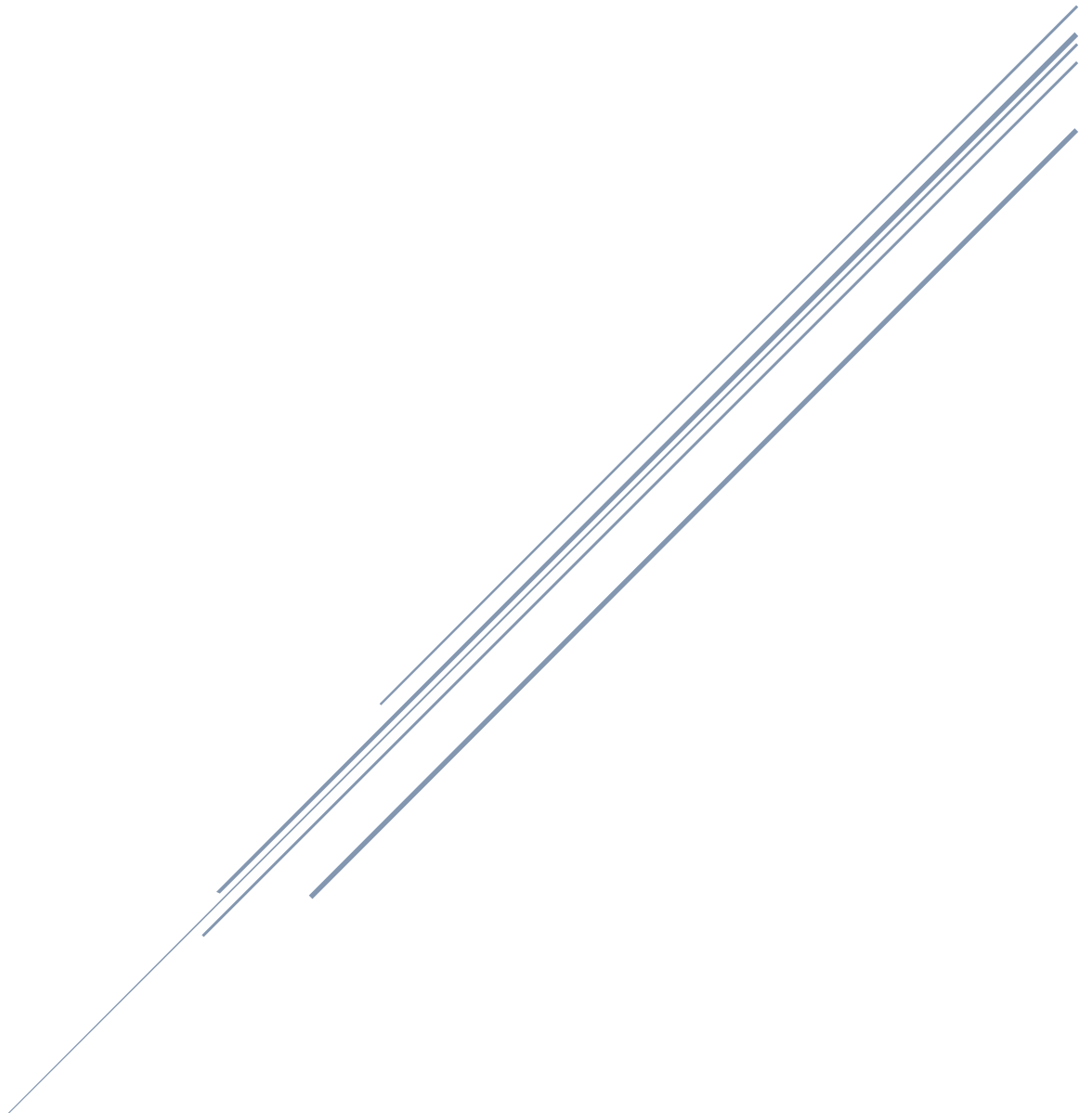


REIMAGINING TEACHER CERTIFICATION IN MANITOBA:

A PROPOSAL FOR A RENEWED REGULATORY FRAMEWORK



April 2022

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“Teaching is important. The theory and practice of teaching form a vital part of any theory of education, and a worthwhile theory of education must in turn form part of a wider theory of society: what it is, what it might be and how we can get there. Anyone who believes that there is a connection between education and citizenship, cannot afford to ignore the influence of teaching.”¹

1. Introduction

The central purposes of schools are teaching and learning. As a society we have chosen to make school attendance compulsory for children and youth and we allocate significant financial resources, obtained through taxation, to fund the Kindergarten to Grade 12 education system. We do so because schools and the education they provide are a value proposition and fundamental to democratic society: to give our young people the tools to become literate and numerate and to be able to think critically and analytically; to provide them with an opportunity to maximize their individual potential; to prepare them for post-secondary education and training, and for employment; and to inculcate them with the desired norms and values to enable full participation as citizens – in short, to attempt to provide the means and create the conditions for every person to be able to strive for and achieve the good life.

Critical to the success of the educational mission is, of course, the role and work of teachers, as well as support staff. A highly trained, skilled, committed and professional teaching force is crucial to the endeavour of helping students achieve desired learning outcomes. In Manitoba, candidates for certification as a teacher must meet several requirements set out by the state in order to be adjudged as a competent practitioner and

¹ Ken Osborne, Teaching for Democratic Citizenship (Toronto: Our Schools/Our Selves, 1991), p. 9.

worthy of holding a professional teaching certificate, and thus eligible for the privilege of having care and control of a classroom and the attendant educational and fiduciary responsibilities for vulnerable children and youth. The school system and each of its players – principals, teachers, educational assistants, clinicians, bus drivers, custodial, administrative and other support personnel – shoulder an increasingly heavy burden of societal expectations to effectively meet the academic and non-academic issues which crowd the curriculum and are part of a child’s growth and development. The Commission on Kindergarten-Grade 12 Education has described this well:

The role of schools and teachers has evolved in response to demographic shifts and public expectations. The impact of these effects is manifested in classrooms as teachers strive to meet the holistic needs of their students. Today’s classrooms include students with a diverse range of needs and assets. For example, some live in poverty; others arrive from war-torn countries where they have experienced the horrors of war; others have lived in refugee camps and have significant gaps in their learning; and still others suffer from trauma and other psychological impacts of negative experiences. At the same time, many students bring a rich reservoir of skills including problem solving, resilience, and resourcefulness. Regardless of these background factors, students want to learn and be successful.

Teachers often talk about the countless roles they play in schools today. Many make sure they have snacks in their classrooms for students who have not had breakfast or who have no lunch. They offer guidance to children who have problems with relationships and those who have had to leave home for a host of reasons. They act as counsellors, social workers, and financial advisors. They help to bridge the generational and cultural divide as parents and grandparents navigate the values and realities of their adopted home with the challenges faced by children who are born in Canada. In short, today’s teachers work valiantly to address the academic, social, and emotional needs of the children in their classes.²

² Report of the Commission on K-12 Education. Our Children’s Success: Manitoba’s Future (March 2020), p. 38.

As MacKay, Sutherland and Barnett have so correctly noted and effectively documented, the modern role of teachers has them serve several functions, including those of parent (“in loco parentis”/prudent parent), educational state agent, agents of the police, social welfare agents, and employees within hierarchical and complex institutional settings.³ They wear, by virtue of their role, many hats and often at once.

The multi-faceted and essential role of teachers has also been confirmed many times through the decisions of courts, all the way to the Supreme Court of Canada, acknowledging that because of the important role they play as conduits of knowledge and in the authority they have over youth, teachers are held to a higher standard of conduct than are ordinary members of the public because their work and conduct cannot serve or be seen to diminish public trust and confidence in the educational enterprise:

“In my view, no evidence is required to prove that teachers play a key role in our society that places them in a direct position of trust and authority towards their students. Parents delegate their parental authority to teachers and entrust them with the responsibility of instilling in their children a large part of the store of learning they will require during their development.”⁴

And

“Public school teachers assume a position of influence and trust over their students and must be seen as impartial and tolerant. By their conduct, teachers as “medium” of the educational message – the values, beliefs and knowledge sought to be transmitted by the school system – must be perceived as upholding that message. A teacher’s conduct is evaluated on the basis of his or her position, rather than whether the conduct occurs within or outside the classroom.”⁵

³ A. Wayne MacKay, Lyle Sutherland and Jennifer Barnett, Teachers and the Law: Diverse Roles and New Challenges, 4th edition (Toronto: Emond Montgomery Publications Limited, 2020).

⁴ R. v. Audet [1996] 2 S.C.R. 171.

⁵ Ross v. New Brunswick School District No. 15 [1996] 1 S.C.R. 825.

The weight of expectations placed on teachers (and non-teaching personnel) is a heavy one, but as the Commission emphasized, it is a responsibility school personnel in Manitoba have embraced with “professionalism and aplomb.”

Outline of this Report

I was asked by the Department of Education⁶ to review* the recommendation of the Commission on Kindergarten to Grade 12 Education, and the department’s response to it, regarding creation of a College of Educators or “equivalent” regulatory body for the certification of teachers in Manitoba. This report will provide an overview of the current model for teacher certification in the province, along with a jurisdictional scan of regulatory frameworks in western Canada and Ontario to canvas a mix of models which differ from Manitoba. Those approaches, each with some internal structural variations, are essentially two-fold: a regulatory model directed by government, or a regulatory model controlled by the profession. That the approaches chosen should be different from place to place⁷ will come as no surprise given the constitutional autonomy section 93 of *The Constitution Act* affords provincial governments over education. Indeed, given the historic, linguistic and cultural cleavages evident in Upper and Lower Canada prior to 1867, delegation of control over elementary and secondary education to the provinces, rather than to the federal government, was an essential part of the bargain in binding the four original provinces (and subsequent newcomers) together to form the Canadian union.

⁶ Although the department has recently changed its name to Education and Early Childhood Learning, given the relative frequency its name is altered and for sake of simplicity and easier reference, in this report I will refer to the ministry as the Department of Education.

⁷ For a summary categorizing these approaches and variations, please see the Appendix (page 112).

The certification of teachers – that is to say, the process of sanction by the state to entrust an individual with the teaching, care and control of children in an educational setting upon completion of some period of formal study and practice – will vary from jurisdiction to jurisdiction. A review of the western provinces serves as a natural lens for comparison as there is similitude in history, settlement, demography and geography. Ontario, which so heavily influenced pre- and post-1870 development of Manitoba is important to consider for its teachers' college model which is largely unique in the country. "Policy borrowing", the practice of looking to other jurisdictions for ideas in creating policy options to address similar policy questions locally, is commonly employed by Manitoba with neighbours sharing similar cultural backgrounds, political systems, and having geographic proximity. There are structures and models which can be of import in considering a revised regulatory framework for certifying teachers in Manitoba.

Internationally, a brief overview of the General Teaching Council of Scotland, the birthplace of the first self-regulatory model for the teaching profession, will also be provided. When established in 1965 it became the world's first independent self-regulating body for teachers. That model was emulated in Canada some decades later, first in British Columbia through the now defunct British Columbia College of Teachers, and shortly thereafter in the creation of the Ontario College of Teachers.

Section 3 of the report will address the question of professional self-regulation for teachers, the advantages and disadvantages of such a model, and whether this approach should be adopted for Manitoba as opposed to the current department controlled model.

Finally, in Section 4, I will identify some next steps to be considered should government choose to move forward with a renewed regulatory body for teacher certification or some variation of it.

Report of the Commission on Kindergarten to Grade 12 Education, and Manitoba Education response

In January 2019, the Government of Manitoba established a nine-person commission to undertake a comprehensive review of the Kindergarten to Grade 12 education system. In its terms of reference, the Commission was to consider a number of guiding principles, including the necessity to improve student achievement and student outcomes, and the conditions needed to support their educational success. One of the areas of focus, in supporting excellence in achievement and outcomes, was that of teaching and, more particularly, “how can teachers and school leaders become most effective?”

In its report, released in March 2020, the Commission structured its findings around ten imperatives for improvement. Among them was Imperative #1, “Strengthen Educator Capacity to Improve Teaching and Learning”. Specific to the purpose of this study is Recommendations #2 and #3:

2. Create a Manitoba College of Educators for individuals with teaching certificates, while also providing for an “Associate Member” status, with clearly defined terms and conditions available to individuals working in education who do not hold teaching certificates, and transfer relevant resources from the Department of Education.

The College will, among other duties and responsibilities:

- Strengthen public interest and confidence in the teaching profession
- Address training and certification of teachers
- Provide transparency and accountability
- Promote quality, excellence, and professionalism
- Maintain high standards for educators
- Provide accreditation for faculties of education.

3. Establish a College governing council comprised of a broad cross-section of members of the profession (teachers, principals, consultants, union representatives), and members of the public-at-large (members of other regulated professions, parents, business professionals) to enhance public confidence in the work of the College and appoint a registrar/CEO.⁸

In accepting, in principle, the Commission’s seventy-five recommendations, the Department of Education responded by confirming the belief that there is a “fundamental relationship between high-quality learning, high-performing education systems and high-quality teachers and leaders” and that “efforts to improve Manitoba’s education system must ensure that teachers are highly trained before they enter classrooms and engage in quality professional learning throughout their careers.”⁹ Specifically, within the fourth pillar

⁸ Commission on K-12 Education, p. 48.

⁹ Manitoba Education. Better Education Starts Today (March 2020), p. 21.

(“Excellence in Teaching and Leadership”) of the Better Education Starts Today document released in response to the Commission report, the department outlined the following priority actions:

4.1 Establish professional standards and a regulatory framework to guide teacher training and professional practice. Teachers have a high impact on student achievement and outcomes. The Organisation for Economic Co-operation and Development (OECD) claims that the highest performing education systems prioritize the quality of teachers over the size of classes (2018). The standards governing the teaching profession help ensure student protection while promoting quality and excellence within the profession. During its consultations, the Commission heard that the most effective way to recognize teachers as professionals who are accountable to the public is to establish a regulatory body to oversee the profession. There are various practices across the country. Ontario, for example has a College of Teachers and Saskatchewan currently has the Professional Teachers Regulatory Board. British Columbia, Alberta, and Nova Scotia do not. Further consultation and planning are needed to determine the best approach.

Priority Actions

- Develop teaching and leadership standards for professional practice and conduct that will guide teacher education, practice, evaluation and ongoing professional growth.
- Undertake a review of regulatory frameworks for strengthening the teaching profession and promoting high standards of teaching and leadership, including professional development, teacher education programs, certifications, fitness to practice, and discipline of certified teachers, including scoping for a Manitoba College of Educators or equivalent regulatory body.¹⁰

This, then, is the contextual background for this report and the information and recommendations therein.

¹⁰ Ibid.

The Current Regulatory Model in Manitoba

The responsibility for approval of teacher education programs, and for the certification of teachers, rests with the Minister of Education and is administered through the Professional Certification Unit (as part of Education Administration Services and reporting to the Director). Responsibility for teacher certification has been reposed with the province since 1871, through the *Act to Establish a System of Public Education in Manitoba*. Teacher preparation, controlled by the Board of Education (the precursor to what is now the Department of Education) was initiated in 1882 with the establishment of Normal Schools in several locations across Manitoba.¹¹

The Minister's present authority for teacher education and certification emanates from *The Education Administration Act*, notably subsections 3(2), 4(1)(c),(h),(f),(u)(v),(w), 6(1) and 7(1):

3(2) Programs taken by persons in teacher education institutions for the purpose of teacher certification, shall be subject to the approval of the minister.

4(1) For the purpose of carrying out provisions of this Act according to their intent, the minister may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by this section has the force of law; and without restricting the generality of the foregoing the minister may make regulations

(c) prescribing the minimum standard of academic and professional education for the certification of teachers in the province;

(h) respecting the qualifications of teachers

(i) who may be employed in teacher education institutions operated by the department, public and summer schools and any other schools established pursuant to this Act, or

¹¹ Thomas Falkenberg and Jon Young, "Understanding Curriculum: The History of Initial Teacher Education in Manitoba" in Theodore Christou, ed., *The Curriculum History of Canadian Teacher Education* (New York: Routledge, 2018).

(ii) who may be eligible for appointment as principals of elementary or secondary schools or any position involving educational administration or supervision;

(t) respecting the certification of clinicians;¹²

(u) prescribing the qualifications required by persons to be certified as clinicians;

(v) respecting classes of clinicians;

(w) respecting such other matters ancillary to the certification of clinicians as he may deem necessary.

7(1) The minister may grant to any person a limited teaching permit, in which the minister shall name the subject or subjects to which the permit applies and state the period during which the permit is valid

7(2) The minister may, in his absolute discretion, cancel any limited teaching permit before the period stated therein.

The Act confers upon the minister authority to issue, and revoke, teaching certificates:

6(1) The Minister may issue teachers' certificates of such grades or classes, and in such form and for such period as he prescribes, and may cancel or suspend a certificate issued to a teacher for any cause he deems sufficient.

A Certificate Review Committee is established in the Act and is charged with the authority to investigate and report to the Minister on any matter referred to it by him/her.

Section 5 of the Act sets out the composition of the Committee: three persons nominated

¹² Types of clinician certification are spelled out in Manitoba Regulation 115/2015 and include audiology and speech-language pathology; occupational therapy; physiotherapy; reading; school psychology; social work. *The Education Administration Act* provides further definition: 4(2) "A person certified as a clinician is deemed to be a teacher for all purposes of this Act, *The Public Schools Act*, *The Teachers' Pensions Act*, and *The Manitoba Teachers' Society Act*, but does not have the right or obligation to teach pupils in a classroom." *The Public Schools Act* includes clinicians within teacher bargaining units for collective agreement purposes by capturing them within the category of "teacher": "'teacher'" means a person employed by a school division or school district under a written contract prescribed under section 92 and who holds a valid and subsisting teacher's certificate or limited teaching permit issued under *The Education Administration Act*. It includes a principal, a vice-principal and a person certified as a clinician. It does not include a superintendent, assistant superintendent or deputy superintendent."

by the Manitoba Teachers' Society (MTS), three persons nominated by the Manitoba School Boards Association (MSBA), two persons nominated by the Manitoba Association of School Superintendents (MASS), and two persons from the Department of Education. All appointments are made by the Minister. The process for hearings, timelines, reporting, and recommendations are further outlined, albeit briefly, in the section. The Committee's mandate to review allegations of teacher misconduct is general owing to the Minister's broad authority in 6(1) to refer to the Committee any case for "any cause he deems sufficient." While the Committee must make a report to the Minister regarding its findings, and provide a recommendation(s) for disposition, the Minister has sole prerogative to suspend or cancel a certificate issued to a teacher or clinician.

