

# THE PROTECTIVE SERVICES POST

Information useful to Local Negotiators and District Officers

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## WELCOME TO THE POST

*The Protective Services Post* (the Post) is a new initiative that has been undertaken by the Protective Services Division at Provincial Office. The goal of *The Post* is to distribute information to presidents and chief negotiators on a wide variety of topics dealt with through Protective Services, including things such as: bargaining information, developments in grievance/arbitration, LTD, WSIB, H&S, pay equity and funding—just to name a few.

Each issue of the *The Post* will focus on a limited number of items, but it is meant to be built upon over time in order to create an expansive and useful resource document for local leaders, covering a wide variety of topics. We intend to publish regular issues every two months with special single item supplements being provided when time-sensitive issues arise. *The Post* will be distributed to presidents and chief negotiators via email and will also be shared through hard copies. We also intend to post a searchable version in the Protective Services area of the provincial website ([www.osstf.on.ca](http://www.osstf.on.ca)).

The content will be of a technical nature rather than general interest articles and is not meant to compete with *Update*, *Education Forum* or D/BUs. Not all information will necessarily be relevant to all Bargaining Units, but common publications will be provided to all. The information will be tailored for local leaders' use and is not meant to be forwarded to a larger audience.

Protective Services staff members are currently responsible for the content, with oversight provided by an editorial board at Provincial Office. The newly formed Protective Services Committee will also play a role in future issues.

We hope that you find *The Post* to be a useful resource that will form a repository of information of a Protective Services nature to assist presidents and chief negotiators in continuing to provide excellent day-to-day service to our members.

**ENJOY!**



The *Workplace Safety and Insurance Act* (WSIA) is the legislation that governs worker entitlement to benefits when they are injured or develop an occupational injury that arises out of and in the course of their employment. The Workplace Safety and Insurance Board (WSIB) is the body that develops policy which interprets the legislation and then administers the policies relating to benefits entitlement. Effective January 1, 2018, as was previously reported in an *Update* article (Vol. 45 N.3), the WSIB updated its policy on past chronic mental stress (CMS) claims, identified as operational policy 15-03-14.

At the time of the *Update* article, the policy contained two major issues which OSSTF/FEESO lobbied to have changed. The first was the fact that the new policy contained no retroactive provision in it to allow for workers to claim for benefits that they should have been entitled to under WSIA legislation. The second issue was that the policy was going to use the “predominant cause” as the standard of proof and causation for benefits entitlement.

Through combined lobby efforts with other unions, and with the Ontario Federation of Labour leading the way back in the fall of 2017, we were successful in getting the final policy on CMS to include some transitional provisions that will allow for retroactive claims to be filed by our members. Policy 15-03-14 states, “If a worker has chronic mental stress which occurs on or after April 29, 2014, and the worker has not filed a claim with the WSIB for the chronic mental stress before January 1, 2018, the worker or the worker’s survivor may file a claim for the chronic mental stress with the WSIB, as long as such claim is filed on or before **July 1, 2018.**” This transitional provision in the updated policy opens the door for members to file claims that they had not previously filed possibly due to a restrictive WSIB policy that denied them access to benefits.

Along with this transitional provision, it is important to note that any pending claims at the WSIB or Workplace Safety and Insurance Appeals Tribunal (WSIAT) levels will also now be adjudicated based on the new updated policy.

As part of the updated operational policy that came in to effect as of January 1, 2018, the WSIB also developed a

### For further clarity a “pending claim” is:

a chronic mental stress claim has been filed, but the WSIB has not yet made a decision



there is a right to file notice of objection in respect of a chronic mental stress claim following an initial entitlement decision and the notice of objection is or has been filed within the appropriate time frame



there is a right to file a notice of appeal to the WSIAT in respect of a chronic mental stress claim following a final decision of the WSIB, and the notice of appeal is or has been filed within the appropriate time frame, or



the worker has filed a notice of appeal to WSIAT and a chronic mental stress claim is pending before the WSIAT.



special claim form (Form CMS8). As outlined in D/BU #84 on January 17, 2018, this new form must be completed by a member’s health professional for any member who is claiming benefits under the WSIA for chronic mental stress. It is also important to note that the member must also complete the WSIB form 6, Worker Report of Injury/Illness in order to initiate a claim.

