

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

1ST SESSION, 43RD LEGISLATURE, ONTARIO
1 CHARLES III, 2022

Bill 26

An Act to amend various Acts in respect of post-secondary education

The Hon. J. Dunlop

Minister of Colleges and Universities

Government Bill

1st Reading October 27, 2022

2nd Reading November 14, 2022

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on Social Policy
and as reported to the Legislative Assembly November 30, 2022)*

(The provisions in this bill will be renumbered after 3rd Reading)



This reprint of the Bill is marked to indicate the changes that were made in Committee.
The changes are indicated by underlines for new text and a ~~striethrough~~ for deleted text.

EXPLANATORY NOTE

SCHEDULE 1 MINISTRY OF TRAINING, COLLEGES AND UNIVERSITIES ACT

The *Ministry of Training, Colleges and Universities Act* is amended to add a new section setting out rules respecting ~~sexual abuse of~~ sexual misconduct toward students by employees of publicly-assisted universities and colleges of applied arts and technology, and to address related matters.

SCHEDULE 2 PRIVATE CAREER COLLEGES ACT, 2005

The *Private Career Colleges Act, 2005* is amended to add a new section setting out rules respecting ~~sexual abuse of~~ sexual misconduct toward students by employees of private career colleges, and to address related matters.

SCHEDULE 3 RYERSON UNIVERSITY ACT, 1977

The *Ryerson University Act, 1977* is amended to change the name of the university to Toronto Metropolitan University, and to change the size and composition of the university's Senate.

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His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Except as otherwise provided in this section, this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Strengthening Post-secondary Institutions and Students Act, 2022*.

SCHEDULE 1
MINISTRY OF TRAINING, COLLEGES AND UNIVERSITIES ACT

1 Section 1 of the *Ministry of Training, Colleges and Universities Act* is amended by adding the following definition:

“publicly-assisted university” means a university that receives regular and ongoing operating funds from the government for the purposes of post-secondary education; (“université financée par les fonds publics”)

2 (1) Paragraph 2 of subsection 15 (6) of the Act is repealed and the following substituted:

2. A publicly-assisted university.

(2) Paragraph 4 of subsection 15 (6) of the Act is repealed.

3 The Act is amended by adding the following section:

Sexual misconduct by employees

16.1 (1) In this section,

“institution” means a publicly-assisted university or college of applied arts and technology; (“établissement”)

~~“sexual abuse” means, in relation to a student of an institution,~~

~~— (a) physical sexual relations with the student, touching of a sexual nature of the student, or behaviour or remarks of a sexual nature toward the student by an employee of the institution where,~~

~~— (i) the act constitutes an offence under the *Criminal Code* (Canada),~~

~~— (ii) the act infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or~~

~~— (iii) the act constitutes sexual abuse as defined in the institution’s employee sexual misconduct policy or contravenes the policy or any other policy, rule or other requirement of the institution respecting sexual relations between employees and students, or~~

~~— (b) any conduct by an employee of the institution that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance. (“mauvais traitements d’ordre sexuel”)~~

~~“sexual misconduct” means, in relation to a student of an institution,~~

~~— (a) physical sexual relations with the student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee of the institution where,~~

~~— (i) the act constitutes an offence under the *Criminal Code* (Canada),~~

~~— (ii) the act infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or~~

~~— (iii) the act constitutes sexual misconduct as defined in the institution’s employee sexual misconduct policy or contravenes the policy or any other policy, rule or other requirement of the institution respecting sexual relations between employees and students, or~~

~~— (b) any conduct by an employee of the institution that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance. (“inconduite sexuelle”)~~

Discharge or discipline

(2) If an employee of an institution commits an act of ~~sexual abuse of sexual misconduct toward~~ a student of an institution, the institution may discharge or discipline the employee for that act, and,

(a) the discharge or disciplinary measure is deemed to be for just cause for all purposes;

(b) the employee is not entitled to notice of termination or termination pay or any other compensation or restitution as a result of the discharge or disciplinary measure; and

(c) despite subsection 48 (17) of the *Labour Relations Act, 1995* and subsection 14 (17) of the *Colleges Collective Bargaining Act, 2008*, and despite any provision of a collective agreement or employment contract specifying a penalty for the infraction, no arbitrator, arbitration board or other adjudicator shall substitute any other penalty for the discharge or disciplinary measure imposed by the institution.

No re-employment

(3) If an employee of an institution commits an act of ~~sexual abuse of~~ sexual misconduct toward a student of an institution and the institution discharges the employee for that act or the employee resigns from their employment, the institution shall not subsequently re-employ the employee.

Same

(4) If an institution determines that it has re-employed an individual contrary to subsection (3), the institution shall discharge the employee and clauses (2) (a) to (c) shall apply to the discharge.