It is worth noting at this juncture that the authority and responsibility for the certification and disciplinary functions pertaining to teachers has always rested with the Minister. This is unlike some other provincial jurisdictions such as Alberta (and Saskatchewan prior to 2015) where the legislative authority for the investigation of complaints and discipline of teachers resides with the teachers' union (Alberta Teachers' Association). In Manitoba, while the MTS per *The Manitoba Teachers' Society Act*, has an obligation to adopt a code of conduct ("Code of Professional Practice") to which its members must comply, has established a conduct committee to receive and review complaints about the conduct of members and a review committee to hear and determine matters referred by the conduct committee, MTS cannot suspend or cancel a teaching certificate. It may reprimand, suspend or terminate the teacher's membership in the union, impose any other penalty provided in its by-laws, or impose costs up to \$5,000. It may also *recommend* to the Minister that the member's conduct be referred to the Certificate

Review Committee. The Minister is not, however, obliged to act upon such a recommendation.¹³

The eligibility requirements for teacher or clinician certification, and the setting of classification level and for recognition of prior teaching experience for salary purposes are established in Manitoba Regulation 115/2015 (Teaching Certificates and Qualifications). The regulation sets out the academic (undergraduate) and professional (teacher preparation) courses, credit hours and degrees, acceptable teachable majors and minors, breadth requirements (early/middle years), and certificate types (permanent, provisional, vocational, clinician and specialist). It is the administrative framework which guides the operational and transactional activities of Professional Certification Unit when processing applications from teachers and clinicians for certification, reclassification, and specialist certification.

Notably absent in the Manitoba model, either in legislation/regulation, or as a policy requirement, is an articulation of professional standards for teachers (and teacher leaders, ie. principals and vice-principals). While referenced later on in this paper, this is a gap (amongst several) missing to guide pre-service education, certification and post-service learning and conduct which should be addressed and which would put Manitoba on similar footing with other provincial jurisdictions.

Teacher discipline, and entry to practice standards – the setting of requirements reflective of the qualities, skills and abilities necessary for practitioners to provide this service – are within the purview of the Minister and his/her department. Although faculties

¹³ A request by MTS for referral of a member to the Certificate Review Committee happens rarely, the last time occurring in 2009.

of education, situated within universities, have had the responsibility for delivering formal, degree-based teacher preparation programs leading to Bachelor of Education degrees since the mid-1960s with the closure of provincial Normal Schools, in practical terms in order to successfully graduate students to be eligible for employment, those programs are “governmentally controlled and institutionalized preparation of teachers designed to meet certification requirements.”¹⁴ The relationship is symbiotic, as Grimmatt and Young note:

“Initial teacher education, teacher certification, and teacher recruitment are closely connected to one another . . . (U)niversities are unlikely to have any interest in offering pre-service Bachelor of Education programs that do not lead directly to certification, and conversely, certificating bodies need to develop requirements that will support an adequate supply of well qualified teachers for provincial schools.”¹⁵

When considering the idea of professional self-regulation, ie. a college of educators, it is critical to understand that this represents (for Manitoba, in this instance, but also for most other provincial jurisdictions presently) a radical departure from historical acceptance of state responsibility for setting entry to practice, certification and discipline of teachers. It means “a delegation of administrative powers by the people of Manitoba through their provincial government to a practitioner organization.”¹⁶ This is no inconsequential matter, and one which must be given serious contemplation before a decision to steer in such a direction is taken.

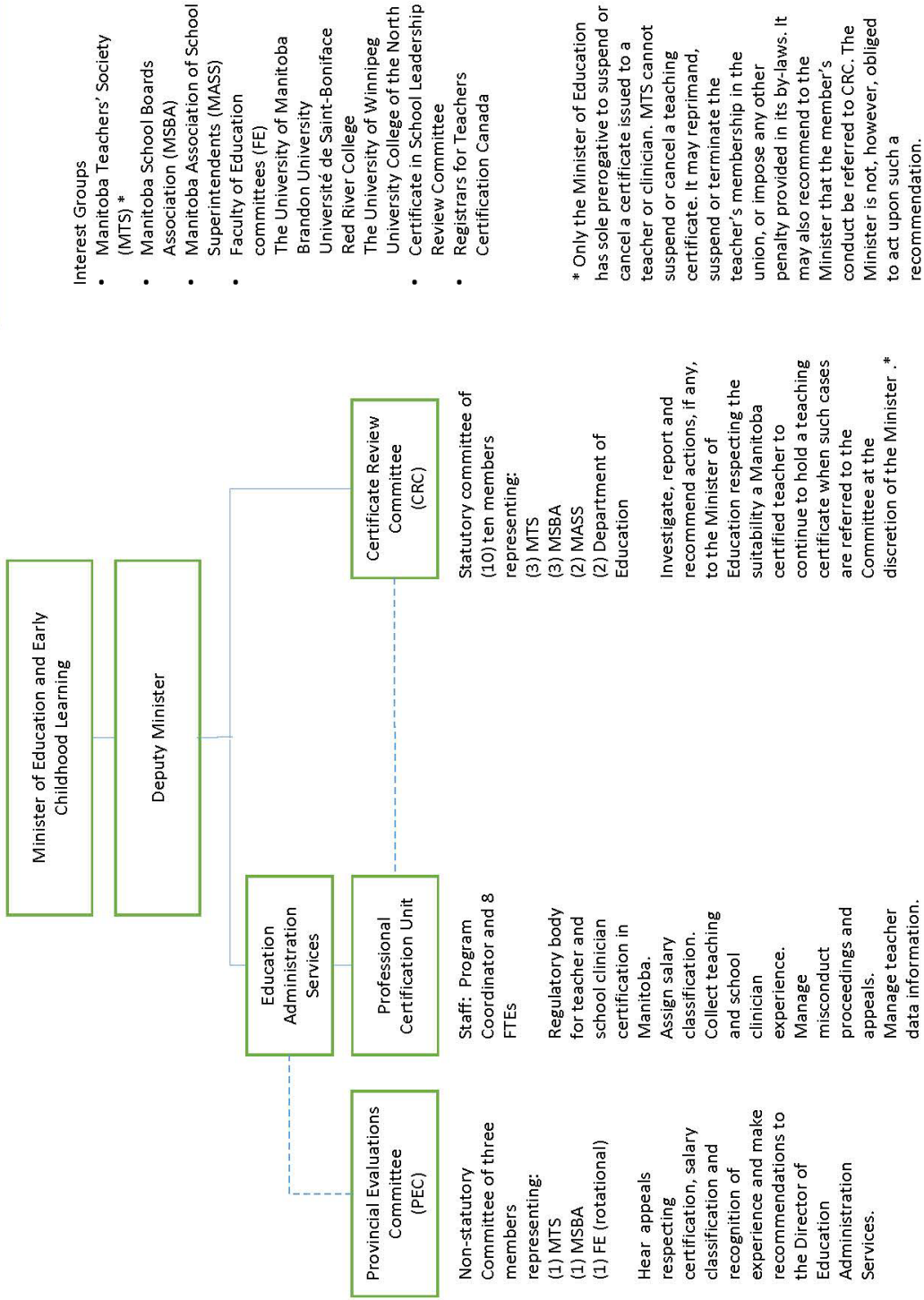
¹⁴ Falkenberg and Young, *op. cit.*

¹⁵ Peter P. Grimmatt and Jon C. Young, *Teacher Certification and the Professional Status of Teaching in North America*. (Charlotte: Information Age Publishing, Inc., 2012), pp. 129-131.

¹⁶ Manitoba Law Reform Commission, *Regulating Professions and Occupations* (Report #84, October 1994), p. 56.

Current Regulatory Structure:

The Education Administration Act and Teaching Certificates and Qualifications Manitoba Regulation 115/2015



2. Jurisdictional scan

British Columbia:

In 2011, the government of British Columbia dissolved the British Columbia College of Teachers after several years of dysfunctionality, toxicity, and conflict with the British Columbia Teachers' Federation, and several instances of litigation with post-secondary institutions.¹⁷ The structure resurrected in its place is set out in *The Teachers' Act* and consists of five separate bodies: the British Columbia Teachers' Council (BCTC), Independent School Teaching Certificate Standards Committee, Director of Certification, Commissioner for Teacher Regulation, and the Disciplinary and Professional Conduct Board. Germane for this discussion are the roles of the Director of Certification, Commissioner for Teacher Regulation, the Disciplinary and Professional Conduct Board, and the BCTC.

The Director of Certification is a Ministry of Education employee and is responsible for the Teacher Certification Branch. The Branch functions much as the Professional Certification Unit in Manitoba does, absent the responsibility for teacher discipline. The Branch issues, suspends and cancels Certificates of Qualification, Independent School Teaching Certificates, and Letters of Permission. The Director is responsible for addressing and responding to requests for reconsideration of decisions denying or rescinding certification within prescribed time limits. Finally, the Certification Branch maintains the online registry of certificate holders, including their certificate status and any disciplinary action (if applicable) on the Ministry of Education website.

¹⁷ Although this report will not review the factors leading to the demise of the BCCT, that history is chronicled effectively by David Avison and Alastair Glegg (see reference sources, pp. 113-119).

British Columbia has separated the certification process from the teacher discipline process. The latter is the responsibility of the Commissioner for Teacher Regulation, an independent officer of the Legislative Assembly appointed by Lieutenant-Governor in Council for a renewable five-year term. The Commissioner is responsible for providing recommendations to the BCTC regarding teacher certification standards; for providing an annual report to the Minister of Education regarding his/her activities, the activities of panels, and any other matters considered relevant or as directed to be included by the Minister; has responsibility for the investigation process related to complaints about teacher conduct or competence, and can enter into consent resolution agreements. Lastly, the Commissioner issues public citations of teachers regarding misconduct or incompetence.

The disciplinary authority of the Commissioner is considerable as he/she manages the intake process where allegations of teacher misconduct and incompetence are handled by a staff of intake officers in the Professional Conduct Unit. Complaints are reviewed and assessed against the following criteria as set out in the Act:

- the matter is within the jurisdiction of the Commissioner to consider
- the matter is frivolous or made in bad faith
- the matter has no reasonable prospect of resulting in an adverse finding by a hearing panel
- if the matter is not in the public interest to take any further action
- the matter has not been pursued in a timely way.

Should the complaint meet the threshold for further action, an investigation is launched to determine the facts. The teacher in question is involved and has the opportunity to explain facts included in the report or to address errors. The matter is then reviewed with

legal counsel assigned to the Commissioner's office and a decision is taken on whether the complaint will be discontinued or will proceed to the consent resolution stage.

The consent resolution process is an alternative to a formal hearing. In the consent resolution process the terms are agreed upon by both the Commissioner and the teacher; one or more admissions of professional misconduct or incompetence related to the originating complaints are made; and the disciplinary consequences are established: reprimand, a requirement to undertake remedial education; limits or conditions placed on the teaching certificate; or cancellation of the certificate. The outcome is reported to the Director of Certification and is made publicly accessible in the teacher registry on the Ministry of Education website.

Where a complaint cannot be resolved after the preliminary review, a citation is issued, and a hearing panel is struck. The Disciplinary and Professional Conduct Board is established under the Act and consists of nine members: four teachers and five members from prescribed organizations such as the British Columbia School Trustees Association, British Columbia School Superintendents Association, among others. Each hearing panel consists of three members, two from among the members of the Disciplinary and Professional Conduct Board (one of whom must be a teacher), and one individual selected from a panel of lay people with legal expertise or experience participation in administrative hearings. Hearings are generally open to the public. Upon conclusion of the hearing the panel will decide if the teacher is guilty of conduct unbecoming or incompetence, or whether the citation should be dismissed and no further action taken. If there is a finding of misconduct or incompetence, the consequence can include a reprimand, suspension, placement of limitations or conditions on the certificate,

cancellation or no reissuance of the certificate. Written reasons for its decision are given and are published online.

Unlike Manitoba, where there is no definition of professional misconduct beyond the broad authority of the Minister to refer any matter to the Certificate Review Committee for cause, the Disciplinary and Professional Conduct Board is guided by reporting requirements set out in *The Teachers' Act* and by the standards for competence and conduct established for teacher applicants and certificate holders by the British Columbia Teachers' Council. The Council's objectives are set out in the Act and include the aforementioned standards for conduct and competence, the setting of standards for the education of applicants for certification, and to establish teacher education program approval standards to determine if teacher education programs meet those standards. The Council is comprised of eighteen members which must include four teachers nominated by the British Columbia Teachers' Federation, five teachers elected in zones (by health authority), seven persons appointed by the Minister representing prescribed organizations,¹⁸ one member representing the First Nations Education Authority, and one person nominated by the Minister.

The BCTC has developed standards for teacher certification which are used by the Director of Certification to evaluate applications for certificates of qualification. Similar to Manitoba Regulation 115/2015, the BCTC standard addresses certificate types, approved degrees, language proficiency, credit hour requirements, teachable subjects, and a re-

¹⁸ Prescribed organizations are defined in the British Columbia Teachers' Council Regulation as the Association of British Columbia Deans of Education, the British Columbia Confederation of Parent Advisory Councils, the British Columbia Principals' and Vice-Principals' Association, the British Columbia School Superintendents Association, the British Columbia School Trustees Association, the Federation of Independent Schools Association, and the First Nations Education Steering Committee.

evaluation of credentials process. Different from Manitoba, however, is the existence of a professional standards document which applies to certificate holders to communicate the “knowledge, skills, attitudes and values that define educators’ work” and communicates “the responsibilities that educators have in fostering public confidence and highlight the complex and varied nature of educators’ work. . . . Educators have a level of autonomy, are accountable for their actions, and must act in the public interest.” They serve as ideals to which educators aspire and expectations to which they can reasonably be held. The standards are used by teacher education institutions to prepare educators for their practice, by the Director of Certification in issuing certificates, by educators themselves to guide their practice and professional growth, by the public to understand the role and work of educators, and by the Commissioner of Teacher Regulation to address possible breaches of the standard.¹⁹

Alberta:

The Teacher Certification Branch is the agent of Alberta Education responsible for delivering the program for certification of teachers. The Branch evaluates applications for certification per the Certification of Teachers and Teacher Leaders Regulation (AR 84/2019). The requirements are in many ways like Manitoba’s inasmuch as a university preparatory program is required consisting of a minimum of a 4-year degree which must include 48 semester hour credits of teacher education courses and ten weeks of supervised practicum.

There are some notable differences in the Alberta approach, however. First, following a successful evaluation of an applicant’s credentials by the Teacher Certification

¹⁹ British Columbia Teachers’ Council, Professional Standards for B.C. Educators (June 19, 2019), pp.2-3.

Branch, the applicant will be awarded an Interim Professional Certificate. The teacher holds this interim status until they have completed two years of full-time teaching (400 days equivalent); have received two successful, formal evaluations based on the knowledge, skills and attitudes for permanent certification outlined in the Teaching Quality Standard; and pay a fee of \$50. At that point the employing school authority must recommend the teacher for a Permanent Professional Certificate. This is a distinct difference from Manitoba where, if an applicant has met the requirements for permanent professional certification, he/she is eligible to receive one immediately and thereafter holds the certificate unless it is otherwise suspended or cancelled.²⁰

The second significant point of contrast with Manitoba is that Alberta has developed, like British Columbia, a statement of professional standards for both teachers and school leaders (principals and vice-principals) called the *Teaching Quality Standard* (Ministerial Orders 001, 002/2020). The documents play an important role because they (1) define the meaning of “competency” (an interrelated set of knowledge, skills and attitudes developed over time and drawn upon and applied to a teaching [leadership] context to support [quality leadership and teaching] optimum student learning; (2) establish several indicators which are measurable and observable, such as fostering effective leadership, engaging in career-long learning, demonstrating a professional body of knowledge, establishing inclusive learning environments, applying foundational knowledge of First Nations, Métis and Inuit, adhering to legal frameworks and policies,

²⁰ In 1994 Manitoba Education put forward for discussion, to the former Board of Teacher Education and Certification (BOTECE), a proposal for a two-year internship for new teachers during which time the teacher would hold an interim teaching certificate. Upon successful completion of the internship period the teacher would become eligible for permanent certification. The proposal generated much discussion but little in the way of consensus (indeed, much opposition from the Manitoba Teachers’ Society), and was not pursued by the department.

[modeling a commitment to professional learning, providing instructional leadership, developing leadership capacity, and managing school operations and resources]; and (3) expectations to guide career practice and are tied to teacher discipline both in terms of conduct (“the professional practice of a teacher is bound by standards of conduct expected of a caring, knowledgeable and reasonable adult entrusted with the custody, care or education of students”²¹) and of competence (“failure to meet requirements of the *Teaching Quality Standard* constitutes unskilled or incompetent teaching”²²).

The third major distinction between Alberta and Manitoba is the contrast in responsibility for teacher discipline. As noted previously, while the Manitoba Teachers’ Society has internal control over discipline of its members for breaches of its Code of Professional Practice and status as a member of the union, the Minister of Education controls the issuance and revocation of teaching certificates and can launch his/her own investigation over allegations of misconduct or malfeasance by a teacher. In Alberta, the Minister has ultimate control over a teacher’s certificate status, but with the exception of teachers employed in private and First Nations schools all public school teachers (approximately 46,000) fall within the purview of the Alberta Teachers’ Association in terms of how the receipt of and investigation into complaints, discipline, and possible recommendations to the Minister respecting a member’s teaching certificate are handled.