It is important that, as local leaders, you are aware of this new policy and that you also facilitate awareness of the policy to members in order for them to initiate a claim for benefits from the WSIB where one is warranted. Please refer to the text of the policy with respect to information about guidelines, definitions, diagnostic requirements, etc. Any questions regarding WSIB Operational Policy 15-03-14 can be directed to Norm Westbury at Provincial Office at 1-800-267-7867 x216 or via email at [norm.westbury@osstf.ca](mailto:norm.westbury@osstf.ca).



## ASSISTING MEMBERS WITH A PROFESSIONAL COLLEGE COMPLAINT

While most of the information in this article is specific to the Ontario College of Teachers (OCT), there is also valuable information in handling complaints from any professional college. Future issues will include specific information about other colleges.

Teachers in Ontario can face multiple panels of discipline when facing allegations from colleagues, the public and/or their employer. The Police, the local Children's Aid Society (CAS), School Board Administration, and the OCT all have jurisdiction to investigate and dole out punishments based on the outcome of their investigation. The OCT can take into consideration the outcomes from all of the other authorities. This means that the actions that locals take with their employers, when representing members in Board level investigations, can have an impact on the outcomes of College investigations. Each case is different and local leaders should be in touch with their field secretaries for support on how to proceed.

When a complaint is submitted to the College, the intake and hearings department will process it and assign an investigator to the file. The OCT will then contact the member, usually by phone, and alert them to the complaint, confirm their identity and mailing address or email address. When the complaint arrives, it will contain a cover letter that will contain one of three distinct pieces of information for dealing with the complaint:

- 1** The letter may just alert the member to the existence of the complaint and the allegations. The letter will state that there is no response required from the member as the College is in the process of investigating the complaint and will communicate with the member should a response be required; or
- 2** The complaint will be deemed appropriate to deal with through complaint resolution (CR). This is a voluntary process, which requires a quick response (10 days) from the member to agree to take part in this process. The OCT has changed its requirements of members to be eligible to take part in CR, which has resulted in OSSTF/FEESO now accepting the process of CR. There is no information published at the end of the CR process nor an admission of guilt to any of the allegations by the member. A memorandum of agreement (MOA) is signed between the member and the OCT. This is a much faster method in dealing with a complaint and often preferred to the other processes; or
- 3** The letter will not contain information on CR but instead will include the allegations and a deadline within which the member must respond in writing. This window of time is very short from as little as 30 days to no more than 60 days. Within this time the local can make a request in writing to the OSSTF/FEESO secretariat member responsible for OCT files copied to the Director of Member Protection. If approved for legal

support, the legal counsel assigned will contact the member for information and will write the response to the College. In order to determine if the member is eligible for support, Provincial Office will require the OCT complaint package and the Bargaining Unit file on the member.

In the third case, the investigator will ask the school Board to supply all of the relevant information on the member within 30 days. To minimize the potential prejudice to members at the College, it is important to protect the member vigorously during the grievance process and to intervene as quickly as possible. The OCT applies penalties which are often much stronger than what is warranted under the situation and look to the Board's discipline as a measure of its own decisions. Locals should strive for the lowest possible disciplinary action by the Board and hold the Board accountable for biased or poor investigation techniques. Boards must report to the OCT



when a teacher is suspended, so it is imperative for locals to eliminate suspension from discipline proceedings. If it is not possible to prevent the suspension, it will come as no surprise that the lower the suspension from the school Board the better the outcome that usually results from the OCT's investigation.

