

# Protecting Our Students - Executive Summary and Recommendations

**The Honourable Sydney L. Robins, 2000**

- [Chapter I: The Nature and Scope of the Review](#)
- [Chapter II: The DeLuca Affair](#)
- [Chapter III: Extent and Nature of Teacher-Student Sexual Misconduct](#)
- [Chapter IV: The Law](#)
- [Chapter V: Avoiding False Accusations](#)
- [Chapter VI: Policies and Protocols](#)

# Chapter I: The Nature and Scope of the Review

## Background

On April 9, 1996, Kenneth DeLuca pleaded guilty to 14 sexual offences, involving 13 victims. The crimes took place from 1972 to 1993. Each was committed while DeLuca was a teacher with the former Sault Ste. Marie Roman Catholic Separate School Board. All of his victims were females; all but one were students. Their ages ranged from 10 to 18.

DeLuca's crimes represent the ultimate breach of the trust reposed in a teacher. He was every parent's nightmare—a teacher who sexually preys on students. His conduct severely damaged his victims' physical and emotional well-being and, in some cases, has had a devastating impact on their lives.

As early as 1973 and at numerous times thereafter, complaints were made about DeLuca's sexually abusive conduct to principals, other teachers and school board officials. Though the complaints were well-founded, they were not acted upon. The crimes continued unabated for over 20 years. Indeed, DeLuca easily moved from school to school, leaving behind emotionally wounded victims, with a fresh opportunity to victimize others.

When DeLuca's crimes were belatedly exposed through the criminal process, it became clear that the educational system had failed his victims. The community was understandably shocked and wanted to know what went so terribly wrong and why. How could this abuse have gone unchecked for 20 years? What protocols or procedures existed to protect children from such abuse? What can be done to ensure that this will not happen again?

These questions raise issues of great importance and require serious attention. After all, children are our most precious asset. Schools are intended to be healthy and nurturing environments within which children can safely learn and grow. When a school environment is poisoned by sexual crimes or harassment, it is of fundamental concern to us all.

The vast majority of teachers are unquestionably highly dedicated and caring professionals who seek to ensure a safe learning environment for their students. They are no doubt appalled by conduct such as DeLuca's, and are understandably concerned that such conduct may unfairly reflect upon them and their profession. Some are also concerned that a heightened sensitivity to sexual abuse may inhibit an appropriate nurturing relationship between teacher and student and deprive children of the warmth and compassion of those who educate them. Most are concerned about false allegations of sexual abuse and the terrible damage that can result when such accusations are made against a teacher. One must remain mindful of these concerns.

However, DeLuca's case is not unique. There are abusive teachers who, like DeLuca, are "opportunistic" sexual predators motivated by power, control and sexual gratification. Some are pedophiles who prefer to have sex with children and have chosen to work in schools so they can better access their targets. Others have "romantic/bad judgment" relationships with students, believing that their conduct is either harmless or is

acceptable because the students are said to be doing what they want to do. Still others engage in sexual harassment or insensitive and inappropriate, though not necessarily criminal, conduct. The unhappy reality is that cases of sexual misconduct are more prevalent than the public and the teaching profession may believe.

While reliable statistics are hard to come by, the law reports, disciplinary cases, arbitration cases and media accounts indicate a significant number of cases in which Ontario teachers, and teachers elsewhere, have engaged in sexual misconduct against students. Moreover, it can be safely assumed that many, perhaps most, incidents of sexual misconduct remain hidden and unreported. Some studies suggest that a sizable percentage of students find sexual harassment by teachers within their school environment to be a problem. In short, it would appear that the reported cases of sexual misconduct represent only the tip of the iceberg.

Nor can the response to DeLuca's victims be regarded as unique. Reluctance on the part of teachers to report suspected sexual misconduct by a colleague, intimidation of victims and their parents to prevent or discourage disclosure, failure to act upon disclosures of misconduct, the inadequacy of records documenting complaints made, the transfer of a suspected perpetrator from school to school, the absence of screening procedures on the hiring of new teachers have all been seen, to varying degrees, in both the DeLuca case and in numerous other cases and in the literature documenting sexual misconduct in schools.

Of course, the physical and emotional impact of sexual abuse on DeLuca's victims is far from unique. Tragically, it is to be expected.