²¹ Alberta Education, Teaching Quality Standard (2020), p. 5. In addition, section 2 of AR 92/2019 (Practice Review of Teachers and Teacher Leaders Regulation) defines unprofessional conduct as conduct that is detrimental to the best interests of students, the public, teachers or teacher leaders generally; does not meet professional conduct requirements, or is the basis for a conviction for an indictable offence.

²² Section 3(1), AR 92/2019. The same application is made for school leaders who fail to meet the requirements of the *Leadership Quality Standard*. The Alberta Teachers’ Association, which is responsible for investigating and recommending disciplinary actions against the certification status of its members to the Minister of Education, also connects competent practice to the *Teaching Quality Standard*, but defines incompetence as the inability of a member to *consistently* meet the requirements of the *Standard* even after having received remedial assistance in order to do so.

The Teaching Profession Act delegates this authority to the ATA, and establishes a Professional Conduct Committee comprised of not fewer than 17 members of the ATA and three members of the public appointed by government. Hearing committees and appeal committees are established, and hearings are generally open to the public. The range of consequences following an investigation can include exoneration, levying of costs or fines, suspension or cancellation of the teacher's membership in the ATA, a recommendation to the Minister that the teacher's certificate be suspended or cancelled, or any further order considered appropriate. The decision to suspend or cancel a teacher's membership in the ATA is highly significant in itself as section 5 of the Act makes employment in the public school system contingent upon active membership. This is not the case in Manitoba: one must hold a valid and subsisting teaching certificate issued by the Minister to be employed as a teacher in the public or funded independent school system; it is not linked to membership in MTS.

Some significant changes appear to be in the offing in Alberta regarding teacher discipline. The provincial government introduced and recently passed Bill 85, the *Education [Students First] Statutes Amendment Act*, which will when the relevant provisions are proclaimed create by September 2022 a public online registry of all Alberta certificate holders and the types of certification held dating back to 1954. The registry will also include information if a certificate(s) was suspended or cancelled dating back to 1990, details on the date(s) certificates were issued, suspended or cancelled (and reinstated, if applicable), and whether the certificate(s) was suspended or cancelled for unprofessional conduct and/or professional incompetence. A summary of the disciplinary matter and copies of the decisions will also be available online.

Bill 85 will also require school boards to obtain a criminal record check and vulnerable sector check when hiring a teacher or teacher leader, and every five years thereafter if the teacher or teacher leader remains employed by the board. Any current teacher or teacher leader who has not had a criminal record check or vulnerable sector check²³ within the past five years will be required to obtain one upon passage of the Bill. Teachers and teacher leaders already employed will have up to sixteen months to complete this new requirement.

Per the Bill, the ATA will be required to notify the Registrar of the Teacher Certification Branch of all complaints filed against its members and at various stages of the complaint and investigation process. However, in early December 2021, Honourable Adrianna LaGrange announced that she had directed her department to begin drafting legislation that would remove the authority of the ATA over discipline for unprofessional conduct by its members. The announcement came as legal action was initiated by three former students in the Calgary Board of Education against the Board, alleging they had been victimized by a former teacher, Michael Gregory. Gregory had been employed at John Ware Junior High between 1986 and 2006, and in 2006 was investigated by the ATA and plead guilty to two counts of unprofessional conduct. His membership and teaching certificate was suspended for one year, whereupon he left teaching. He was found by the ATA to have mentally and physically abused his students, and to have

²³ "Criminal record check" means a report, including a vulnerable sector search, obtained from a law enforcement agency about a person stating (a) whether the person has any conviction or outstanding charge awaiting court disposition under any federal, provincial, or territorial enactment; and (b) the details of any conviction or charge.

"Vulnerable sector search" means a search of the records maintained by law enforcement agencies, including the records of offences referred to in Schedule 2 to the Criminal Records Act (Canada) for which a pardon has been issued or granted, or a record suspension has been ordered.

coerced and manipulated his students for his own benefit for the period between 1992 and 2005. There was no evidence the ATA ever referred the matter to police for further investigation (and there was no statutory obligation for it to do so). In early 2021 Gregory was charged with 17 sexual offences against six students. He committed suicide shortly after the charges were laid.

Minister LaGrange indicated that, in her opinion, “this episode clearly demonstrates that the ATA failed to protect students from a predatory teacher”, a claim the ATA disputed as “an attack on teachers”. The Minister said she expected the legislative change would be introduced in spring 2022 and, in so doing, would put Alberta on the same footing as every other province and territory which utilizes an arms-length disciplinary process.²⁴

On March 31, 2022, Minister LaGrange introduced Bill 15, The Education (Reforming Teacher Profession Discipline) Amendment Act (2022) to remove from the ATA its discipline function. The Bill proposes, similar to the structure in British Columbia, creation of a Commissioner’s office to be responsible for managing the disciplinary process. It also defines unprofessional conduct and professional incompetence; authorizes by regulation development of a code of professional conduct to which all teachers and teacher leaders shall comply; establishes hearing panels to hear complaints on conduct and competency; specifies reporting obligations in cases of misconduct; and provides detail on reporting to be included in the online teacher registry. The Bill preserves the Minister’s ability, upon receipt of a decision from a hearing or appeal committee, to

²⁴ Dylan Short, “ATA to lose disciplinary role following assault allegations against Calgary teacher,” Calgary Herald, December 9, 2021. See also Kieran Leavitt, “The case of a teacher accused of abusing 200 kids prompts Alberta to overhaul its disciplinary process,” Toronto Star, December 9, 2021.

render a final judgment on a teacher/teacher leader's certification status. If passed, the Bill will come into effect as at January 1, 2023.²⁵

Saskatchewan:

If Alberta is only belatedly coming to the realization that a teachers' organization cannot act as both advocate and regulator²⁶, Saskatchewan for very similar reasons reached that conclusion in 2015 with the establishment of the Saskatchewan Professional Teachers Regulatory Board (SPTRB).

Prior to 2015, Saskatchewan's teacher discipline model operated on a very similar basis to what is currently in place in Alberta. The Saskatchewan Teachers' Federation (STF) was responsible for teacher discipline with the exception of teachers employed in the private school system. The *Teachers' Federation Act* granted the power to the STF to discipline its members for unprofessional conduct, as well as to review a member's competency through the establishment of a professional competency committee. The Ethics Committee of the STF was comprised of five members of the Federation, and one public member appointed by government. The STF Competency Committee was made up of five Federation members. If a member was found guilty by either of these Committees, the matter proceeded to a penalty hearing convened before the STF

²⁵ In response to the Bill's introduction, ATA president Jason Schilling suggested the legislation "de-professionalizes" teachers and serves as a distraction from government's "bad decisions" around education funding, curriculum development, and the COVID-19 response in schools, while the Opposition Education critic suggested the Minister was inflicting "more political harassment upon teachers".

Michelle Bellefontaine, "Alberta Teachers' Association to lose disciplinary powers under new bill," CBC News, March 31, 2021. See also Alberta Teachers' Association website, "Proposed Teacher Discipline Process Changes".

²⁶ As the Canadian Centre for Child Protection has pointed out in its critique of the lack of transparency in teacher disciplinary processes across the country, unions are frequently involved in sexual misconduct discipline cases and "The conflict of interest that this poses is obvious."

Canadian Centre for Child Protection, "Student Sexual Assault, Misconduct, and Boundary Violations by Staff in Schools: Concerning Trends and Recommendations for Change" (Executive Summary), 2021, p. 3.

executive. The executive could issue a reprimand or recommend the Minister of Education suspend or revoke the member's teaching certificate. It was, apparently, the practice of the department (although responsible for the issuance of teaching certificates) not to act on a suspension or cancellation action unless a recommendation to do so by the STF preceded it.

Shaken by damning articles in the *Saskatoon StarPhoenix* in 2013, calling into question the effectiveness of the STF in disciplining some of its members for misconduct which, on its face, appeared egregious, the ministry through the Deputy Minister of Education responded by suggesting the cases were "troubling" and that the department would consider requiring two organizations to separately represent and to discipline teachers.²⁷

Acting on this media reporting and the negative public reaction emanating from it, Education Minister Russ Marchuk launched a review into the teacher certification and discipline process. Dr. Dennis Kendel, former registrar with the College of Physicians and Surgeons in Saskatchewan, was engaged to consult with education stakeholders and develop recommendations for future teacher regulation in the province. The Kendel Report was highly critical of the procedures used by the STF in receiving public complaints regarding teacher conduct or competence; the lack of separation between its professional regulatory and professional advocacy functions; and the absence of "social contract"²⁸ elements articulated within the STF Codes of Professional Ethics and

²⁷ Janet French, "Teacher conduct revealed; Ministry of Education questions teacher regulation," *Saskatoon StarPhoenix*, June 28, 2013. See also French, "When Teachers fail; Investigation reveals cases of teacher misconduct," *Saskatoon StarPhoenix*, June 27, 2013.

²⁸ ". . . the STF very explicitly discloses that these codes were developed "by teachers for teachers". It also declares that these codes outline "what the teaching profession expects from its members". Disappointingly, there is no

Professional Competence. Unsurprisingly, given his prior role with the College of Physicians and Surgeons, Dr. Kendel expressed his support for a college of teachers model with full professional self-regulation and that teachers in Saskatchewan, similar to those in Ontario, deserved the privilege of self-regulation. The STF would retain responsibility as advocate and bargaining agent for teachers, as the manager of teacher benefit programs, and provider of professional development programming. The advantages of a College model, in his estimation, were that:

- it would reflect the professionalization of the teaching force, putting it on equal footing with more than forty other professions and occupations in the province;
- it would enable teachers to better lend their professional expertise, insights and judgment for the betterment of the K-12 education system;
- it would remove the conflict of interest inherent in the unitary model where the STF acted as both advocate and regulator, and would support greater transparency.

The disadvantages cited by Kendel included:

- higher start-up costs in creating a College model;
- more extensive legislative work to establish;
- risk of failure similar to the experience of the B.C. College of Teachers.

Interesting, however, was his fall back recommendation of support for a Ministry of Education regulatory model similar to what exists in most provinces if teachers or the government were not prepared to endorse his proposal. A ministry-controlled model, although denying teachers the opportunity to exercise full responsibility and accountability for regulation of their profession, would effectively separate the advocacy and regulatory functions for teachers, incur fewer start-up costs and involve less work in legislative development, and represent a lower risk of failure.

recognition in this model for the views of students and parents. It is based on the assumption that professionals inherently “know what is best” for the people they serve.”

Dennis Kendel, For the Sake of Students: Current and Future Teacher Regulation in the Province of Saskatchewan (September 2013).

Approximately a year after release of the Kendel Report, the Saskatchewan government introduced the *Registered Teachers Act* establishing the Saskatchewan Professional Teachers Regulatory Board (SPTRB). The government, upon review of the report and following a process of consultation with stakeholders, introduced a Bill which clearly endorsed Kendel's recommendation for professional self-regulation. Creation of the SPTRB would remove responsibility for teacher discipline from the STF and assign it to the Board, along with teacher certification and registration functions. It was to be, according to Minister Don Morgan, "a major step toward the creation of one professionally-led, self-regulated body for the teaching profession in Saskatchewan. The Board will operate in the best interests of students, families, teachers and the public, and will be committed to the safety of all students and the integrity of all teachers."²⁹

On July 2, 2015, the Act was proclaimed into force with the Minister declaring that "our government is pleased to have moved one step closer to providing Saskatchewan teachers with the same authority and responsibility as other self-regulated professions in the province, resulting in a more transparent and clear process."³⁰ The grand opening of the Board was celebrated in late October 2015, about twenty-five months after the Kendel Report was released.

The duties and objects of the board of the SPTRB are set out in the Act. Its duties are to serve and protect the public and to exercise its powers and discharge its responsibilities to the public. The objects of the board are to establish and administer the

²⁹ "Government Introduces Legislation to Create Teacher Regulatory Board", Government of Saskatchewan News Release (December 3, 2014).

³⁰ "Independent Teacher Regulatory Board Created", Government of Saskatchewan News Release (July 2, 2015).

professional certification and standards of professional conduct and competence of teachers for the purposes of serving and protecting the public.

The board is entitled to make bylaws which are both administrative and regulatory in nature. Administrative bylaws include matters such as records retention schedules, certification and administration fees, committees of the board, notice of meetings, meeting frequency, etc. Bylaws of this kind are passed on the authority of the board itself and are filed with the Director of Corporations for formal registration. Regulatory bylaws include such items as providing for a code of conduct for teachers; setting standards for the manner and method of practice of teachers; and prescribing procedures for teacher discipline, including the investigation and disposition of complaints, hearings of disciplinary committees, and reviews of decisions on certification rendered by the Registrar. It is important to note that, unlike administrative bylaws, regulatory bylaws must be filed with the Minister and if he/she does not advise the Board within 90 days of his/her approval, the bylaw is deemed to have not met approval. The Minister may also request that the board amend or revoke a regulatory bylaw, or make a new regulatory by law if he/she believes it necessary or advisable. In so doing, the Minister may provide a draft of the bylaw amending or revoking the regulatory bylaw or a draft of a new bylaw. If the board does not comply with that request within 90 days, the Minister may proceed to amend or revoke the bylaw or make a new regulatory bylaw, and it takes effect the day it is published in the Gazette. The new bylaw is also filed with the Director of Corporations.

The SPTRB is led by a nine-member board comprised of three registered teachers appointed by the STF, but who cannot be employees of the Federation nor hold any office or committee membership in the STF; one registered teacher appointed by the League of Educational Administrators, Directors and Superintendents, but who cannot be an

employee of the League or be a member of its provincial executive; three registered teachers appointed by the Minister, only one of whom can be a member of STF; and two non-teachers appointed by Lieutenant-Governor in Council. Members serve for three-year terms and cannot serve more than a total of three terms. The administrative activities of the board are conducted by a staff of nine, led by its Registrar and Chief Operating Officer, an Assistant Registrar, Executive Coordinator, three certification analysts, two records clerks, and one Administrative Assistant/Accounting Clerk. The office is responsible for the annual registration of teachers, for maintaining a public registry of teachers, the evaluation and certification of applicants per its regulatory bylaws, and for supporting a number of committees operated under the auspices of the board. These include the Teacher Education and Certification Committee, which makes recommendations to the board on matters related to teacher education program approval, reviews teacher education programs, and determines the qualifications and standards related to certification; Certification Decision Review Committee, which hears and decides appeals of teacher certification decisions made by the Registrar; an Appointments Committee which reviews applications and makes recommendations to the board for applicants to the Professional Conduct Committee and the Discipline Committee; and the Conduct and Discipline Committees which review and investigate complaints of alleged professional misconduct, professional incompetence, or both against a registered teacher.

To aid in its deliberations on complaints about professional misconduct or professional incompetence, the board has passed bylaws setting out professional standards for conduct and competence. Broadly speaking, professional misconduct means conduct that is:

- harmful to the best interests of students or other members of the public
- tends to harm the standing of the profession
- a breach of the Act or bylaws
- a failure to comply with an order of the Professional Conduct Committee, Discipline Committee, or Board of Directors.

Professional incompetence is defined as the display by a registered teacher of a lack of knowledge, skill or judgment or a disregard for the welfare of a student or other member of the public served by the profession or to an extent that demonstrates that the registered teacher is unfit to:

- continue in the practice of the profession; or
- provide one or more services ordinarily provided as a part of the practice of the profession.

Development of the SPTRB model required an intense period of work in the run up to formal operation. A new teacher database, website, and public registry had to be developed and maintained. An initial three-year funding commitment of approximately \$7.3 million was obtained from the provincial government to establish and operationalize the board; the board now functions on the basis of annual registrations (\$85 [plus GST] per teacher) as well as certification fees generated from new teacher applications for an annual operating budget of approximately \$1.7 million. Teachers must register with the board annually in order to remain in good standing, but their annual registration fee is paid by the employer school board (if the teacher works in the public system). Provincial

teacher collective agreements specify that school boards will pay the annual fee (from monies provided to them by the government) per the invoiced amount set by the SPTRB.

Although the board office lost some of the services previously available when the teacher certification function was housed with the Ministry of Education (ie. accounting and finance, IT, human resources), in the Registrar's view the freedom to staff according to operational need and with an adequate budget to do so has facilitated flexibility and nimbleness to an extent greater than what could be achieved when situated within government. Efforts at continuous communication, particularly with teachers, have generated positive results.

Ontario:

Prior to 1996 when the *Ontario College of Teachers Act* was proclaimed, with its formal operation launched in 1997, the responsibility for issuance of a teaching certificate resided with the Minister of Education and cancellation or suspension of that certificate by the Minister occurred following receipt of a recommendation from the Ontario Teachers' Federation. The notion of self-regulation for the teaching profession had some currency in Ontario in the 1980s, taking note of developments occurring in British Columbia, but did not gather political momentum and general support until the government established the Royal Commission on Learning in 1993 to explore ways of ensuring that "Ontario youth are well-prepared for the challenges of the 21st century."

In its report "For the Love of Learning", the Commission devoted a chapter exclusively to the role of educators, suggesting that education reforms could only succeed if teachers and school administrators were committed to ongoing professional growth, took collective responsibility for high quality student learning, and assumed greater

responsibility for professional standards. Pointing to the experience of the General Teaching Council of Scotland, and the nascent College of Teachers in British Columbia, the Commission concluded that:

“. . . the teaching profession in Ontario must now be considered equal to the established professions. . . [W]e believe that the complexity of contemporary education in Ontario, and the best professional interests of educators, dictate a transfer of governance issues to a newly created professional body. Giving teachers full professional status is a logical extension of trends in education and developments in the teaching community. While the vast majority of Ontario teachers conduct themselves with a high degree of professionalism, teaching itself cannot be called professional because an essential characteristic of a profession in Ontario is the exercise of self-regulation, under statute.