A grievance settlement that results in any sort of documentation in the member's personnel file will most likely be forwarded by the employer to the College. Members need to be aware of the implications at the OCT when they accept settlements offered by the Board. Even letters of expectation (or letters of caution) which are not considered disciplinary will wind up at the OCT. Since these are not considered disciplinary, they will not be removed from the member's personnel file under the provisions of collective agreement sunset language on discipline letters. Bargaining teams should strive to have them explicitly listed as a document with a sunset clause in the collective agreement and in the meantime, negotiate a stale date that is printed on any letters of caution or expectation.

The OCT has a practice of treating the Board's notes from witness interviews as direct evidence during the investigation process, rather than speaking to the witnesses to confirm their statements. This means that the Board's investigation practice, and what the member

says to the employer during its investigation, has a major impact on the outcome of the OCT investigation. Any admission of guilt made to the school Board will wind up at the OCT. This includes notes taken during grievance meetings while negotiating a lesser penalty for the member. Arbitrators correctly consider notes taken during the grievance process as inadmissible, however the biased processes of the OCT do not, and all information will be considered. Locals should develop a tracking system on discipline letters to make sure the request goes into the employer to have the letter pulled from the file once the timelines have elapsed.

Employers are required to report to the OCT when members are suspended or have restrictions placed on the member; however, the employer needs only to feel that the conduct is “conduct...that, in the opinion of the employer, should be reviewed by a committee of the College.” Even resolution of a grievance at the local level does not prevent the College from investigating and imposing further discipline as a parent, student or even the Board can still register a complaint.

If an OCT file is not dealt with at the investigation stage, it can be referred to either the Discipline Committee or the Fitness to Practice Committee. The Fitness to Practice Committee can still suspend members, revoke certificates and apply conditions. There are certain advantages over the Discipline Committee. Decisions of the Fitness to Practice Committee involve medical information and are not published on the OCT website. If the local believes there is an underlying medical situation that has led to the allegations, it is advisable to discuss this with your field secretary.

The Liberal Government has proposed changes to the *Ontario College of Teachers Act (OCTA)* and the *Early Childhood Educators Act (ECEA)* that would increase the jeopardy for members in certain situations. These include measures that result in automatic revocations and suspensions, as well as the ability to demand medical examinations and to assess costs to a member to pay for therapy or counselling for students.

## A summary of advice to local leaders to help strengthen a member’s defense at the College:

- 1 Be rigorous in your defense of members during the grievance process.
- 2 Advise your members that any admissions made to the Board will be relied upon at the College.
- 3 Explore any underlying incapacity issues.
- 4 Hold the Board accountable when they use poor investigation practices.
- 5 Caution members about the implications at the College of accepting settlement offers from the Board.
- 6 Ensure that any letters going into a personnel file include a removal date, and have a process for removal when that date occurs.
- 7 Avoid settlements that place any restriction on a member’s duties.
- 8 Do not rely on your Board’s assurance that they will not report a teacher to the College.
- 9 Keep your notes and be prepared to give evidence.
- 10 If you believe that the case will go to the OCT—inform the member of short timelines and the necessity of getting support ASAP after first contacted by the OCT.

## FINAL Q&A ON RETURN TO WORK

**Q1** If an employee returns to work from sick leave to a partial day workload due to an on-going illness or injury from the previous year, what access to sick leave do they have for the part of the day where they are absent from work?

**A1** The employee continues to use any unused sick/STLDP days from the previous school year’s allocation. The employee is paid for the full day in this situation until the previous years’ allocation is exhausted.

**Q2** What happens if the employee is absent from the part of the day where s/he is scheduled to work?

**A2** Absences will be retroactively deducted from a new sick leave allocation once the new sick leave allocation is provided. This applies whether the absence is due to the previous or a new illness/injury.

**Q3** Does the 11-day refresh apply in cases of a graduated return to work?

**A3** No. The 11-day refresh only applies to those returning to full FTE. Those returning at less than the full FTE will receive a pro-rated allocation once provided.

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Focus on Central Issues