue of teacher-on-student sexual misconduct/assault.**

BC has legislated that reporting by teachers is mandatory and has provided some protection from reprisal. However, this is a notable exception and media reports have noted some problematic practices. Not only do most codes not have proper reporting requirements in place, many union codes order their members to report any complaints regarding a colleague's behavior to the offender first. This creates a significant deterrent to report as teachers can fear reprisal from their colleagues.

CURRENT MANAGEMENT OF REPORTED CASES

Schools

In most provinces, it is not clear where to report cases of suspected abuse and what process will be followed once cases are reported. Most cases are reported to school principals and then are initially 'investigated' by individual schools. **Not a single description of the process followed by any school was uncovered in this research.** Sometimes cases are referred out to other bodies or committees, but with a few exceptions, the criteria for when and how this occurs is not evident in provincial policies.

There have recently been several media stories indicating that cases never go beyond the school system, and many parents, victims and other stakeholders are left in the dark. Recently uncovered clusters of cases in Orleans and Perth Ontario are good examples of this. This is **the weakest part of the current system.**

This weakness is primarily due to the fact that the current systems in place to deal with teacher misconduct were built for routine discipline issues such as tardiness. These processes are not effective for serious and potentially criminal cases of teacher sexual misconduct/assault. They do not account for the needs of child victims and they often result in further harm to those victims.

Principals and school staff are unqualified and untrained, and lack the competence to conduct fair, impartial and procedurally fair investigations, and they can easily compromise evidence. Schools are small workplaces where understandably it is difficult to be objective about your colleagues, and sexual predators are often very effective in grooming colleagues to see them as incapable of such abuse. Further, **past experience demonstrates that principals often act to protect their school's reputation over the welfare of children being victimized.**

In some instances, complainants and concerned parents are told to refer cases to the police or child protection agencies if they are not getting results from individual schools. While referral to the police can be the appropriate action in some cases, often these entities are unable to help, because:

- The police have a high threshold for action. They can respond to criminal activity but often not to anything below that threshold. Teacher-on-student sexual misconduct/assault is often a gradual process that involves grooming and often begins with boundary violations observable to those with appropriate training. **An effective system would be one in which sexual predators would be spotted before serious damage has been done to victims**, and therefore before the police would need to become involved.
- Child protection services have a role in ensuring children are safe in their home environments, but they can have little impact on teacher behavior and the removal of problematic teachers from their positions.

Teachers Unions and Associations

In general, many Canadian teachers' unions have a great deal of power, holding authority to discipline teachers, to remove their membership and therefore their ability to teach in any given province or territory, and to negotiate important elements of discipline such as the right to grieve and to scrub personnel files of discipline records. Moreover, they owe a duty of protection to their fee-paying members.

Teachers' unions also collectively bargain on behalf of their members, which can give them leverage over provincial governments. While there is no evidence of this leverage being exercised, it is an obvious structural defect that needs to be addressed. Collective bargaining itself is subject to trade offs and the matters related to child protection should never be compromised in any manner. For example, scrubbing personnel files after 3 years is a common practice that is encoded in collective bargaining agreements. When it comes to child protection this is an obvious problem.

In some provinces and territories, unions operate either a parallel process, or the only process, to discipline teachers. These union-led disciplinary processes usually include referring cases to the province for removing teaching licenses; however, in some cases, the unions have overall discretion over whether to refer cases to provinces for license revocation.

Separate Quasi-Independent Bodies

There are no fully independent bodies anywhere in Canada where victims, parents, school staff or members of the public can report cases of suspected teacher-on-student sexual misconduct or abuse and seek objective advice and support.

There are three separate and quasi-independent bodies: in Ontario, British Columbia and Saskatchewan. These provide some degree of separation of key functions from the school system and unions, such as the ability to conduct investigations and remove teaching licenses.

However, notwithstanding recent improvements, such as changes to the governance of the Ontario Teachers College and the openness of the BC Regulator to accept complaints directly from the public, **these bodies still lack the independence and authority to adequately protect children from teacher sexual assault and misconduct**. Cases are often referred a long time after schools become aware of a potential problem.