The Education Act and *The Teaching Profession Act* regulate admission, certification and practice for teaching in Ontario. Governance is currently exercised under the Acts by universities through admission to faculties of education and control of the pre-service teacher education program; and by the Minister through authority over certification and decertification and post-certification qualifications. As long as these crucial areas of governance in teaching remain outside the control of teachers, the profession of teaching will remain in a state of limited development. In order to promote teaching to full professional status, we propose that a provincial self-regulatory body, a College of Teachers, be established. The College would be responsible for determining standards of teaching practice, regulating initial and on-going teacher certification, and accrediting teacher education programs, both pre-service preparation and on-going professional development. A majority of the College would be professional educators selected by their peers, but there would be substantial representation from the public, that is, non-educators.”³¹

The Commission cautioned against a College becoming an extension of the teacher federations and associations, a prudent warning given the later experience of British Columbia; nonetheless, it was fully of the view that “practitioners in the profession are most qualified to establish what is required for a teacher to function effectively, and decide which programs constitute appropriate professional preparation and in-service. Finally,

³¹ Ontario Royal Commission on Learning, *For the Love of Learning* (Vol. 3, 1994), pp. 282-283.

we believe that teachers themselves, in partnership with the broader community, should define professional conduct and practice.”³² This aspirational and hopeful perspective would and could not be divorced from future events demonstrating that a self-regulated body dominated by a majority of members of the profession is inevitably captured to some extent by it and at the expense of the public interest. While the Ontario College has escaped the fate of the British Columbia College of Teachers, it has nonetheless experienced several growing pains which have forced it to evolve and to change its internal operating procedures and even more recently its board size and composition – sometimes prompted by self-reflection, but more often by external pressure imposed by government and by expressions of public dissatisfaction.

The College is established under *The College of Teachers Act* and operates according to that statute and accompanying regulations. In carrying out its duty “to serve and protect the public interest”, the College has decided upon the following objects:

- to regulate the profession of teaching and to govern its members
- to develop, establish and maintain qualifications for membership in the College
- to accredit professional teacher education programs offered by post-secondary educational institutions
- to accredit ongoing education programs for teachers offered by post-secondary educational institutions and other bodies
- to issue, renew, amend, suspend, cancel, revoke, and reinstate certificates of qualification and registration
- to provide for the ongoing education of members of the College
- to establish and enforce professional standards and ethical standards applicable to members of the College

³² *Ibid.*, p. 284.

- to receive and investigate complaints against members of the College and to deal with discipline and fitness to practise issues
- to develop, provide and accredit educational programs leading to certificates of qualification additional to the certificate required for membership, including but not limited to certificates of qualification as a supervisory officer, and to issue, renew, amend, suspend, cancel, revoke, and reinstate such additional certificates
- to communicate with the public on behalf of the members of the College
- to perform such additional functions as are prescribed by the regulations.³³

The College had a membership of 232,164 in 2020, with revenues of \$41.8 million against expenditures of \$40.4 million. To be able to teach in the public school system in Ontario, a teacher must have active membership in the College, which is maintained through an annual registration fee of \$170. To reinstate membership or a lapsed membership, an additional fee of \$130 must be paid to the College.

When first established, the College was led by a 31-member Council of seventeen elected members (teachers) and fourteen members of the public appointed by government. In 2006 this was expanded to twenty-three elected members (teachers) and fourteen members of the Council, for a total of thirty-seven. A dozen years later, following an independent review of the College's governance structure, the government passed legislation (proclaimed in early 2021) which as of February 2022 dissolved the Council and replaced it with a twelve-member Council made up of six Ontario certified teachers and six members of the public who are not now, nor have ever been, teachers.³⁴ A Transition Supervisory Officer, Paul Boniferro, was appointed to oversee the changes. The reduction in Council size, and imposition of a 50/50 balance in teacher/non-teacher

³³ Ontario College of Teachers website, "Objects of the College".

³⁴ Government of Ontario, Bill 29, *The Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020.

composition, was made in government's view to "enable the Council to operate more efficiently and effectively. Most importantly, it will permit an even greater level of engagement in our work by both the public and members of Ontario's teaching profession. . . . The legislative reforms . . . will serve as a model for regulatory governance across jurisdictions and should serve to enhance public confidence in the teaching profession."³⁵

While the Council undergoes this transformation, its several committees established in support of the College's objects continue to function. These include:

- Accreditation (and accreditation appeal) – to review new and existing teacher education programs offered by Ontario post-secondary institutions
- Investigation – screens all complaints regarding College members and determines the appropriate outcomes (ie. no further investigation or action; issue written or oral caution or admonishment; reach agreement through complaint resolutions; referral to the Discipline or Fitness to Practice Committees)
- Discipline – conducts proceedings and rules on allegations of professional misconduct or incompetence
- Fitness to Practice – conducts proceedings and rules on allegations related to a member's physical or mental capacity to carry out professional responsibilities
- Registration appeals – considers requests for review from applicants who were denied College membership
- Standards of Practice and Education – advises on the development, implementation and review of Ethical Standards, Standards of Practice, and Professional Learning frameworks. Review and approve Additional Qualifications policy guidelines.

³⁵ Ontario College of Teachers New Release, "College Begins Transition to New Governance Structure" (February 1, 2021). Not surprisingly, the Ontario Teachers' Federation has been critical (or at least highly suspicious) of the transformation of the Council, describing it as "the end of self-regulation." See Ontario Teachers' Federation News Release, "Protecting the public interest? The Devolution of the Ontario College of Teachers" (October 27, 2021).

The work of the Discipline Committee is guided by definitions of professional misconduct set out in the Ontario *College of Teachers Act*, in Ontario Regulation 437/97, as well as Ontario Regulation 615/20 which prescribes acts of a sexual nature prohibited under the Criminal Code (Canada). The Act also defines professional misconduct, sexual abuse, and sexual misconduct³⁶ and makes its application in reference to a student under the age of 18 (or a special needs student under the age of 22) enrolled in a school, or a student of any age if subjected to behaviour, remarks or conduct while a student of the teacher, or the teacher was the principal or vice-principal of the school, or assisted in extracurricular activities in which the student was involved, or provided school related services to the student.

The Act also sets out reporting obligations of both employers and members themselves in the event of misconduct. Employers are required to report terminations or restrictions on a teacher's duties for reasons of professional misconduct. An employer who intended to terminate a teacher or impose restrictions on their duties for reasons of

³⁶ Professional misconduct means (a) sexual abuse of a student, (b) sexual misconduct, (c) engaging in prohibited acts involving child pornography, (c.1) engaging in a prescribed sexual act, or (d) any other act or conduct prescribed by the regulations.

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.

Sexual misconduct means inappropriate behaviour or remarks of a sexual nature by the member that is not sexual abuse of a student, where, (a) one or more students are exposed to the behaviour or remarks, or the member knows or ought to know that one or more students are likely to be exposed to the behaviour or remarks, and (b) a reasonable person would expect the behaviour or remarks to have the effect of (i) causing distress to a student exposed to the behaviour or remarks, (ii) being detrimental to the physical or mental well-being of a student, or (iii) creating a negative environment at a school for a student exposed to the behaviour or remarks. *Ontario College of Teachers Act*, s. 1(1).

Education Minister Stephen Lecce also recently announced that the lifetime ban on educators guilty of sexual abuse of students or children will also apply retroactively for previous similar acts by teachers and early childhood educators whose memberships were reinstated or not revoked at first instance. Government of Ontario News Release, "Taking Action to Protect Students and Children" (February 9, 2022).

misconduct but did not do so because the teacher resigned is also required to report this to the College. Employers are also obligated to file a report where they become aware that a teacher has been charged or convicted of an offence under the Criminal Code (Canada) or has engaged in behaviour which the employer believes should be reviewed by the College.

The Act was also recently amended to expand reporting obligations so that teachers must report if they have been found guilty of an offence, or have been charged with an offence and must provide information about bail or other restrictions imposed upon them. Failure to do so may be considered professional misconduct.³⁷

The College has been a pioneer in Canada in terms of the development of and continuous revision to professional standards for teachers, including ethical standards and setting of professional boundaries. The standards of practice and ethical standards frameworks are set out to articulate the goals and aspirations of the profession, as well as to demonstrate the ethical responsibilities and commitments of those in the profession. The College has developed a series of Professional Advisory documents covering a range of topics such as professional boundaries, professional misconduct, bullying of students, use of electronic communication and social media, and supporting student mental health. All of those documents could and should be applied to the Manitoba

³⁷ Although extensive legislative changes over the course of twenty years, following the reports issued by Justice Sydney Robins (2000) and Justice Patrick LeSage (2012), identified gaps and addressed processes to better protect students, the very prescriptive nature of the College framework is of itself no guarantee that appropriate steps are always followed in response to teacher misconduct. As the Toronto Star has pointed out, the opportunities for “bad” teachers to offend and re-offend before finding themselves in front of a disciplinary panel, exist through the practice of administrative transfer: moving a problem teacher from school to school. The Star identified 27 cases, between 2012-2017, where a teacher had been investigated by their employer school board, disciplined and transferred at least once by the time their behaviour brought them before a College hearing. Victoria Gibson, “‘One Wrong just creates another wrong’: How the quiet transfer of teachers over disciplinary issues has led to patterns of abuse in schools,” Toronto Star, December 1, 2017.

context as supports to educators, and to safeguard and support students. The College has also announced that, in partnership with the Canadian Centre for Child Protection (CCCP), as of January 3, 2022 all Ontario certified teachers, applicants and re-applicants are required to complete an online sexual abuse prevention program offered at no cost. The program must be completed by certified teachers no later than August 31, 2022 and completion will be noted on the public registry. Failure to do so by this date will mean an “incomplete” notation on the register. Ontario teacher certification applicants who complete their applications after January 1, 2022 must successfully finish the program in order to be considered eligible for certification and membership in the College. The CCCP has indicated that it will be advocating for “mechanical change in the education system to prevent child abuse” by urging all provincial certifying bodies to put in place a similar requirement for their current and newcomer teachers.³⁸

³⁸ Ontario College of Teachers News Release, “Development of Mandatory Sexual Abuse Prevention Program for Ontario Certified Teachers” (September 1, 2021).
Canadian Centre for Child Protection News Release, “Child Protection organization calls for need to modernize safeguarding structures in education system: Government-mandated child sexual abuse prevention program step in the right direction” (December 22, 2021).

Scotland:

The General Teaching Council of Scotland, considered the birthplace of the teacher self-regulatory model, came into existence in 1965. Its genesis reached back four years prior, in 1961, when striking teachers gathered to debate the idea of giving teachers control over their profession similar to what existed in medicine and accountancy at the time. Spurred on by grievances over wages and working conditions, a significant increase in school enrolments as a result of the post-war baby boom, and a shortage of teachers prompting government to relax certification standards, striking and disaffected teachers lobbied aggressively to seize control over training, certification and registration of members of the profession.³⁹ On June 2, 1965 the *Teaching Council (Scotland) Act* became law. The Council would have authority over matters such as compulsory registration, teacher discipline, and entry to practice standards – a not unfettered authority, however, as it was recognized that a legitimate state interest existed in determining the qualifications of individuals desirable for the classroom:

“Despite the extensive powers that the Committee envisaged being entrusted to the new Council, there remained the fact that in a democratic country Parliament, and not the Council, would have to have a final say on issues such as standards of entry to practice. . . . The problem, then is to devise a method by which the legitimate aspirations of the profession towards a greater measure of authority over standards of entrance to training can be reconciled with the need to retain Parliamentary authority.”⁴⁰

The solution to the problem, although unsatisfactory to many on the Council, was to permit Council to initiate policy changes and submit those to the Secretary of State for approval. This arrangement persisted until 2012 when the Scottish government announced its

³⁹ Ian Matheson, *Milestones and Minefields* (General Teaching Council of Scotland, 2015).

⁴⁰ *Ibid.*, p. 9.

intention to make the Council an independent profession-led teacher regulator, on the same footing as the General Medical Council. The government repealed the *Teaching Council (Scotland) Act*, replacing it with the *Public Services Reform (General Teaching Council for Scotland) Order*. As part of its statutory authority, the Council must:

- maintain a register of teachers
- set the professional standards expected of teachers
- accredit programs leading to the award of GTC standards, including initial teacher preparation programs at Scottish universities
- assume responsibility for investigation and adjudication on matters of fitness to teach of registrants
- advise the Scottish government on matters related to teachers and teacher professionalism.

The Council may also acquire and dispose of land and other property, enter into contracts, borrow money, and charge fees for services. It may also commission or carry out research and publish information relating to its functions. Its aims are to contribute to improving the quality of teaching and learning, and to maintain and improve teachers' professional standards. The Minister of Education, when performing functions related to education, "must have regard" to any relevant recommendation made by the GTC.

The GTC is governed by a Council of 37 members, the majority of whom (19) are elected registered teachers. Eleven members are education stakeholder nominees from a prescribed list of organizations (ie. Universities Scotland, Convention of Scottish Local Authorities, Scottish Council of Independent Schools, Church of Scotland, Roman Catholic Church, Parent Councils), and seven are appointed by the GTC but are not teachers. The role of Council membership is to establish the strategic direction of the GTC, monitor the performance of the GTC including its senior leadership team, develop

and maintain relationships with education stakeholders, and ensure an effective financial monitoring and risk management framework.

As part of its duty to “regulate teachers in the public interest and, in so doing is accountable to the public and the profession for maintaining standards and ensuring that teachers are fit to teach”, the GTC has developed both a Code of Professionalism and Conduct (2012) and multiple Professional Standards (Provisional Registration, Full Registration, Career-Long Professional Learning, Middle Leadership, and Headship).

The Code sets out the standard of conduct and competence expected of registered teachers. The Code is set out in five parts and provides a brief contextual commentary around each part:

- professionalism and maintaining trust in the profession
- professional responsibilities towards pupils
- professional competence
- professionalism towards colleagues, parents and carers
- equity and diversity.

The Code establishes the expectations of the GTC and are linked to disciplinary consequences if breached. While there are some elements common and comparable to the Manitoba Teachers’ Society Code of Professional Practice, the GTC Code is more detailed and represents the regulator’s perspective on professionalism as opposed to a union focus.

Professional Standards for Teachers, the “way of being”, was first established in 2000 and subject to periodic revision, most recently in 2021. The standards are meant to

- create a shared language for teaching professionals
- act as a benchmark for professional competency
- develop and enhance professionalism
- support career-long professional growth
- provide a framework for initial teacher education, probation and leadership pathways
- ensure and advance public trust and confidence in the profession.

The standards provide benchmarks of competence across several levels of a teaching career, from the beginning (provisional) teacher to those seeking and holding Headship roles. They set out the values, commitments, knowledge and understandings, skills and abilities expected as a teacher progresses through their career. While the standards are designed to support and promote leadership, enquiry and professional learning they are also used to support investigations into a teacher’s fitness to practice as teachers are expected to be aware of and effectively model the standards at every level of their career journey.

3. Self-regulation or Departmental control: which approach to teacher certification for Manitoba?

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any laws which either could be executed, or would be consistent with liberty or justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies, much less to render them necessary.”⁴¹

The fundamental question to be asked, and overriding principle to be observed, when ruminating upon a professional self-regulatory model for teachers in Manitoba or a regulatory model controlled by government is this: which of the two frameworks is most likely to keep the promise of acting in the *public interest*? Which approach is best able not only to *protect* but also to *serve* the public interest? Although the concept of the “public interest” is difficult to define⁴² and more challenging still to reach consensus on in a diverse, pluralistic, and heterogeneous society, it is within the political arena that the adjudication of divergent interests is played out. In democracies it is the role of elected

⁴¹ Adam Smith, *The Wealth of Nations* (New York: Bantam Books, 5th edition, 2003 [1776]), p. 152.

⁴² To the best of the author’s knowledge, and perhaps demonstrating the difficulty in capturing its essence, the concept of “public interest” is set out in only one statute in Manitoba. *The Engineers and Geoscientific Professions Act* defines public interest as “the well-being, convenience and concern of the public at large.” (s.1). Without attempting to define it, the recently enacted *The Public Service Act* identifies integrity as a value guiding the public service and in providing services public servants must “place the public interest over the personal interest.” (s. 4(a)).

The Ontario College of Teachers, while acknowledging the amorphous nature of the “public interest”, believes it has incorporated public interest measures and methods within its regulatory framework by adopting standards of practice to describe the knowledge, skills and values of the profession; ethical standards (care, respect, trust and integrity) to guide members in their professional roles; a professional learning framework to encourage ongoing learning; and accountability and transparency through publication of the College’s activities and decisions. Ontario College of Teachers, “Defining the Public Interest” (2007).

officials, accountable to the public, to have and articulate a sense of what reasonable people would believe to be in the common good and to develop policy responses reflective of it. They must be able, as Jean-Jacques Rousseau so aptly described, to “aggregate the babble of the collective will”. It means, then, the exercise of judgment to make decisions and thereafter be accountable for those choices; to take actions seen to be in the interest of the broader public rather than those of selected individuals or the interests of members of a particular group or profession.

Self-regulation, which will always find itself challenged to recognize, reflect and promote the public interest, is “an arrangement involving procedures, rules and norms that constrain the conduct of private actors, when the actors themselves develop the rules rather than the state.”⁴³ Self-regulated entities are granted statutory authority by the state to regulate the conduct of their members on condition that this authority is exercised in a way that advances the public interest. Decision-makers within these entities (and, indeed, as government departments and agencies must too) are required to exercise discretion appropriately, and “discretion necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.”⁴⁴

Conceptions of self-regulation of the teaching profession are typically rooted in the notion of comparability, that is, when considering the characteristics of professions which have already established self-regulating frameworks (ie. colleges) there is some similarity to those of teaching. Indeed, it was the basis for the argument advanced in Scotland in

⁴³ Robert Mysicka, “Who Watches the Watchmen? The Role of the Self-Regulator.” C.D. Howe Institute, No. 416, October 2014.