The DeLuca case provides an important framework for an evaluation of how suspected and proven sexual misconduct by teachers upon students is addressed and how it can be prevented or better identified and dealt with in the future. Though, since DeLuca, important changes have been made, they do not completely address these issues and, in any event, practices widely vary from jurisdiction to jurisdiction within Ontario. As the Report simply states: "the problem remains".

The Report examines the issues raised by the DeLuca case and the lessons to be learned from it. Recommendations for change are designed in the hope that they will facilitate the identification and prevention of sexual misconduct within the Ontario school system, and thus better protect our students.

## **The Mandate**

By Order in Council dated May 5, 1999, the Honourable Sydney L. Robins, a former judge of the Court of Appeal for Ontario, was appointed to conduct a review into and report on the following matter:

The incidents involving Kenneth DeLuca which gave rise to charges and the prosecution and guilty pleas of Mr. DeLuca with respect to the sexual assault of female students enrolled in the former Sault Ste. Marie Roman Catholic Separate School Board from the late 1970s to the early 1990s to the extent appropriate to make recommendations regarding protocols, policies and procedures to effectively identify and prevent sexual assault, harassment or violence.

The Order in Council permitted the Chair to request any person to provide information or records, meet with any person and rely on any transcripts or record of legal proceedings relating to any criminal, civil or administrative proceedings respecting DeLuca. The Order in Council authorized a *review*, not a *public inquiry*.

During a review, witnesses cannot be compelled to testify under oath. Interested parties have no opportunity to test the accuracy or veracity of other parties. Given these and other limitations, neither findings of credibility nor disputed findings of misconduct could fairly be made. Indeed, the Chair was precluded, as is also the case in a public inquiry, from finding civil or criminal responsibility of any person or organization or making recommendations regarding such responsibility.

However, the voluminous documentary record fully enabled the Chair to identify what went wrong in the DeLuca case and to make recommendations as to how similar events might be prevented in the future. For example, a realistic appraisal of the undisputed evidence available to the review made clear that the response of the School Board and its employees to complaints or disclosures made by the victims was completely inadequate and, indeed, harmful. It involved, at times, stereotypical notions of what could be expected from a truthful victim, a minimizing of the seriousness of DeLuca's misconduct, a lack of objectivity and a self-serving approach to these complaints, a failure to properly investigate or document these complaints and a complete absence of appropriate policies, protocols and procedures to identify and investigate suspected abuse and prevent its continuation.

The public has had very limited information on what transpired during the DeLuca affair. Criminal and civil proceedings were resolved or settled without the necessity of trials. This lack of information doubtless contributed to the community of Sault Ste. Marie's understandable outrage and its continuing concern for the safety and well-being of its children. The factual component of the Report is designed not only to provide a basis for the systemic recommendations which follow, but also to inform the community of what happened here and facilitate the healing process.

The Report contains 101 recommendations for change. They specifically address *teacher-student sexual misconduct* in the *elementary* and *secondary* schools. However, it is hoped that the recommendations will be received, as they were intended - as part of a larger strategy, directed at contributing to a healthier school environment generally. It is important to remember that policies and protocols designed to identify and prevent sexual misconduct by educators may, and indeed, should be established within larger initiatives designed to create a school environment free from violence, abuse, harassment and discrimination. These initiatives could address student-to-student or student-to-teacher activities as well as a wide range of conduct, including physical abuse or harassment unrelated to sexual misconduct. It is hoped that the policies and protocols recommended in this Report can be integrated with analogous policies.

### **Definitions of Sexual Misconduct, Abuse and Harassment**

Throughout the Report, the terms "sexual abuse" and "sexual harassment" are discussed. These terms admit of some confusion. "Sexual abuse" is generally understood by many to describe conduct that involves physical contact between the abuser and victim which is criminal and which involves a significant age differential between the parties. (DeLuca's criminal activity is appropriately so described.) "Sexual harassment" is often used to describe non-criminal but offensive conduct, including comments about a student's physical characteristics, suggestive or offensive remarks, propositions of physical intimacy and other behaviour which is unwelcome and sexual in nature. The Report introduces the term "sexual misconduct" to address the full range of activities by teachers which should be proscribed and to avoid labels which are too

easily misunderstood. Generally, it constitutes *offensive conduct of a sexual nature which may affect the personal integrity or security of any student or the school environment*. Chapters IV and VI of the Report contain a more precise delineation of the boundaries set by this definition.