This often leads to mismanagement of cases and further harm to victims.

Moreover, most decision-making committees are made up by a majority of teachers, who are unionized, once again leading to the problem of conflicting loyalties and a lack of diversity of perspectives and expertise. Ontario's recent move to diversify its governance with 50% of its members being from the general public is one notable improvement.

Worse, the systems in place are designed to focus on the teachers, their rights and processes to discipline them if required. There is little or no mention of the child victims of teacher-on-student sexual misconduct/assault.

The needs of victims are almost entirely absent. In fact, victims are lost in the process. No protection seems to be afforded to them and no consideration of how to help them move forward is evident in the design of any of the processes examined.

EXTERNAL REPORTING, OVERSIGHT AND ACCOUNTABILITY

While most provinces and territories have legislative provisions in place for them to intervene in the management of teacher-on-student sexual misconduct/assault and to conduct evaluations of the systems that they have created, not one such report was found.

However, there have been media reports of notable problems being addressed. For example, the Ontario College of Teachers was recently put under the management of a supervisor while it underwent some reforms to its governance and reporting. Another example can be found in Alberta, where the Minister of Education has recently called for a review of discipline decisions by the teachers' union. This latter example became politicized as unions accused the Minister of doing so to distract attention from budgetary issues. This is one of the best illustrations found as to why unions and provincial governments should not be engaged in discipline related to child protection. If there was an independent body free from both ministerial and union interference, this conflict would not have arisen and the only discussion would have been about the issue of child protection. Alberta is currently implementing reforms and has very recently appointed a Teaching Profession Commissioner but it is unclear at this time how these new structures will operate and how independent they will be.

There is no single database in Canada where the names of teachers who are a risk to their student are kept. A few provinces publish names and decisions on their own, while other provinces and territories either keep the names confidential or share them with other jurisdictions 'if necessary'. These processes lack uniformity, consistency, and transparency. **They are designed to protect teachers rather than child victims.**

Further, external statistical reporting of case numbers and reasons for teacher discipline is hard to find and of poor quality. The best example found was in British Columbia where they report annually on the status and types of cases they examine.

Given the dearth of information and oversight, it seems clear that provinces and territories are not paying sufficient attention to this issue, nor can they ensure Canadians that students under their care are adequately protected in the school system.

PART TWO: KEY COMPONENTS

It is abundantly clear that the current structures in place in schools across Canada are woefully inadequate to protect students from sexually predatory teachers. **The following changes are strongly recommended.**

PROVINCES NEED TO IMPLEMENT ROBUST AND MANDATORY PREVENTION MEASURES

Training and awareness must begin with children in kindergarten to equip them to act should they encounter abuse within the school system or elsewhere.

Universities should be training student teachers to recognize predatory behaviour and to report teacher sexual abuse and misconduct. This training should then be reinforced annually by school systems.

This reinforcement is critical because even after the right policies and procedures are in place they can only work when combined with high levels of training and awareness. Otherwise, cases will be missed or dismissed by well-meaning but uninformed people who do not know how to recognize the signs of abuse and do not understand their individual legal responsibilities.

Much of the above training material has already been developed by the Canadian Centre for Child Protection but they have told us that uptake by school boards has been limited.

These requirements should be enshrined in legislation.

CASES NEED TO BE REMOVED FROM REGULAR DISCIPLINE SYSTEMS

Neither political actors, schools nor teachers' unions should have direct involvement in managing cases due to their conflicts of interest and their lack of expertise and experience in the area of teacher-on-student sexual assault.

For the most part, provinces have pushed this problem down to school boards and schools without equipping them with adequate legal, policy or institution structures to manage them. Worse, these cases are often treated solely as discipline problems, for which the current systems are wholly inadequate for dealing with sexual misconduct or assault.

Teachers' unions currently have a significant impact on the employer's ability to discipline cases of sexual assault or sexual misconduct. However, the systems teachers' unions have in place to deal with workplace misconduct were never meant to address something as serious as sexual abuse of children, and it is crucial that the power to investigate this sort of misconduct be entirely removed from unions.