⁴⁴ *Roncarelli v Duplessis*, [1959] S.C.R. 121.

the 1960s, for the establishment of the British Columbia College of Teachers in 1987, in 1994 when the Ontario Royal Commission on Learning recommended creation of a College of Teachers in that province, and most recently in Saskatchewan in the form of the Saskatchewan Professional Teachers Regulatory Board. Fundamentally, it is an idea premised on the demand for equal respect and footing with other professions such as law and medicine. It suggests, as the Commission on Kindergarten-Grade 12 Education reported, that educators in Manitoba share similar characteristics with other professionals, and the educator class has evolved through stages of development similar to other established and recognized professions, including

- performance of a unique and clearly defined service
- possession of a specialized body of knowledge and skills
- high standards of performance
- regulation of admission and of practice
- professional autonomy balanced by public accountability
- adherence to a code of ethics
- a fiduciary responsibility to act in the interests of their clients and to be less concerned with their own interests such as wealth and status.⁴⁵

Citing with favour the experience of Ontario in establishing a College of Teachers, the Kindergarten-Grade 12 Education Review Commission suggested that “it is time for Manitoba’s teachers to put a stamp on who they are as professionals, to regulate themselves, and to forge new directions for the future of their profession.” It

⁴⁵ Manitoba Law Reform Commission, *op. cit.*, p. 47.

recommended that the province create a College of Educators, governed by teachers and members of the public, to address the training and certification of teachers; promote quality, excellence, and professionalism; maintain high standards for educators; and to provide accreditation of faculties of education. The goal, in creating a College, is to strengthen the public interest and confidence in the teaching profession.⁴⁶ The recommendation, if implemented, represents as has been noted a sea change in the historical and long standing regulatory arrangement whereby the Minister of Education, through his/her department, has responsibility for oversight of teacher education programs, entry to practice and admission standards, certification, classification and discipline of teachers.

Although the Commission did not provide any financial estimate of the cost to government in establishing a College, it would undoubtedly be significant, at least in the short-term. In recommending that government “transfer relevant resources from the Department of Education”, it is likely that in assuming the functions now performed by Professional Certification Unit (PCU) a College would not operate from the current location of PCU in Russell, Manitoba. There would be presently unknown costs related to the relocation or severance of 9 full-time equivalent staff, buying out the current lease of the building that houses that function as well as associated equipment leases (desktop computers, printers, telephone system, etc.) as that office is dismantled. There will be file

⁴⁶ Commission on K-12 Education, *op. cit.*, p. 48. Although a recommendation for a College of Educators model for Manitoba reflected the consensus opinion of Commission members, given her prior background as a Commissioner with the 1994 Ontario Royal Commission and having authored her own report (“Raise the Bar”) on education reform for Nova Scotia (2018) recommending a College of Educators for that province, it is unsurprising that in her role as Consultant to the Commission Dr. Avis Glaze would help shepherd the Commission toward such a conclusion.

Of note, the Government of Nova Scotia has declined to act on the recommendation for a College of Educators in face of opposition from the Nova Scotia Teachers’ Union and perceived general lack of public support for the idea.

transfer costs as well other related closure expenses. In the Saskatchewan experience, as noted previously, the provincial government there transferred \$7.3M in operating grants over three years to SPTRB to finance their initial and ongoing operating costs prior to the introduction of annual teacher registration fees which now cover its annual budget of \$1.7M. It is anticipated that support of this magnitude would be necessary to successfully establish a Manitoba College.

To fund the Manitoba College's one-time start-up costs and ongoing operations, the provincial government would need to provide about \$3.5M: an initial operating grant to support the first year of operations (\$1.5M); start-up costs (\$1.0M) to address the purchase of an integrated teacher certification management application as well as staff training costs, an office lease commitment for the College's headquarters (likely in Winnipeg) to accommodate 10-15 staff, and lease of computers and other technical equipment; and working capital to fund the College's ongoing operations (\$1.0M). Operating grants of about \$1.5M would be provided in each of years two and three until replaced by a stable source of revenue in the form of teacher registration fees⁴⁷. Manitoba Education would reallocate PCU's annual operating budget of \$595.0 to the operating grant to be provided to the College for the first three years, thereafter eliminating the impact of the transfer to the department's budget. The province would also relinquish to the College the annual collection of about \$200.0 in certification services provided to teachers.

⁴⁷ Modelling again the SPTRB experience, if an annual fee of \$100 was charged to each of Manitoba's approximately 15,000 teachers, an annual collection of \$1.5M might be generated to cover the College's estimated ongoing annual expenditure requirements. This assumption on revenue is qualified, however, given that while some number of presently inactive teachers may wish to maintain their registration status others will not, and there is no accurate way of estimating with any great reliability at present the total number of teachers in the province who would pay the fee.

As part of an annual registration and fees payment process, the College will need to implement a large-scale collection system capable of processing a high volume of financial transactions. This might be achieved, in part, by building upon an automated payroll deduction method for all teachers employed in the public school system. Mandating a payroll collection through employing school divisions would require an amendment to The Public Schools Act to authorize school boards to make the deduction and remittance of fees to the College (similar in some respects to existing enabling provisions which mandate boards to collect and remit to Manitoba Teachers' Society members' annual union dues via payroll deduction if not already covered through a collective agreement). Alternative approaches for fees collection would be necessary in the case of teachers employed in funded independent schools, institutional schools and adult learning centres, as well as for certified teachers employed in First Nations schools who wish to be registered as members of the College.

Given these costs for government and for teachers in the form of annual registration fees what, then, is the advantage to the profession in assuming, and for government in devolving, authority over regulation of entry to practice and admission requirements, professional standards, fitness to practice, and certification and discipline to a body representing teachers and the profession generally? For those who support the idea of a College of Teachers or Educators, the central advantage is it reflects and operationalizes the belief that practitioners themselves are most qualified to determine what is necessary for a teacher to function effectively, to decide what constitutes the best and most appropriate pre-service preparation and post-service learning, and to develop the requisite standards outlining and defining professional conduct and ethics. As educational experts, teachers possess a specialized body of knowledge acquired through

study and training which eludes the lay public, and because of this expertise can and do exercise considerable autonomy in their classrooms. Advocates would argue that constraints on that autonomy, where a question of competent instruction is at play, should be applied only by those who possess similar skill and knowledge and who can therefore make such a determination and assessment fairly. This is not to say that there is no role for the public to play in any of these matters – in fact, it is not so sinister a concession to make as Ornstein suggests when he writes that “lay control is the natural enemy of professions; it limits the power of the professional and opens the door to outside interference.”⁴⁸ The tension between democratic authority and professional expertise, as the early experience in Scotland highlighted, reflects two fundamental educational values. Most members of the profession recognize, I believe, that while they possess certain expertise as pedagogues, the determination of the purposes of education “is a matter of democratic choice because the primary consideration is the preferences of members of the community. Educators have no expertise concerning these preferences that might count against democratic rule... Legitimate authority over education is democratic authority. Whatever else the educator is, he or she is, first of all, a servant of the people.”⁴⁹ In that same vein, Professor Emeritus Ken Osborne (University of Manitoba) opined several years ago that the Manitoba Teachers’ Society should “give up the chase for professional status and move in the opposite direction. Become not a profession but a union.” It should do so because it

⁴⁸ Allan C. Ornstein, “The Trend Toward Increased Professionalism for Teachers.” *Phi Delta Kappan*, Vol. 63, No. 3 (November 1981), p. 196.

⁴⁹ Emil J. Haller and Kenneth A. Strike, *An Introduction to Educational Administration: Social, Legal and Ethical Perspectives* (Troy, New York: Educator’s International Press, Inc., 1997), p. 246.

“ . . . would also accomplish another objective. It would acknowledge that education is and must be a public institution. It should not be exclusively controlled by teachers. Teacher training and eligibility for entry into teaching, for example, are legitimate questions of public policy. They should not be controlled by any one group. What is good for teachers is not automatically good for education, and vice versa. The same is true for the medical and legal professions. For example, a rational health policy – advocating more community clinics, paraprofessionals, preventive medicine and the like – has been difficult to attain because of the self-interest of doctors.

Education must be open to much greater community involvement than it is now. Teachers must be willing to share power, not monopolize it.”⁵⁰

Hence, there is a place for lay representation on governing councils and subcommittee structures of teacher colleges (and, I would suggest, in department managed structures too), and this is evident in Ontario, Saskatchewan and Scotland although the degree of representation varies from place to place. There is a commitment as expressed in the statutes creating them, to have regard for the public interest when carrying out their functions, duties and powers. The lay perspective, given voice through significant minority or co-equal representation, is seen as a mechanism for ensuring this occurs.

The primary advantage to government in delegating authority for governance to professional groups is that it shifts responsibility for rulemaking and enforcement to those groups. It can be less costly to taxpayers over time, once initial financial supports end, as the administrative and governance structures are funded by members of the profession themselves. It can reduce government’s “information costs”; that is, the cost to government as regulator to obtain and have mastery over the scope of information needed to provide and ensure effective regulation. Lastly, and from the perspective of the profession, it can enable greater nimbleness of operational response with less

⁵⁰ Ken Osborne, “Give Up The Chase”, The Manitoba Teacher, Vol. 70, No. 3, March 1992, p. 17.

bureaucracy and greater opportunity for the exercise of discretion in administration. It enhances organizational autonomy and independence.

The perceived advantages to government, coupled with effective lobbying by some professions and occupational entities desirous of greater control, has created the conditions for a significant proliferation in self-regulated organizations. As Mysicka points out, in Ontario at the time of Confederation in 1867 there were three self-regulated professions: lawyers, doctors and land surveyors. At present, there are more than eighty bodies to which government has delegated administrative or quasi-judicial functions, and over 300 organizations able to exercise powers set out in statute. Forty professions have been delegated authority to engage in a particular practice, are entitled to use a professional designation, and are charged with protection of the public interest in the delivery of their services.⁵¹

In its instructive and comprehensive examination on regulation of professions and occupations, the Manitoba Law Reform Commission (1994) argued that the first and fundamentally only principle which must be considered and answered is whether delegation of regulatory authority to a profession *serves the public interest*. The interests and aspirations of professional organizations and its members are secondary in this assessment and, in the Commission's view, "should be disregarded."⁵² This is critical when contemplating the recommendation from the Kindergarten-Grade 12 Education Review Commission advocating for a College of Educators for Manitoba. The K-12 Commission lays out the usual arguments in support of a College model for self-regulation yet it never quite addresses or attempts to demonstrate *how* such a body would be an

⁵¹ Mysicka, *op. cit.*, p. 6.

⁵² Manitoba Law Reform Commission, *op. cit.*, p. 47.

improvement over the existing regulatory framework or would *better* protect and serve the public interest. It argues, essentially, that teachers in Manitoba demonstrate professionalism, that the profession of teaching in this province has matured and come of age, and that their status is deserving of recognition through the creation of a College. If teachers in Ontario and Saskatchewan merit autonomy through a College, why not in Manitoba? While inadequately addressing the *why* question, the Commission also makes no attempt to answer another important question: do Manitoba teachers, by and large, desire a College of Educators?⁵³

⁵³ Although a question best left for Manitoba teachers themselves to answer, it is far from obvious that the profession itself (or at least those organizations representing it) is demanding self-regulating authority. In response to the Glaze Report (“Raise the Bar”, 2018), the president of the Nova Scotia Teachers’ Union denounced the recommendation for a College of Educators, citing the failed B.C. College of Teachers and asserting that teachers already have a voice through their union. A teachers’ college, she said, is “an extra layer of bureaucracy paid for by teachers . . . This body won’t help students. It won’t help teachers. It’s a solution to a problem that does not exist.” The Council of Atlantic Provinces and Territory Teachers’ Organizations (CAPTTO), representing teacher unions in the four Atlantic provinces and Nunavut, described Dr. Glaze’s recommendations as “another level of bureaucracy that is unnecessary and costly and will do nothing to improve the quality of education for students.”

The Manitoba Teachers’ Society has, for most of its history, also opposed the idea of a College for Manitoba, and (although it is not a regulatory body) has suggested it would create a parallel system to one which already exists through the Society and would only serve to impose additional costs upon teachers and create confusion. While not speaking on behalf of the Society, former MTS General-Secretary Roland Stankevicius was surely reflecting its position when suggesting that educators “already navigate through teacher professional certification, myriad school division policies, provincial legislation and regulations. They do not need yet another layer of administration and more bureaucracy to be successful . . .”.

“Teachers’ Union President Pans Glaze Report,” [CJLS.com](#), January 24, 2018.

Nova Scotia Teachers’ Union News Release, “Public education system needs unity, not division and distraction” (February 12, 2018).

CAPTTO News Release, “Atlantic Teacher Organizations Give Failing Grade to Nova Scotia Government’s Response to Flawed Glaze Recommendations” (February 12, 2018).

Maggie Macintosh, “Manitoba eyes creation of regulatory body for teachers,” [Winnipeg Free Press](#), November 24, 2021.

Roland Stankevicius, “Teachers already well regulated,” [Winnipeg Free Press](#), November 26, 2021.

In my view, the flaw in the K-12 Commission's argument is that it makes little attempt to overcome the bar necessary for self-regulation as was so eloquently expressed by Justice McRuer writing for the Ontario Royal Commission Inquiry into Civil Rights (1968) when he said:

"The granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to the public interest. The power is not conferred to give or reinforce a professional or occupational status. The relevant question is not, "do the practitioners of this occupation desire the power of self-government?", but "is self-government necessary for the protection of the public?" No right of self-government should be claimed merely because the term "profession" has been attached to the occupation. The power of self-government should not be extended beyond the present limitations, unless it is clearly established that the public interest demands it."⁵⁴

For the K-12 Commission, though, teachers are professionals and have earned the right to exercise greater autonomy in their practice: *ergo*, the creation of a College of Teachers is warranted.

All professional self-regulatory bodies are, in exchange for the privilege of self-regulation, expected to act in the public interest. Their primary purpose in being is not to advance the interest of their members but to protect the public from incompetent or unethical practitioners and to ensure access to competent and effective professional services. Again, as Mysicka points out

"There is an important nexus of trust and confidence between licensed, self-regulated professionals and the consumer or client, who relies on the professionals for their knowledge and expertise The importance of trust in maintaining fairness and balance in this relationship gives rise to a fiduciary obligation, meaning that the professional should 'operate with a high degree of disinterestedness and maintain the primacy of the client's welfare'".⁵⁵

⁵⁴ Honourable J.C. McRuer, Ontario Royal Commission Inquiry into Civil Rights (Report No. 1, Vol. 3, 1968), p. 1162.

⁵⁵ Mysicka, op. cit., p. 11.

Self-regulating bodies can, and do, take steps to reduce the risk of overweening self-interest supplanting the public interest. In addition to the establishment of governing councils and subcommittee structures which mandate some minimum public or layperson membership and participation, the Manitoba Law Reform Commission suggested some additional requirements (which could easily be applied to state regulation) to enhance openness and transparency in safeguarding the public interest:

- mandatory publication of annual reports, with prescribed elements of consequential information valuable to the public and to practitioners
- public access to the rules, regulations and bylaws of the self-governing body
- publicly accessible registry of members
- open disciplinary hearings
- access to information on historical disciplinary sanctions imposed upon practitioners
- open public meetings of the governing board
- periodic public meetings to provide general information on the role and activities of the self-governing body
- some continued government oversight to ensure self-regulatory bodies are in compliance with the legislation creating them and are investigated should they not be.⁵⁶

Risk mitigation is also enhanced by preventing the self-regulating body from simultaneously acting as an association or union dedicated to the economic welfare of practitioners. The conflict of interest for such a dual object entity is inescapable and the public interest obligation will invariably take second place to the economic and reputational interests of the membership. Although self-regulating bodies like the Ontario College of Teachers avoid this problem by separating out the union advocacy function, the pre-2015 experience in Saskatchewan and current situation in Alberta where the

⁵⁶ Manitoba Law Reform Commission, *op. cit.*, pp. 57-62.

teachers' unions in those provinces had/have responsibility for regulating the conduct of their members and held significant influence over their certification status in cases of alleged misconduct was not positive and led to change.⁵⁷ These dual object bodies simply cannot meet the requirements proving their ability and willingness to act in the interests of the public when faced with the sometimes conflicting needs and demands of their own members. It is not in *their* self-interest to do so.⁵⁸

If not already apparent it is my view that the rationale supporting, and the recommendation for, a College of Educators advanced by the Kindergarten-Grade 12 Education Review Commission does not provide sufficient justification for such a model and should not be implemented in Manitoba. The Commission's reasoning for this approach, while familiar and endorsed in jurisdictions such as Ontario and Saskatchewan through establishment of self-regulating bodies for teachers, lacks substance and should not be adopted by Manitoba (and, in fact, has not been adopted in other provincial and territorial jurisdictions in Canada, or internationally in most liberal democratic national and

⁵⁷ Although not now a proponent of a College of Teachers model for Manitoba, the Manitoba Teachers' Society had many years ago put forward a proposal advocating for one in an attempt to block or counter the provincial government's initiatives on education reform and teacher collective bargaining. As the MTS itself describes it

"In 1997 the annual brief to Premier Gary Filmon and Education Minister Linda McIntosh included a proposal for Professional Self-Governance which would result in a College of Teachers of sorts. The MTS proposal was markedly different from provinces such as B.C. and Ontario where similar entities were government led and government controlled. Ours would be teacher-led, funded and affiliated with the MTS, but the majority of members would also be teachers. Despite previous comments by the Manitoba government that they were open to considering a professional bill, they ignored this one." (Manitoba Teacher, April/May 2018)

In addition to the questionable assertion that the British Columbia and Ontario colleges were "government led and government controlled", given the predominance of teacher representation in their governance structures, one is quizzical as to whether the Society was truly surprised when the government chose not to endorse their College proposal. The model was riven with self-interest, and as a dual object entity made no pretence at making the public interest its primary focus. As defined, it was a non-starter from the perspective of government.