Agreement

~~(5) An agreement between an institution and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after the day section 3 of Schedule 1 to the *Strengthening Post-secondary Institutions and Students Act, 2022* comes into force, shall not contain any term that, directly or indirectly, prohibits the institution or any person related to the institution from disclosing the fact that a court, arbitrator or other adjudicator has determined that an employee of the institution has committed an act of sexual abuse of a student of the institution, and any such term that is included in an agreement is void.~~

Same

~~(6) Subsections (2) to (5) apply despite any contrary term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity.~~

Agreement

(5) Subject to subsection (5.1), an agreement between an institution and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after the day section 3 of Schedule 1 to the *Strengthening Post-secondary Institutions and Students Act, 2022* comes into force, shall not contain any term that, directly or indirectly, prohibits the institution or any person related to the institution from disclosing that an allegation or complaint has been made that an employee of the institution committed an act of sexual misconduct toward a student of the institution, and any such term that is included in an agreement is void.

Exception

(5.1) An institution may enter into an agreement that contains a term described in subsection (5) if the student requests that the institution do so, provided that,

- (a) the student has had a reasonable opportunity to receive independent legal advice;
- (b) there have been no undue attempts to influence the student with respect to the request;
- (c) the agreement includes an opportunity for the student to decide to waive their own confidentiality in the future and the process for doing so; and
- (d) the agreement is of a set and limited duration.

Contrary term, rule, etc.

(6) Subsections (2) to (5.1) apply despite any contrary term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity.

Employee sexual misconduct policy

(7) Every institution shall have an employee sexual misconduct policy that includes, at a minimum,

- (a) the institution's rules with respect to sexual behaviour that involves employees and students of the institution; and
- (b) examples of disciplinary measures that may be imposed on employees who contravene the policy.

Sexual abuse

~~(8) An employee sexual misconduct policy may specify acts that constitute sexual abuse for the purposes of the definition of "sexual abuse".~~

Same

~~(9) An employee sexual misconduct policy may be included as part of another policy, including as part of the sexual violence policy required under subsection 17 (3).~~

Same

(8) The employee sexual misconduct policy referred to in subsection (7) may specify acts that constitute sexual misconduct for the purposes of the definition of "sexual misconduct".

Same

(9) The employee sexual misconduct policy referred to in subsection (7) may be included as part of another policy, including as part of the sexual violence policy required under subsection 17 (3).

4 The following provisions of the Act are amended by striking out “university that receives regular and ongoing operating funds from the government for the purposes of post-secondary education” wherever it appears and substituting in each case “publicly-assisted university”:

- 1. Subsection 6.1 (1).**
- 2. Subsection 17 (2).**

Commencement

5 (1) Except as otherwise provided in this section, this Schedule comes into force on the day the *Strengthening Post-secondary Institutions and Students Act, 2022* receives Royal Assent.

(2) Section 3 comes into force on the later of July 1, 2023 and the day the *Strengthening Post-secondary Institutions and Students Act, 2022* receives Royal Assent.

**SCHEDULE 2
PRIVATE CAREER COLLEGES ACT, 2005**

1 The *Private Career Colleges Act, 2005* is amended by adding the following section:

Sexual misconduct by employees

32.0.1 (1) In this section,

~~“sexual abuse” means, in relation to a student enrolled at a private career college,~~

~~— (a) physical sexual relations with the student, touching of a sexual nature of the student, or behaviour or remarks of a sexual nature toward the student by an employee of the private career college where,~~

~~— (i) the act constitutes an offence under the *Criminal Code* (Canada),~~

~~— (ii) the act infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or~~

~~— (iii) the act constitutes sexual abuse as defined in the private career college’s employee sexual misconduct policy or contravenes the policy or any other policy, rule or other requirement of the private career college respecting sexual relations between employees and students, or~~

~~— (b) any conduct by an employee of the private career college that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance. (“mauvais traitements d’ordre sexuel”)~~

“sexual misconduct” means, in relation to a student enrolled at a private career college,

(a) physical sexual relations with the student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee of the private career college where,

(i) the act constitutes an offence under the *Criminal Code* (Canada),

(ii) the act infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or

(iii) the act constitutes sexual misconduct as defined in the private career college’s employee sexual misconduct policy or contravenes the policy or any other policy, rule or other requirement of the private career college respecting sexual relations between employees and students, or

(b) any conduct by an employee of the private career college that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance. (“inconduite sexuelle”)

Discharge or discipline

(2) If an employee of a private career college commits an act of ~~sexual abuse of~~ sexual misconduct toward a student enrolled at a private career college, the private career college may discharge or discipline the employee for that act, and,

(a) the discharge or disciplinary measure is deemed to be for just cause for all purposes;

(b) the employee is not entitled to notice of termination or termination pay or any other compensation or restitution as a result of the discharge or disciplinary measure; and

(c) despite subsection 48 (17) of the *Labour Relations Act, 1995*, and despite any provision of a collective agreement or employment contract specifying a penalty for the infraction, no arbitrator, arbitration board or other adjudicator shall substitute any other penalty for the discharge or disciplinary measure imposed by the private career college.