Educator sexual misconduct and assault is always harmful and often criminal and therefore requires very specialized expertise and a very low tolerance for risk, error and inconsistency. It is not reasonable to conclude that each school, school board or teachers' unions could adequately create this capacity.

What is needed are independent structures that are free from bias and outside the normal chain of command and are capable of consistent application of specialized policy and procedure.

AN INDEPENDENT BODY WITH THE FOLLOWING CHARACTERISTICS IS URGENTLY NEEDED

A. INDEPENDENCE

The body(s) should report to provincial/federal legislatures, or, be housed in an entity that does, such as the Auditor General, to ensure its independence, multi-party scrutiny and rigorous review of its mandated activities.

The head of the body should be appointed and dismissed by provincial legislatures. This will ensure that the entity acts and reports in a wholly independent and fearless manner.

Staff should be appointed by the head of the body via competitive and merit-based appointment processes. The body should be staffed by a diverse group of professional experts. While it makes sense for teachers to be included in this mix, for their experience and understanding of the teaching profession, there is no reason that they should be the majority. Moreover, all employees should be fulltime and free from teacher union affiliation. Appointing staff pursuant to public service legislation would provide them with stability and help ensure institutional independence and longevity of tenure.

It is necessary to have an independent funding source, such as government appropriation, rather than being funded by teacher dues. Being solely funded by teachers can result in conflicted loyalties and can hamper its independence.

B. FAIR, INDEPENDENT AND TRANSPARENT PROCESS

Schools and unions who receive complaints should be required by law to **immediately** refer cases to this body and the body should allow for and accept direct complaints from the public including victims, school staff and parents. Failure of school and teacher union administrators to report, should result in fines and/or criminal charges. Procedures need to be put in place to protect students, parents and teachers from reprisal.

The body should have an intake function where complaints can be reviewed and triaged for next steps. A broad range of interventions should be available for offences such as:

- suspected grooming and/or boundary violations **versus**
- suspected sexual misconduct or sexual assault

The above examples are meant to be illustrative and more work is needed to find the right balance. However, it is important that any system that is put in place is designed for the earliest possible intervention to assure that teacher predators are disruptive before serious harm is caused.

The body should take reasonable steps to follow up on anonymous complaints.

The body should have powers such as those under the Inquiries Act, to conduct investigations and hearings. These should include the ability to compel witnesses and subpoena information.

A broad range of interventions should be possible, as cases can range from suspected grooming and/or boundary violations to suspect sexual assault.

The body should be able to order the following types of corrective action:

- at the individual level – training, suspension, dismissal;
- at the school level – school-wide training, policy, or process improvements.

The body should be required to refer cases, it believes are of a criminal nature, to the police. Likewise, the body should be required to inform child protective services as required by law. This step is critical to further deter teachers from reoffending either in or outside of the school system.

The bodies' decisions should be subject to judicial review.

C. RECORDS, REPORTING, ACCOUNTABILITY AND A NATIONAL DATABASE

The body should report annually to the legislature by tabling an annual report and should be summoned to provincial legislative committees to answer questions in public about its activities.

The annual report should outline the number and types of cases being investigated and include a year-to-year comparative analysis, so that parents and members of the public can monitor to see if the situation is improving (or not).

The names of offenders who have been found to have sexually assaulted students should be submitted to a national database available to parents and all child-based employers anywhere.

The body should also be responsible for the retention of records regarding teacher sexual misconduct.

D. VICTIM SUPPORT

Victim supports also needs to be put in place. These should include provisions for:

- Victim counseling and psychological support.
- A reconciliation process based on principles of restorative engagement where the school system would proactively supports victims and acknowledge harms. This should include, support and follow up to assist victims in completing their education and transitioning to the next phase of their life.
- Victims should not be required to sign nondisclosure agreements.
- An optional financial compensation scheme, as an alternative to civil litigation would also be helpful, as civil litigation can often result in additional harm to victims.
- Apologies from responsible governments are also critical for victims to move forward.

Such processes will also help the school system and governments avoid additional future costs because the earliest possible intervention can reduce future harm.

Society overall will benefit if victims can more quickly heal and become fully functioning and productive.