⁵⁸ Should government choose to establish a College model for Manitoba, per the K-12 Education Commission's recommendation, it must certainly follow the example of the OCT and SPTRB and not be or be seen to be an extension of the teachers' union and must separate out the union advocacy function performed by MTS, especially given the role the Society will now play as the employee bargaining agent under single table provincial bargaining.

sub-national entities holding responsibility for primary and secondary level education). I continue to fall back upon the wisdom articulated in the Manitoba Law Reform Commission report which always and deliberately brings the reader back to first principles: that self-regulation can only be considered **if** there is a compelling need to do so **and** the public interest is served and safeguarded. The desires of practitioners do not extinguish or make subordinate the legitimacy of a state interest in the training and certification of teachers:

“In analyzing costs and benefits, care should be taken by decision-makers to avoid the inclusion of irrelevant factors. For example, it is not particularly relevant that an occupational group is university-educated, has been in existence for some time, has developed its own code of ethics or that similar groups have obtained occupational regulation in other provinces. These facts are peripheral to the central questions decision-makers should address: Is there a manifest need on the part of the public from the improper performance of this service? If so, will licensing or certification provide an adequate level of protection from this harm and will it do so at a cost which is less than the benefits of protection? In short, we propose that the purpose of occupational regulation should be to protect consumers and third parties from harm. It should not be used to reward or recognize practitioners for their educational and ethical achievements. Indeed, its purpose should not be to serve the interests of practitioners at all but should only be implemented when it is in the public interest to do so.”⁵⁹

Is the public interest better served when the functions of training and certification of those holding such important roles in the education of children and youth are regulated by the state? It is, in my view, and responsibility and accountability for the decisions which impact teacher education, certification and discipline will rest with elected officials and their respective ministries as set out in statute and regulation, as it should under our model of responsible government. Changes to the current framework for teacher regulation are

⁵⁹ Manitoba Law Reform Commission, *op. cit.*, p. 19.

clearly required to better support the profession and the needs of the public, but those are changes and enhancements to a government administered model, not the creation of a new, teacher funded and controlled professional body. While the changes being proposed in this paper are significant, they are also somewhat incremental in nature: that is, they build upon an existing structure and avoid the change and disruption which comes with the introduction of something entirely new. This offers the advantage of a degree of continuity and is also consistent with the approach being adopted in the department's "K to 12 Education Action Plan"⁶⁰ which emphasizes the importance of continuous improvement and of building upon existing system strengths and capacities in responding to the recommendations from the K-12 Education Review Commission.

There have been sufficiently numerous and egregious instances in the fields of law, health care and education (where self-regulation exists), where bad actors have been able to evade, or be only minimally sanctioned for, unprofessional behaviour that would leave reasonable people to wonder if, regardless of structures and safeguards, professions can escape the irresistible temptation and sway to "circle the wagons" in protecting their members and their reputation.⁶¹ When action does not get taken, proceeds at glacial pace in responding to complaints about misconduct, or appears to

⁶⁰ Manitoba Education and Early Childhood Learning, [Manitoba's K to 12 Education Action Plan: A Roadmap in Response to the Recommendations of the Commission on K to 12 Education](#) (April 2022).

⁶¹ The abject failure of the British Columbia College of Teachers, the exposés on ineffectual disciplinary practises and outcomes for teachers in Alberta and Saskatchewan, the criticisms (despite numerous legislative changes) of disciplinary processes outlined in the Robins and LeSage commissions in Ontario, and the recent concerns expressed by child protection organizations lead even the most casual observer (and most certainly a cynical one) toward a similar conclusion. As Heather Mallick of the Toronto Star has bitingly observed in commenting upon the cancellation of the March 2022 bar exams by the Law Society of Ontario due to breaches in exam security, "The Law Society has quite the momentary sheen for its rectitude, a rare thing in a profession that regulates itself about as well as doctors do, pretty badly. Self-regulation, what a difficult thing it is. If people can't stick to diets, stay faithful to spouses, or stop buying what I call "objets d'art" and my spouse calls "wank" on Etsy, what hope is there that they can regulate themselves in larger groups?"

Heather Mallick, "The ethics of cheating on a law exam that tests – among other legal matters – ethics," [Toronto Star](#), March 8, 2022.

condone misconduct through inadequate penalty or opprobrium, public trust is eroded. Robust oversight from outside of the profession (although not devoid of participation and input from it), situated in and under the auspices of government, can support the needs of the profession but locates accountability squarely where it belongs.

The English playwright George Bernard Shaw brilliantly recognized, more than a century ago, the conflict inherent between self-regulating professions or occupations and the common good. The sense of skepticism that the public interest will prevail when pitted against well-organized and well-funded powerful private interests has not diminished in the years intervening since he penned The Doctor's Dilemma (1911):

“. . . no doctor dare accuse another of malpractice. He is not sure enough of his own opinion to ruin another man by it. He knows that if such conduct were tolerated in his profession no doctor's livelihood or reputation would be worth a year's purchase. I do not blame him: I would do the same myself. But the effect of this state of things is to make the medical profession a conspiracy to hide its own shortcomings. No doubt the same may be said of all professions. *They are all conspiracies against the laity*; and I do not suggest that the medical conspiracy is either better or worse than the military conspiracy, the legal conspiracy, the sacerdotal conspiracy, the pedagogic conspiracy, the royal and aristocratic conspiracy, the literary and artistic conspiracy, and the innumerable industrial, commercial, and financial conspiracies, from the trade unions to the great exchanges, which make up the huge conflict which we call society. But it is less suspected.”

4. Changes necessary for a renewed regulatory model

Having determined that the public interest is better served and protected through departmental control over the teacher certification process due to the inherent and unavoidable conflict of interest present in any self-regulating model, I turn to the changes needed to improve and strengthen the current regulatory framework to facilitate transparency, improved practice, and enhanced student safety.

Young and Boyd examined the importance of jurisdiction, ie. by whose authority are activities of governance carried out, when looking at teacher preparation leading to certification. I have extended this conceptual model to include the responsibility for teacher certification itself. Although Young and Boyd suggest there is no ideal type, and often a “contextually specific hybrid of these modes”, they posit that there are three modes of governance in which government, universities and the profession each have a stake and while one will ultimately assert primacy it is critical that the tensions and interests of each are managed and reconciled to the greatest extent possible.⁶² The three modes they identify are political (government), institutional (universities) and professional (teachers).

Political governance is defined as elected government bodies (departments of education), supported by legal jurisdiction and authority and a willingness and interest to exercise authority directly rather than to delegate it, controlling teacher education. The core interest is the public policy agenda.

⁶² Jon Young and Karen Boyd, “More Than Servants of the State? The Governance of Initial Teacher Preparation in Canada in an Era of School Reform”, The Alberta Journal of Educational Research, Vol. 56, No. 1 (Spring 2010), pp. 2,10.

Institutional governance implies that governance is centered in faculties of education, within the structures of decision-making and accountability of the university. The core interest is critical inquiry, that is, the application of relevant knowledge underpinned by theory, and in the tradition of research and scholarship to improve professional practice.

Lastly, they identify professional governance as teacher control over entry into the profession and a governance role over teacher preparation (and ultimately certification). The core interest is professional self-regulation, which in Canada has taken the form of the Ontario College of Teachers, the Saskatchewan Professional Teachers Regulatory Board, and the former British Columbia College of Teachers.⁶³

In their paper, Young and Boyd situate Manitoba within the institutional governance mode of pre-service teacher education as, for the most part, the core interests and primary structures which drive decision-making over admissions, curriculum, instruction, and site of offering rest with universities and their faculties of education. The schema is helpful more broadly inasmuch as I would suggest that in “bulking up” its regulatory requirements for certification by revamping teacher disciplinary processes, developing professional standards, and enabling greater stakeholder (including public) input in both, Manitoba should move closer to the governance mode for pre-service, certification of, and post-service learning for teachers. In saying this, it is clearly appropriate for faculties of education in Manitoba to continue to enjoy the considerable autonomy they hold over the way in which teacher candidates are educated, and to deliver the theoretical and practicum training necessary for teacher preparation. This occurs, though, and as noted

⁶³ *Ibid.*, pp. 5-11.

previously, within a statutory framework which confers upon the Minister of Education authority over approval of programs offered by teacher education institutions for the purpose of teacher certification (EAA, s. 3(2)), in addition to the power to make regulations prescribing the minimum standard of academic and professional preparation acceptable for the certification of teachers (EAA, s. 4(1)(c)). Initial teacher education has always been inextricably linked to the certification requirements set by government, and while I do not suggest a measurably more interventionist (or, as some might less charitably describe, intrusive) role for government in shaping the format and content of Bachelor of Education programs, there must surely be general recognition that government is not and should not be a passive or disinterested bystander in how teacher candidates are trained. In moving closer to a “political” mode, government will signal its interest and willingness to exercise a greater degree of influence over this important aspect of public policy. Such an approach clearly aligns with a department-led regulatory model. And it would not necessarily be inconsistent, as Young and Boyd note, given “the well-being of any education system is closely related to its capacity for renewal through the recruitment and preparation of well-qualified new teachers.”⁶⁴ How teachers are prepared will be influenced by changes in certification requirements introduced from time to time by government – indeed, it would be pointless to train teachers if they were subsequently ineligible for certification and therefore unemployable – and this should include the introduction of professional standards for teachers, something most other provincial jurisdictions have developed but which Manitoba presently lacks.

⁶⁴ Ibid., p. 2.

Beyond this, however, the current regulatory framework for teacher certification needs to be revised to address significant gaps which presently exist, to better align functions within the department,⁶⁵ and to support public confidence through greater transparency and a more comprehensive, prescriptive disciplinary process. The Professional Certification Unit would continue to have responsibility for transactional elements related to certification, including evaluating and processing applications for certification against established regulatory requirements: assessment of credentials, evaluation/recognition of prior teaching experience, classification and certification, stewardship of the teacher database to support Unit and department operations and policy-making, and for maintaining a new public facing teacher registry. A significant enhancement of resources will be needed and dedicated to general policy development in support of teacher education and certification requirements; for investigation of complaints regarding fitness to teach and professional misconduct and developing recommendations for the Minister's consideration for possible referral to the Certificate Review Committee; support and management of the teacher discipline process through the Certificate Review Committee; and management of the interface with education stakeholders (including faculties of education) and through a new Minister's advisory body on matters of teacher education and certification.

⁶⁵ It is a separate line of inquiry and will not be studied in this report, but the recent reorganization of the department to include responsibility for early childhood education may out of interest or necessity trigger an examination of the feasibility in establishing a certification regime (and attendant disciplinary procedures) for those holding the Early Childhood Educator designation. It might parallel the teacher certification/discipline process or look somewhat different in considering the needs and requirements of that sector.

Proposed changes

Update Teacher Discipline Processes:

“Justice must be rooted in confidence.”⁶⁶

The present model and process for the discipline of teachers in Manitoba has been in place for decades. The last significant statutory alteration to existing procedures occurred in the early 1990s following the decision of the Court of Queen’s Bench in *Barrow v. Manitoba* (1992) when the Court ruled that a teacher must be apprised of and given the opportunity to respond to the conclusions and recommendations reached by the Certificate Review Committee *prior* to the Minister rendering a final decision on their certification status. The administrative practice of offering a voluntary surrender option whereby a teacher facing an investigation and possible sanction by the courts agrees to surrender their certificate(s) to the department on a without prejudice basis and with a written undertaking not to teach in the interim until the matter has been resolved, was also initiated by the department several years ago. Where a criminal sanction is later imposed by the court, the process can also be used to move to an indefinite certificate suspension without need (with consent of the teacher) for a formal hearing of the Committee. The teacher relinquishes their certificate(s) and cannot have it returned without appearing before the CRC, is no longer eligible to be employed as a teacher, and this information regarding certification status is communicated to other certification bodies across Canada.

⁶⁶ Honourable Patrick J. LeSage, “Review of the Ontario College of Teachers intake, investigation and discipline procedures and outcomes, and the dispute resolution program” (2012), p. 68.

To modernize its teacher discipline processes the department must align itself with the approach taken by other provincial jurisdictions to define what constitutes professional misconduct, what constitutes misconduct which must be reported, and to whom a reporting obligation falls.

As referenced earlier in this report, there is currently no legislative definition of teacher professional misconduct in Manitoba. *The Education Administration Act* simply assigns authority to the Minister of Education to refer a case to the Certificate Review Committee for its review for “any cause the Minister deems sufficient.” Upon review of the matter and delivery of recommendations to the Minister, it is within the Minister’s absolute discretion to accept, reject or modify those recommendations and to determine whether a certificate should be suspended or cancelled.

In terms of reporting obligations, *The Public Schools Act* narrowly prescribes the following:

41(1) Every school board shall

(t) where it has knowledge thereof, report to the Minister any teacher employed in a school within the jurisdiction of the school board who has been charged with or convicted of an offence under the Criminal Code (Canada) relating to the physical or sexual abuse of children.

The Child and Family Services Act states that the Director of Child and Family Services, where he/she believes a person has caused a child to be in need of protection or has failed to report where a child is in need of protection, may report the matter “to the body or person that governs the professional status of the person or certifies, licenses, or otherwise authorizes or permits the person to carry on his or her work or occupation” (CFS Act, s. 18.2(1)). When this occurs, the Director of Education Administration Services

(presently) shall investigate the matter to determine whether any professional status review or disciplinary proceeding should be initiated against the person (teacher) and, upon conclusion, advise the Director of Child and Family Services on the determination of the investigation, reason for the determination and, if applicable, the outcome of the professional status review or disciplinary proceedings (s. 18.2(s)).

Although in practice, and to the best of its knowledge, funded independent school and First Nation employing authorities will also apprise the department where it has knowledge of teachers in their employ who have been charged with or convicted of physical or sexual abuse of children, the legislation is currently silent on that reporting obligation. This provision needs to be tightened to ensure that the obligation for reporting also falls upon funded independent schools, institutional schools and adult learning centres; and that First Nation schools, although they fall outside provincial jurisdiction, be strongly encouraged (voluntarily or through formal agreement) to report professional misconduct of Manitoba certified teachers as it is in the interests of student safety and parental confidence.

I would therefore recommend that the Department of Education consider adopting the approach set out in the *Ontario College of Teachers Act* which defines professional misconduct, sexual abuse and sexual misconduct; sets out in regulation (OR 615/20) prescribed sexual acts per the Criminal Code (Canada); and the interpretation on application of sexual abuse and sexual misconduct (see page 39). I also endorse the approach taken by Ontario on mandatory revocation of a teacher's teaching certificate where a teacher has been found guilty by the disciplinary committee of professional misconduct involving sexual abuse of a student, a prohibited act involving child pornography, or a prescribed sexual act. Similar provisions for mandatory revocation of

a medical license for sexual abuse of a patient are set out in Ontario's *Protecting Patients Act*. I am also of the view that, similar to what is now in place in Ontario, applicants for teacher certification should be required to successfully complete an online sexual abuse prevention program (offered through the Canadian Centre for Child Protection or another program of similar quality) prior to certification, and that active teachers be compelled to successfully complete this program by a prescribed date. Completion/incompletion of this program will form a notation on the public registry.

I also recommend that the department consider the reporting obligations as set out in the *Ontario College of Teachers Act* as something to be emulated in Manitoba. Notably, sections 43.2, 43.3, 51.1 and 51.2 which impose requirements upon the employer to report a teacher who has been terminated for professional misconduct, when they intended to terminate a teacher or place restrictions on their duties prior to the teacher's resignation (or the teacher resigns during the course of an investigation by the employer over alleged professional misconduct); reporting by the employer when the teacher has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct around minors, who has been charged with or convicted of a Criminal Code (Canada) offence that in the employer's opinion indicates that students may be at risk of harm or injury, or has engaged in conduct or actions that the employer believes should be reviewed. Teachers, too, are required to report to the College if they have been found guilty of an offence (nature of and description of offence, date found guilty, name and location of the court where found guilty, and status of any appeal), and where they have been charged with an offence must report on any bail conditions or restrictions imposed or agreed to in relation to the charge.

The department and its legal counsel must also work with child protective services in the Department of Families to better facilitate information sharing regarding agency investigations involving teachers per the criteria set out in subsection 17(2) of the *Child and Family Services Act*. It is important that where a teacher has been referred to the Certificate Review Committee regarding their ongoing fitness to hold a teaching certificate, and that teacher has also been investigated by a Child and Family Services agency, that the Department of Education have some capacity to understand the underlying facts regarding an agency finding. Given that CFS agencies define their own categories of findings and they vary across the province, and that the Department of Education is presently unable to determine whether a teacher has been placed on the Child Abuse Registry (unless the teacher provides written consent to allow this disclosure), some limited disclosure of information necessary to accomplish the intended purpose must be permitted without need to obtain a court order under section 76(3)(b) of the *Child and Family Services Act*. If the Department of Families is intent upon a review of that Act in the near future, and perhaps even if it is not, this is an issue that requires attention to support fairness and informed decision-making in any disciplinary proceeding by the Department of Education.

Disciplinary Committee:

As previously referenced, per *The Education Administration Act*, the Minister of Education has sole authority to suspend or cancel a certificate issued to a teacher. He/She does so following receipt of recommendations from the Certificate Review Committee which, upon referral from the Minister, has the responsibility to investigate and report on a review of a teacher's certificate. I propose no change to this decision-making model. The Minister, with the benefit of advice received from the Committee (about which he/she maintains his/her discretion on whether to accept, reject or modify) should retain this authority and therefore be responsible and legally accountable for such decisions.

I do, however, recommend that the composition of the Committee, unaltered for decades, be changed to give greater representation to the lay public. This is common practice in other provincial jurisdictions and consistent with a recommendation advanced by the Manitoba Law Reform Commission.⁶⁷

At the current time, the composition of the Committee is prescribed in *The Education Administration Act*, membership of which is appointed by the Minister. The members of the Committee are:

- three persons nominated by The Manitoba Teachers' Society (MTS)
- three persons nominated by the Manitoba School Boards Association (MSBA)
- two persons nominated by the Manitoba Association of School Superintendents (MASS), and
- two persons from the Department of Education.