No re-employment

(3) If an employee of a private career college commits an act of ~~sexual abuse of~~ sexual misconduct toward a student enrolled at a private career college and the private career college discharges the employee for that act or the employee resigns from their employment, the private career college shall not subsequently re-employ the employee.

Same

(4) If a private career college determines that it has re-employed an individual contrary to subsection (3), the private career college shall discharge the employee, and clauses (2) (a) to (c) shall apply to the discharge.

Agreement

~~(5) An agreement between a private career college and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after the day section 1 of Schedule 2 to the *Strengthening Post-secondary Institutions and Students Act, 2022* comes into force, shall not contain any term that, directly or indirectly, prohibits the private career college or any person related to the private career college from disclosing the fact that a court, arbitrator or~~

~~other adjudicator has determined that an employee of the private career college has committed an act of sexual abuse of a student enrolled at the private career college, and any such term that is included in an agreement is void.~~

Same

~~(6) Subsections (2) to (5) apply despite any contrary term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity.~~

Agreement

~~(5) Subject to subsection (5.1), an agreement between a private career college and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after the day section 1 of Schedule 2 to the *Strengthening Post-secondary Institutions and Students Act, 2022* comes into force, shall not contain any term that, directly or indirectly, prohibits the private career college or any person related to the private career college from disclosing that an allegation or complaint has been made that an employee of the private career college committed an act of sexual misconduct toward a student of the private career college, and any such term that is included in an agreement is void.~~

Exception

~~(5.1) A private career college may enter into an agreement that contains a term described in subsection (5) if the student requests that the private career college do so, provided that,~~

- ~~(a) the student has had a reasonable opportunity to receive independent legal advice;~~
- ~~(b) there have been no undue attempts to influence the student with respect to the request;~~
- ~~(c) the agreement includes an opportunity for the student to decide to waive their own confidentiality in the future and the process for doing so; and~~
- ~~(d) the agreement is of a set and limited duration.~~

Contrary term, rule, etc.

~~(6) Subsections (2) to (5.1) apply despite any contrary term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity.~~

Employee sexual misconduct policy

(7) It is a condition of every registration that a private career college have an employee sexual misconduct policy that includes, at a minimum,

- (a) the private career college's rules with respect to sexual behaviour that involves employees and students enrolled at the private career college; and
- (b) examples of disciplinary measures that may be imposed on employees who contravene the policy.

Sexual abuse

~~(8) An employee sexual misconduct policy may specify acts that constitute sexual abuse for the purposes of the definition of "sexual abuse".~~

Same

~~(9) An employee sexual misconduct policy may be included as part of another policy, including as part of the sexual violence policy required under subsection 32.1 (2).~~

Same

~~(8) The employee sexual misconduct policy referred to in subsection (7) may specify acts that constitute sexual misconduct for the purposes of the definition of "sexual misconduct".~~

Same

~~(9) The employee sexual misconduct policy referred to in subsection (7) may be included as part of another policy, including as part of the sexual violence policy required under subsection 32.1 (2).~~

2 Clause 32.1 (2) (a) of the Act is repealed and the following substituted:

- (a) subject to subsection 32.0.1 (9), specifically and solely addresses sexual violence involving students enrolled at the private career college;

Commencement

3 This Schedule comes into force on the later of July 1, 2023 and the day the *Strengthening Post-secondary Institutions and Students Act, 2022* receives Royal Assent.

**SCHEDULE 3
RYERSON UNIVERSITY ACT, 1977**

1 The title of the *Ryerson University Act, 1977* is repealed and the following substituted:

Toronto Metropolitan University Act, 1977

2 Clause 1 (1) (c) of the Act is amended by striking out “Ryerson Polytechnic University or Ryerson University” and substituting “Ryerson Polytechnic University, Ryerson University or Toronto Metropolitan University”.

3 Subsection 2 (1) of the Act is repealed and the following substituted:

University

(1) Ryerson University is continued under the name Toronto Metropolitan University.

4 (1) Clause 9 (1) (a) of the Act is repealed and the following substituted:

(a) the Chancellor, the President, the Vice-Presidents, the Deputy Provost, the Vice-Provosts, the Deans, the Chief Librarian and the Registrar, each of whom shall be a member of the Senate by virtue of office; and

(2) Clause 9 (1) (b) of the Act is amended by striking out “fifty-one” and substituting “sixty-two”.

5 The Act is amended by striking out “Ryerson University” wherever it appears and substituting in each case “Toronto Metropolitan University”, except in the following provisions:

1. Clause 1 (1) (c).

2. Subsection 2 (1).

University Foundations Act, 1992

6 The Schedule to the *University Foundations Act, 1992* is amended by striking out “Ryerson University” and substituting “Toronto Metropolitan University”.

Commencement

7 This Schedule comes into force on the day the *Strengthening Post-secondary Institutions and Students Act, 2022* receives Royal Assent.