⁶⁷ The Law Reform Commission recommended that at least one-third of every disciplinary panel should be made up of public representatives; with at least one practitioner and one public representative sitting as a member of every panel conducting a disciplinary hearing. Manitoba Law Reform Commission, *op. cit.*, p. 76.

Notably absent from the roster of members is any lay public representation. This is in contrast with, for example, Saskatchewan where four of twelve members (one-third) of the Discipline Committee Panel of the SPTRB are public representatives. Lay representation can advance greater confidence in the community at large that the public interest is not being ignored. Lay representatives should be selected from members of the public who are not (and have never been) teachers, and who desirably have some knowledge of the K-12 education system, legal background, or experience with administrative tribunals and familiarity with concepts of procedural fairness.

In this vein I recommend that the composition of the Certificate Review Committee be enlarged and altered to include the following:

- four persons nominated by MTS
- two persons nominated by MSBA
- two persons nominated by MASS⁶⁸
- four public representatives appointed by the Minister of Education
- Chair and Vice-Chair appointments will be made by the Minister, with a public representative serving as Chair and a nominee from MTS designated as Vice-Chair.

Of the now twelve-member committee four members, or one-third of the total, will represent the lay public. The reader will recognize that representation from the Department of Education is absent under this model. As proposed, the Department will continue to receive and investigate complaints about teacher conduct and competence,

⁶⁸ In the event a teacher, employed in the funded independent school system, finds him/herself before the CRC, I suggest that one member of MASS be replaced with a person nominated by the Manitoba Federation of Independent Schools. Knowledge about and background in the funded independent school system may provide helpful context and lend understanding to the Committee in its deliberations.

as well as to support the work of the Certificate Review Committee in managing the hearing process, formal department membership on the Committee will no longer be necessary. In some jurisdictions which field a significant number of complaints and subsequent disciplinary hearings, it is the practice to establish panels of members from discipline committees to hear those matters and issue decisions. This helps to moderate workloads rather than drawing upon all members to sit for every hearing. Unless such a situation develops in Manitoba, and one hopes that will not become the norm, I recommend that disciplinary hearings be held with all twelve members (or some acceptable quorum) present to hear the case before it and make recommendations to the Minister. Should it become necessary to adopt a panel approach, I would recommend that six members constitute a panel, comprised of two representatives from MTS, two public representatives, one from MSBA and one from MASS. This preserves one-third representation for the public, as well as providing sufficient representation to stakeholder groups.

Create a Public Registry of Teachers:

In its report the Manitoba Law Reform Commission recommended that to support accountability and openness self-regulating bodies should have an up to date and publicly accessible register of members. This register should include the practitioner's names and any information on current suspensions, conditions on practice or probationary terms.⁶⁹ Even under a department controlled regulatory model, a public registry of teachers is an idea whose time has come. British Columbia, Saskatchewan, Ontario, and New

⁶⁹ Manitoba Law Reform Commission, *op. cit.*, p. 58.

Brunswick have created teacher registries which are publicly accessible. Alberta, per Bill 85, will create a public teacher registry by September 2022. The Canadian Centre for Child Protection in its 2018 report, “Child Sexual Abuse by K-12 School Personnel in Canada”, called for the disciplinary decisions made by teacher certification bodies to be made public in every province and territory. In its 2016 investigation into the same matter the Canadian Broadcasting Corporation (CBC) program “Marketplace” was highly critical of the lack of publicly available information, suggesting that “compared to other professions involving public trust, there is little information available about teachers who have been disciplined.”⁷⁰

Creation of a public registry will require an exemption under *The Freedom of Information and Protection of Privacy Act* (FIPPA) to permit a public body such as the Department of Education to disclose personal information on a teacher’s name, information about their employment or occupation, and disclosure about any regulatory offences (in this case, sanctions for professional misconduct warranting disciplinary action against their teaching certificate).

Another issue to be determined is the content of the registry. The Ontario College of Teachers’ registry list the teacher’s name, registration number, academic qualifications, program of teacher education, teaching qualifications, date of certification, any additional qualifications, status (good standing, inactive/non-practising, cancelled-resigned), and supplementary information (sexual abuse prevention program: complete or to be completed). It also has accessible information on teacher discipline decisions. The Saskatchewan Professional Teachers Regulatory Board includes teacher name,

⁷⁰ Canadian Broadcasting Corporation, “Discipline for teacher misconduct often handled in secret, Marketplace finds”, April 8, 2016.

registration start/end dates, certificate type, status (permanent, provisional, temporary, suspended, cancelled), areas of endorsement, and a section for notes on disciplinary actions (professional misconduct). As of July 1, 2021, New Brunswick implemented a registry of teachers whose certificates have been suspended and revoked but does not include any teachers who have not been subject to disciplinary sanction. This registry includes the teacher's name, registration number, actions taken by the registrar, reasons, effective date of suspension or revocation, and period of suspension or revocation. As this registry contains information related to misconduct occurring after July 1, 2021, no names currently populate the registry.

In Alberta, Bill 85 will create an online registry for Alberta certificated teachers and teacher leaders (principals and vice-principals). The registry will house information on the teacher's name, each certificate held, date of issuance and current status, date of certificate suspension or cancellation (if applicable), date suspension is to end, and a copy of reasons for the suspension or cancellation. In British Columbia, the Ministry of Education posts an online registry of teachers which includes the teacher's name, validity status (the period of time registration is valid to), certificate holder status and certificate types. The ministry also hosts a separate page which lists disciplinary outcomes for the previous twelve months and a schedule of upcoming disciplinary hearings.

Creating an online teacher registry in Manitoba will require an injection of resources, both human and technological. Staff will be needed in Professional Certification Unit to ensure the registry is kept current, and technology upgrades will be required to replace the teacher database which currently exists as part of the Education Information System (EIS) used by the department. EIS is a legacy system created in the mid-1990s, and while it has been very serviceable in its twenty-five or so years of

existence, its limitations are obvious to users and has been identified as overdue for replacement. It was not designed for the functionality needed to capture and maintain a public registry. Professional Certification Unit conducts all administrative and certification work using two databases: a document management database dedicated to teacher certification documentation (eDocs) and a data management database (EIS Oracle) used for teacher certification and employment data. The department will need to decide, based upon factors such as cost and timeliness, whether to include a teacher registry and updated teacher database as a component of a revamped provincial student information system (SIS), or more immediately look to the experience of other jurisdictions such as Saskatchewan and through BTT and Procurement Services Branch purchase a customized software system which can manage the database, website, client management and certification requirements. A public registry will also require an investment in a software system with capability for launching it as well as being part of a complete solution to all teacher regulatory needs including:

- an employer portal able to provide employing authorities (school divisions, funded independent schools, etc.) direct access to information that would confirm whether a teacher's certificate is in good standing prior to employing the teacher
- certification applications and request for services web forms with a revenue collection software solution
- an annual practice renewal processing tool to maintain a teaching certificate in good standing
- integrated document and data management capabilities
- an automatized email solution for sharing encrypted documents, and
- reporting capabilities to produce valuable teacher statistics supporting evidence-based policy and certification decisions.

A teacher database linked to, but a separate component of, a new provincial SIS would serve as a single "source of truth" for the department and be the most desirable

approach. However, as there is, I suggest, a pressing need to stand up a teacher registry, exploration of options for a separate software package which supports this initiative and can subsequently be linked to the SIS should be pursued. The Saskatchewan model can be useful in this instance as it is recent, functional, and can capture the data elements necessary for interactivity and access for teachers, employers, and the public. If government opts to wait until a more robust and all-encompassing technology solution is in place which includes a teacher database, it should when FIPPA changes allow for it adopt an interim approach like New Brunswick and post some minimum information on the PCU website on disciplined teachers from a fixed date in time (eg. July 1, 2023) and on a go-forward basis until the technology solution allowing for retroactive disclosure is in place.

Manitoba's teacher registry should capture basic information of interest to Manitobans: name, certificate/PSP number, date of certification, certificate(s) held, notes on any disciplinary actions taken regarding certification. Those notes could link to a summary of disciplinary decisions (cause: professional misconduct or incompetence, with reasons for decisions and actions taken); alternatively, as with New Brunswick and British Columbia, disciplinary decisions could rest on a separate site. I am not convinced the registry need include information on degree(s) earned, or major/minor information as the salient point is that through their academic credentials they met the requirements as set out in regulation and were eligible for Manitoba teacher certification which, at present, is generalist in nature.

For the registry to be meaningful, it must be accurate and up to date. Some advice on logistics for collection of this information can be obtained from the SPTRB, but it must be on an annual basis and applicable to certified teachers employed in the public school

system, funded independent schools, institutional schools, and adult learning centres. Except for teachers employed in First Nation schools, as these schools do not fall within provincial jurisdiction, failure to register annually will mean ineligibility to hold employment in those schools/facilities.

Saskatchewan has adopted an annual registration fee of \$89.25 (including GST). The rationale for charging a fee is because of its self-regulated status: “a hallmark of professional regulation is operational and financial independence. To ensure financial independence members of the profession provide the funds for the organization’s operations, typically through payment of an annual registration fee.”⁷¹ For those employed in the public school system in Saskatchewan, a teacher’s annual registration fee is paid on his/her behalf by the employing school division as part of the terms of the collective agreement. For others employed in independent schools, First Nation schools, custody and care facilities, and post-secondary institutions the annual fee is paid by the teacher (the fee amount can then be claimed as an income tax deduction). As I am not advocating for a self-regulation model mirroring Saskatchewan, unless the government wishes to recoup some of its operational costs stemming from the new Teacher Regulation Unit and the costs of purchasing software for and maintaining a public registry, I do not recommend an annual fee be charged. Teachers will continue to pay for the services they may require from Professional Certification Unit, and the consequence to those who fail to register annually is that they will be unable to hold positions of employment in public schools, institutional schools, adult learning centres and funded independent schools. Should government, at some date in the future, choose to adopt a College model,

⁷¹ SPTRB website, “Annual Registration Fees”.

charging fees for registration in and membership to such a body would be appropriate (and up to the College to determine an amount) based on its operational and revenue requirements.

Professional Standards:

In contrast to the other provincial jurisdictions to which some attention has been paid in this report – British Columbia, Alberta, Saskatchewan and Ontario – Manitoba stands out for the absence of an articulated description of professional standards (alternatively referred to as standards of practice) for teachers.⁷² At its most basic level, professional standards refer to the rules and expectations which govern the behaviour of practitioners once they have been admitted to a licensing or certification regime. They typically address the need for continuing competence as well as ethical practice.

In its *Professional Standards for British Columbia Educators* (2019), the British Columbia Teachers' Council describes its standards as serving “both as ideals to which educators aspire and expectations that can be reasonably held.” They communicate the knowledge, skills, attitudes and values that define the work of teachers, and establish the responsibilities teachers have in fostering public confidence. The document then sets out nine standards for practice obligating teachers to, among other aspects, value the success of all students; act ethically and maintain the integrity, credibility and reputation of the profession; understand and apply knowledge of student growth and development;

⁷² Although the Manitoba Teachers' Society (like other teacher unions) has a Code of Professional Practice which its membership is expected to abide by, it is a statement of expectations set out by the union regarding teacher conduct developed by members for members. It also does not, nor is it intended to, apply to teachers who are not members of the Society, such as those employed in the funded independent school system.

value the involvement and support of parents, families and communities; demonstrate knowledge and understanding of the areas they teach; engage in professional learning; and respect and value the history of First Nations, Inuit and Métis in Canada. In outlining these standards, the document sets out the conduct and competence requirements for an individual to receive and maintain a B.C. teaching certificate.

In Alberta, the *Teaching Quality Standard* (2020) provides “a framework for the preparation, professional growth, supervision and evaluation of all teachers” and “students, parents and other partners in education should be confident that Alberta teachers demonstrate the *Teaching Quality Standard* throughout their careers.” The *Standard* establishes the following competencies (with indicators): fostering effective relationships; engaging in career-long learning; demonstrating a professional body of knowledge; establishing inclusive learning environments; applying foundational knowledge about First Nations, Métis and Inuit; and adhering to legal frameworks and policies.

The Saskatchewan Professional Teachers Regulatory Board, in its regulatory bylaws, sets out standards (and examples) for conduct and competency. Teachers are expected to uphold the professional standards and reputation of the profession; act with integrity; conduct themselves in a manner which reflects favourably upon the profession; and inspire the respect and trust of learners and the community. Teachers must also take responsibility for maintaining the quality of their practice. Professional incompetence, as defined in the *Registered Teachers Act* (s. 32), “is a question of fact, but the display by a registered teacher of a lack of knowledge, skill or judgment or a disregard for the welfare of a student or other member of the public served by the profession of a nature or to an extent that demonstrates that the registered teacher is unfit to (a) continue in the practice

of the profession; or (b) provide one or more services ordinarily provided as part of the practice of the profession, is professional misconduct within the meaning of this Act.” Examples of standards of practitioner competence include creating and maintaining an environment that encourages and demonstrates a commitment to student learning and well-being; demonstrating a professional level of knowledge about the curriculum and the skills and judgment required to apply this knowledge effectively; demonstrating a repertoire of instructional strategies and methods; carry out professional responsibilities for student assessment and evaluation; conduct all professional relationships with equity, fairness and respect for others.

The Ontario College of Teachers has developed both Standards of Practice and Ethical Standards for its members. The purposes of the Standards of Practice are to inspire a shared vision for the profession; identify the values, knowledge and skills distinctive to the profession; guide the professional judgment and actions of the profession; and to promote a common language to foster an understanding of what it means to be a member of the profession. The standards themselves require a commitment to students and to student learning; professional knowledge; professional practice; leadership in learning communities; and ongoing professional learning.

The purposes of Ethical Standards are to inspire members to reflect and uphold the honour and dignity of the profession; identify the ethical responsibilities and commitments in the profession; guide ethical decisions and actions; and promote public trust and confidence in the profession. The standards for demonstrating ethical teaching practice are care (for students), respect, trust and integrity.

If these several jurisdictions have deemed it important to create a framework for teacher professional standards, it begs the obvious question as to why Manitoba should not? In my view it should, and the common elements described by each of those certifying jurisdictions – ongoing responsibility for professional learning; demonstrating a body of knowledge and applying it to the curriculum; acting ethically and maintaining public confidence in, and the reputation of, the profession; acting in the best interests of students and their learning – are equally applicable to the Manitoba K-12 context. Further, it is my view that the standards should be developed by the Department of Education as the regulatory body for teachers with responsibility for setting out the entry to practice requirements and for certification and discipline. This is consistent with the approach taken by provinces which do not utilize self-regulatory models, places accountability squarely with government (as it should), and mirrors the recommendation of the Manitoba Law Reform Commission which argued that “entry and practice standards are critical to the success of the regime, [and] we propose that they should be set by the same decision-makers who determine whether or not to implement a particular licensing or certification regime.”⁷³

Developing a statement on professional standards will complement, and indeed form a foundational piece of, the current work being undertaken in the department to develop a comprehensive framework for learning. That overarching structure will incorporate new curriculum and assessment frameworks, a “Future Ready Strategy”, as well as a professional learning framework. Professional standards, consistent with the goals of education established for the K-12 system, are developed and supported through

⁷³ Manitoba Law Reform Commission, *op. cit.*, p. 42.

professional learning to reflect and nurture good teaching practice. It is integral to appropriate educational programming for all students and for better learning outcomes.

Although some will view creation of a statement for professional standards with trepidation, suspicious of its application as an evaluation tool for and of teachers – and it should be acknowledged that such standards can be used, as provincial jurisdictions now do, to review competency and fitness to teach – such fears should be allayed through systematic and sustained efforts at the school and division level to work with teachers who have been assessed as being unable to meet some aspect of the standard. Only very few cases, where egregious instances of incompetence are clearly demonstrated and where remedial attempts to rectify have failed, should ever come before certification review bodies (Saskatchewan, for instance, has not yet had any). Those fears, though, must be secondary to the primary purpose which is to set a compass by which good practice can occur, and where recalibration of practice (when needed) can happen through self-reflection, ongoing learning, and supportive assessment and mentoring.

The development, periodic review, and “ownership” of practice standards for teachers should rest, as I have said, with the department. That is to say, the mantle of leadership for creating and periodically revising the standards should be taken up by Manitoba Education. In saying this, I take no issue with the position of the Manitoba Teachers’ Society in its response to Pillar 4 of the Better Education Starts Today (BEST) strategy document:

“The development of standards is crucial in helping to guide the expectations for all educators. MTS is ready to work with the government to develop a uniform set of professional standards, offer ongoing professional development to support those standards, and to help teachers in need of assistance in meeting the standards within an organization of both teachers and school leaders that is unique to the Manitoba context.”⁷⁴

“Ownership” of professional standards is not to suggest that the department should “go it alone” in their development. The department must lead the process and, where it is not possible to achieve consensus on every aspect of content, ultimately decide what is appropriate. As the Manitoba Law Reform Commission has pointed out, there is value in soliciting and incorporating the input of practitioners and others:

“We therefore believe that the same decision-makers who are to determine whether or not a licensing or certification scheme should be implemented should also set entry and practice standards for the regime. However, in performing this function, we believe that they should be required, when practicable, to take into account the views and proposals put forward by practitioners. Because of their practical experience in providing the service, practitioners will be able to provide valuable information and advice to decision-makers. In addition, a failure to include practitioners in this process would likely leave them with a minimal commitment to ensuring the successful application of entry and practice standards. As a result, these standards (especially practice standards) would be difficult to enforce.

However, we are also of the view that input should not be restricted to practitioners. All parties with an interest in this issue should be encouraged to participate in the decision-making process. For example, decision-makers should be prepared to hear from members or representatives of the public, . . . practitioners of related services, educational institutions and others. After considering the views of a diversity of interests, decision-makers will be better equipped to set entry and practice standards in the public interest.”⁷⁵

⁷⁴ *The Manitoba Teacher*, April/May 2021, Vol. 99, No. 6, p. 9.

⁷⁵ Manitoba Law Reform Commission, *op. cit.*, p. 43.

One additional point the department should seriously consider, which would certainly promote the efficacious application of and adherence to professional standards (leading to improved quality of practice and better student learning outcomes): offer support for the articulation, structuring and expectations/outcomes of, and as importantly the provision of financial assistance to sustain implementation for, programs for **teacher induction** and **mentorship** in schools. Setting out the common elements and expectations for such programs (with some allowance for adaptations suitable to local context), providing ongoing financial support to school divisions to allow for a reduced teaching load for first year teachers along with regular access to a supervising teacher, their principal and Faculty of Education advisor, will enable those teachers to better survive the learning curve and challenges associated with assuming their new classroom duties and responsibilities. That type of supportive induction program, coupled with a mentorship program which affords release time for effective mid-career or veteran teachers to help guide junior or struggling colleagues, would create a culture of collegiality and build communities of learning and practice in schools, enhance teacher practice, and improve teacher retention rates in the critical first five years following entry into the profession.⁷⁶

⁷⁶ This is not a new idea; indeed, it had been discussed at the former Board of Teacher Education and Certification (BOTE) table in the 1990s. Some school divisions have, within the limits of their resources, developed and promoted some form of these programs. However, the utilization of such strategies has been modest and is uneven across the province.

The Ontario Ministry of Education has implemented a New Teacher Induction Program, which it describes as a “job-embedded step along a continuum of professional learning for new teachers”, to grow and support confidence, efficacy, instructional practice, and a commitment to continuous learning for new teachers. The program provides new teachers with orientation to the school and school board, mentoring by experienced teachers, and professional learning relevant to their needs.

Ministry of Education (Ontario), New Teacher Induction Program: Induction Elements Manual (2021).

See also Thierry Karsenti and Simon Collin, “Why are New Teachers Leaving the Profession? Results of a Canada-Wide Survey”, Education 2013, Vol. 3, No. 3, pp. 141-149.

Stakeholder liaison:

Re-establishing a formal mechanism to solicit and receive feedback and advice on matters of teacher education and certification is an undertaking the department should make in the coming months. Increasing opportunities for dialogue around important public policy issues, such as the way in which teachers are trained, how they get certified, education in Truth and Reconciliation, diversity in the teaching force, and the kind of and opportunities for ongoing professional learning, always supports improved policy outcomes. The department had for several decades – first through the Board of Teacher Education and Certification (BOTEC) and later reconstituted in the early 2000s as the Teacher Education and Certification Committee (TECC) – a non-statutory but well-established advisory body available to it as a sounding board on issues related to pre-service teacher education and matters of certification. Although both advisory bodies were not without their challenges owing primarily to the inability, over time, of some partner groups to move beyond their particular organizational imperatives to reach common ground, they were largely useful and helpful as mechanisms for the department to gauge the system’s temperature on a variety of issues, to better understand the views of stakeholders, and to give them a forum to bring matters of concern to the department’s attention. TECC was dissolved in 2016 as part of a cross-government effort to reduce the total number of government agencies, boards and commissions.

Those committees, when in existence, met with the Minister once each year and provided him/her with an annual report which addressed any matters he/she had referred to them for study as well as on any issues the committee had taken its own initiative to review. The length of pre-service education programs, acceptable teachable majors/minors, classification levels for vocational teachers, required coursework and their

credit hour values for B.Ed. programs, identification of issues and of solutions around implementation of the former Agreement on Internal Trade – all of these and other matters where the collective input of stakeholders helped support decision-making were beneficial to the department and to the K-12 system at large.

At present, where issues about teacher education and certification require review, the process is to identify the relevant stakeholder group(s) and consult on a one-to-one basis. This can be helpful to the department in sourcing out the bluntly spoken perspective of the individual stakeholders but this method has limitations, the most obvious being that stakeholders are not required to listen and to *hear each other* and through that process better understand the gamut of concerns and perspectives which can sometimes lead to a softening or alteration in position and potentially enable compromise and consensus. It is now left to the department to assess the position of each organization, perhaps engage in “shuttle diplomacy” to try to broker compromise, but all the while the affected organizations do not hear from each other directly. This does not always foster a cooperative approach, nor does it lend itself to or organizational support for policy decisions the field may believe it had little hand in shaping. And, at present, there is no mechanism for *public* input to help give balance to the views of education organizations which may not align with the public interest.

A new body, the Advisory Committee on Teacher Education and Certification (ACTEC), should be created with a mission to act in the public interest by providing advice to the Minister on matters pertaining to the education (pre- and post-service) and certification of teachers in Manitoba. A model upon which this could be based can be found in the Minister’s Advisory Council on Teacher Certification (MACTC) in Nova Scotia. This body has a mandate “to work in the public interest” in advising the Minister

of Education and Early Childhood Development on matters pertaining to teacher certification, and to provide recommendations grounded in the expressed values of “accountability, transparency, trust, honesty, and integrity; diversity, fairness and equity; respect, and the public good.” MACTC is responsible for:

- providing advice to the Minister as requested on proposed, modified, or existing programs leading to teacher certification. MACTC may also raise concerns with the Minister about existing programs that do not meet current needs or policy directions. It is also responsible for ensuring programs leading to certification continue to meet the needs of the profession, the education system, and the initial intent of the program’s approval
- reviewing and assessing concerns about teacher education programs brought forward by practitioners and advising the Minister when action to address those concerns should be taken
- ensuring recommendations regarding professionalism and the act of teaching are in alignment with Nova Scotia teaching standards
- conducting a review every three years on regulations and policies related to teacher certification to ensure that the regulatory and policy framework is meeting the needs of the profession
- monitoring changes in directions and trends in teacher certification and regulation nationally and identifying opportunities for improvement.

The advisory committee meets four times per year and is comprised of fifteen members. It has representation from the department, the Nova Scotia Teachers’ Union, elementary and secondary school principals, deans of teacher education institutions, directors of human resources and student services, and First Nations, Acadian and African Canadian organizations.

Manitoba could create a comparable advisory body, non-statutory in nature, to serve a similar purpose. To be manageable and effective, I would recommend it be no larger than fifteen members in size, with representation from the department (2), MTS (5), MASS (1), MSBA (1), Manitoba Federation of Independent Schools (1), Manitoba First

Nations Education Resource Centre (1), Council of Deans and Directors of Education (2), Manitoba Association of Parent Councils (1), and the public (1). This mixture and weighting of representation provides a broad spectrum of interests and perspectives without allowing any one organization to monopolize or veto recommendations which may come forward from the committee. Administrative support for ACTEC would be provided by the department, to support meetings, distribution of agendas and information, and to prepare annual and other reports of the Committee to the Minister.

ACTEC should adopt similar terms of reference, mission and mandate – modified as appropriate for the Manitoba context -- and a regularized schedule for meetings, perhaps three times yearly.⁷⁷ The purpose and focus of ACTEC will be specific yet sufficiently broad to facilitate policy development on teacher education programs, teacher certification requirements, and professional standards through the lenses of currency and relevance, as well as of the public interest. It could help support important initiatives to advance government and sector commitments on Truth and Reconciliation, strategies to enhance the department's Indigenous Education Policy Framework (Mamàhtawisiwin), as well as efforts promoting diversification of the profession. This is important and serious work as the content of teacher education programs and the training of teachers, and the regulatory schemes that determine entry to practice and ongoing professional learning, directly impact the quality of education received by over 200,000 children in the province.

⁷⁷ The department will need to establish a modest budget for the cost of operating this committee, covering expenditures such as sitting fees for public members, substitute teacher costs for teacher members, overnight accommodation for members living outside Winnipeg to attend full-day meetings, meal allowance, mileage, etc.

Legislative/regulatory implications:

The changes being proposed in this report will require, for implementation to occur, several legislative and regulatory amendments. Legislative Counsel office will provide advice on the best and most appropriate approach but given the scope of changes needed it is likely that a new Act will be necessary which I will call (simply for placeholder purposes) “The Teacher Certification and Registration Act”. Pieces currently situated within *The Education Administration Act* will need to be removed and placed (with revision) in the new Act, including some of the Minister’s current regulation making authority pertaining to the certification and qualifications of teachers, as well as his/her authority over the content of teacher education programs, issuance of teaching certificates, the ability to refer matters regarding a teacher’s continuing fitness to teach to the Certificate Review Committee, and the establishment, composition and role of the Committee. The Teaching Certificates and Qualifications Regulation (MR 115/2015) would become a regulation falling within the new Act.

As identified in this report, the new Act will need to address several areas:

- definition of professional misconduct and incompetence
- definition of sexual abuse and sexual misconduct
- offenses which warrant mandatory certificate revocation
- role and composition of the Certificate Review Committee
- process for conducting an investigation into allegations of teacher misconduct and procedures for referral to and the holding of disciplinary hearings, including the role played by the Teacher Regulation Unit
- setting out the circumstances when disciplinary hearings would not be open to the public
- expanded reporting obligations of employing authorities and of teachers related to criminal charges, convictions, unprofessional behaviour, bail conditions and restrictions
- information sharing between departments regarding teacher misconduct involving child abuse
- annual teacher registration requirement tied to employment eligibility
- creation of an online, publicly accessible teacher registry (and FIPPA exemption) with the content of such a registry specified.

In addition, I would also suggest the following items be considered:

1. If the Professional Certification Unit is to continue to have responsibility for setting teacher classification levels and recognition of prior teaching experience for salary purposes, section 19(2) of *The Education Administration Act*⁷⁸ should be strengthened such that liability for errors is compensable by government only if it can be

⁷⁸ **Protection from liability: teacher certification and classification**

19(2) No action or proceeding for damages, retroactive remuneration or any other loss may be brought against the government, the minister or an employee or agent of the government in respect of a determination as to a teacher's classification or certification made in good faith and without negligence under this Act or the regulations.

It is interesting to note that, unlike Professional Certification Unit, the Saskatchewan Professional Teachers Regulatory Board does not certify clinicians (they are employees of health districts), does not assign salary classification levels for teachers (done by school divisions), and does not collect and evaluate prior teaching experience (done by employers or pension plans).

demonstrated that gross negligence occurred in conducting such an evaluation. Teachers should not, within limitation of course, be penalized for an error in classification made by Professional Certification Unit: with an opportunity to have their initial classification and experience evaluation reconsidered, followed by a formal appeal process, teachers do have the capacity to challenge classification decisions which they believe are in error. Given they can avail themselves of processes to have errors reviewed and corrected, those retroactive pay requests should not exceed two years in length if and once an error can be proved to have occurred and the amount of money involved should be the responsibility of the employer. Two years of back pay should be entirely manageable for the employer from a cost and budgetary perspective.

2. The Alberta government, through its *Students First Act*, will now obligate school boards to obtain a criminal record check and vulnerable sector check when hiring a teacher and again every five years while the teacher is employed by that employing authority. This is in addition to the current requirement for applicants for teacher certification to complete a self-disclosure document, criminal records check, and vulnerable sector check.

I would recommend a similar approach for Manitoba. While Professional Certification Unit does require applicants for certification to complete a self-declaration form, criminal record, child abuse registry and vulnerable sector checks, it is left to each school division to determine whether and how frequently they conduct such checks at point of hiring and thereafter. Many, if not all, divisions will require criminal record, abuse registry and vulnerable sector checks if hiring a teacher beyond three months of such checks having been completed by Professional Certification Unit as

part of the initial certification process, but very few have regularized such a requirement once employment has been secured and enjoyed for several years. Given that many years may have passed from the time a teacher initially underwent such checks, instituting a requirement for criminal record, child abuse registry, and vulnerable sector checks every five years where there is no change in employer, or at the point of hiring when a teacher leaves one school division for another, reduces risks to students as well as exposure to liability for school boards.

The department should also consider expanding this requirement to include non-teaching personnel, many of whom who are in daily contact with students. Again, at present, while school divisions make obtaining a clean criminal record, abuse registry check and vulnerable sector check a requirement at point of hire, most non-teaching employees are not obliged to undertake another one unless they change employers at some point in their career.

Like Alberta, a reasonable phase-in period for those personnel already employed would be necessary to ensure that school boards, police and child abuse registry agencies are able to manage and accommodate this significant increase in the volume of requests for such checks.

5. Next steps

The changes to the regulatory model being proposed in this report are significant. Implementation will require a considerable investment in time and work, and would begin with a process for and period of consultation with stakeholders and the public; thereafter the necessary policy development to support clarity in drafting instructions to Legislative Counsel; requisite approvals from Treasury Board for budget purposes and Regulatory Accountability Committee for permission to proceed with a Bill. The advantage of the enhanced regulatory model I propose, as opposed to a College of Educators, is that it builds upon what currently exists and does not try to create an entirely new structure unfamiliar to Manitoba and with it a myriad of challenges which might precipitate failure.

The initial phase of the work plan to create this enhanced regulatory model would be to engage stakeholders to solicit feedback, and to determine a mechanism to obtain public input. It would be preferable, as a first step, for the department to develop a consultation or discussion paper which would outline the changes it is prepared to advance, and to give partners and the public an opportunity to respond. This approach focuses the conversation and can provide some direct reaction to specific matters of interest or concern. Leaving it to a “blue sky” or co-creation approach is ineffective and unlikely to generate the considered feedback the department desires. Once developed, the simplest method, in terms of generating stakeholder engagement, would be for the department to contract the services of an external facilitator (in late spring 2022) to hold and report back on consultations with stakeholders, either separately, in small groups, or all of them together. I would suggest the former: allowing each of the major stakeholder groups (MTS, MSBA, MASS, MFIS, MAPC, MFNERC, faculties of education) to have individual audiences with the facilitator would probably generate the most candid

conversations. The consultation document could also be posted on the department's website, with an open invitation to the public to provide feedback within a specified window of time. In that way the department will potentially garner advice from a cross-section of the interested public, as well as stakeholders, in order to consider useful changes to the proposals.

Once the department has sifted through the information received and determined what changes it may be prepared to act upon, it could then bring the major stakeholders together to outline what it proposes to do to move the effort forward. In either case, the policy work in support of new legislation will need to begin. I would anticipate this effort could start in fall 2022 and conclude early in 2023. By fall 2025, a new framework for teacher certification, professional standards, registration, and discipline – modernised, grounded in relevance, transparency and accountability, and congruent with the *public interest* – could be in place and operational.

Summary of Recommendations:

1. The Department of Education should reject the recommendation of the Commission on Kindergarten-Grade 12 Education calling for the creation of a College of Educators, thereby enabling self-regulation of the profession. As a compelling argument was not made that establishment of such an entity is in the public interest, the department should instead modernize the existing teacher regulation framework to support greater public confidence and transparency through enhanced procedures and prescriptions around teacher conduct and discipline, opportunities for lay public participation in decision-making pertaining to teacher education and certification, and creation of a public registry of teachers.
2. Update the teacher discipline process through greater prescription in legislation on what constitutes professional misconduct, the types of offences which merit disciplinary review, sanction or automatic certificate revocation, and the reporting obligations of employing authorities (including funded independent schools, institutional schools, and adult learning centres) and teachers.
3. Like Ontario, Manitoba should make mandatory (as a condition of initial certification and for all currently practising teachers) successful completion of the sexual abuse prevention program offered online by the Canadian Centre for Child Protection. Completion (or failure to do so) will form a notation with the teacher on the public registry.
4. Collaborate with the Department of Families to improve information sharing (without necessity of obtaining a court order) about teachers who are or have been the subject of investigation by a child care agency or have been placed on the child abuse registry, and who are also being investigated for professional misconduct.

5. Create a publicly accessible registry of teachers. Teachers will be required to register annually with the department in order to be eligible to hold employment in a public school, funded independent school, institutional school, or adult learning centre. Ensure that the requisite exemption for disclosure of limited personal information (name, occupation, etc.) under FIPPA is authorized.
6. Reconstitute the Certificate Review Committee to allow greater public participation in its deliberations through allocation of one-third of its total membership. The Committee will continue its current role of investigating allegations of teacher misconduct through publicly accessible hearings, and to provide recommendations on disciplinary actions to the Minister of Education.
7. That the department, with input from stakeholders and the public, take the lead on development of Professional Standards frameworks/documents for teachers which will help inform pre-service training, ongoing professional learning, and establish expectations of teacher performance over the course of their careers.
8. Re-establish a Minister's advisory committee on teacher education and certification to provide input, information and recommendations on pre-service education, ongoing professional learning and development, and regular assessment of certification requirements. The committee must include indigenous and lay public membership, meet on a regularly scheduled basis, and file annual reports with the Minister.
9. Consider amending section 19(2) of The Education Administration Act to strengthen the liability provisions around certification and classification decisions made by Professional Certification Unit.

10. Implement mandatory and regularized (every five years) criminal record, child abuse registry, and vulnerable sector checks for all teaching and non-teaching school personnel.

APPENDIX

JURISDICTION	REGULATORY STRUCTURE	RESPONSIBILITY FOR DISCIPLINARY PROCESS	MISCONDUCT / INCOMPETENCE DEFINED	PROFESSIONAL STANDARDS	PUBLIC REGISTRY
MANITOBA	Government	Minister (Certificate Review Committee)	No	No	No
BRITISH COLUMBIA	Government	Commissioner for Teacher Regulation	Yes	Yes	Yes
ALBERTA	Government	Alberta Teachers' Association ¹	Yes	Yes	No ²
SASKATCHEWAN	Self-Regulated	Saskatchewan Professional Teachers Regulatory Board	Yes	Yes	Yes
ONTARIO	Self-Regulated	Ontario College of Teachers	Yes	Yes	Yes
SCOTLAND	Self-Regulated	General Teaching Council for Scotland	Yes	Yes	Yes

¹ Effective January 1, 2023 it will become the responsibility of the Alberta Teaching Profession Commissioner/Minister upon passage and proclamation of Bill 15, Education (Reforming Teacher Profession Discipline) Amendment Act, 2022.

² An on-line Public Registry is scheduled to go live in September 2022.

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