## **Survivors of DeLuca's Abuse**

The Report reflects the input, including the insight and helpful suggestions, of a number of the survivors of DeLuca's abuse with whom the review met. These women, who demonstrated great courage in the affirmative steps they took to overcome their ordeals, are "survivors" in the fullest and most positive sense of that word.

In order to protect the privacy of these survivors, and to avoid their re-victimization, the Report refers to them by initials unrelated to their actual names.

## **The Process**

The review sought the views of as many different stakeholders as possible. A toll free line was set up and an advertisement was placed in local Sault Ste. Marie newspapers inviting interested parties to file submissions, propose recommendations and provide information relevant to the review. Many did. In addition, members of the review staff met with representatives of many stakeholders from across Ontario, including teachers' federations and associations, trustees' associations, school boards, the Ontario College of Teachers, child or victim-witness organizations, the Crown Attorneys' Association, the Criminal Lawyers' Association, faculties of education, counsel for many of these stakeholders and academia. Interested parties included a number of DeLuca's victims, in some cases, their parents, and other interested parties in Sault Ste. Marie.

Questionnaires were sent to all school boards and authorities and children's aid societies in Ontario. Submissions were also requested from 17 of the province's larger police service boards or police forces and from principals' associations, parents' associations and students' associations.

This extensive consultative process across Ontario was important to a fuller understanding of what transpired in the DeLuca case and the formulation of systemic recommendations.

## **Structure of the Report**

The Report is comprised of six chapters. Recommendations for change, reproduced in bold print, appear throughout Chapters IV to VI. They are again reproduced, without supporting commentary, at the end of the Report. The Appendices which follow include, amongst other things, several policies and protocols currently in use by school boards in Ontario.

Chapter I provides an overview of the entire Report.

Chapter II outlines the facts directly arising from the DeLuca affair. These facts relate to DeLuca's conduct, the response to complaints about his conduct and the impact of these events upon DeLuca's victims. Commentary upon these facts is contained in italicized passages throughout the chapter and in a summary and conclusion at the end of the chapter. The Report's conclusions as to what went wrong in the DeLuca case provide a basis for later recommendations.

Chapter III examines the extent and nature of the problem of sexual misconduct by teachers as reflected in the reported criminal and disciplinary cases, media accounts and in the literature.

Chapter IV of the Report examines the laws pertaining to sexual misconduct by teachers upon students to the extent necessary to fulfill the review's mandate and to make recommendations for change. The chapter addresses the relevant provisions of the *Criminal Code*, the *Ontario Human Rights Code*, the *Child and Family Services Act*, and education-related statutes, such as the Education Act, the Teaching Profession Act, and the *Ontario College of Teachers Act, 1996*. Certain deficiencies in existing legislation are highlighted. Civil liability is also briefly canvassed. Much of the chapter is dedicated to the special evidentiary and procedural considerations which obtain when a sexual complainant or child witness' account is relevant to criminal or administrative proceedings. Recommendations relating to this particular section are directed at minimizing the re-victimization of complainants after they have disclosed misconduct in a way compatible with the interests of all affected parties.

Chapter V focusses on concerns raised by teachers, including false accusations of sexual misconduct. The fear that a heightened sensitivity to potential sexual misconduct will have a chilling effect on a friendly and nurturing school environment is also explored. Several recommendations in this chapter better promote a fair and accurate evaluation of sexual misconduct allegations. The views espoused by teachers on the issues examined in the Report are not confined to this chapter; they find expression in various chapters.

Chapter VI extensively examines existing policies, protocols and procedures which are relevant to the systemic issues under consideration and makes recommendations for change. Many of the concerns raised by this review are best addressed, not through legislative intervention, but through comprehensive policies and protocols adopted by school boards across Ontario. The chapter concludes with a detailed checklist to assist school boards in developing their own policies and protocols.

## **Chapter II: The DeLuca Affair**

### **Criminal Proceedings Against DeLuca**

In 1994, Ken DeLuca was charged with 41 offences involving 21 complainants. All but one of those complainants were former students of the Sault Ste. Marie School Board ranging from age 10 to 18; the other complainant was a School Board employee.

On April 9, 1996, in accordance with a plea negotiation entered into with the Crown, DeLuca pleaded guilty to, and was convicted of, 14 offences before the Ontario Court (General Division) in Sault Ste. Marie: six counts of indecent assault, seven counts of sexual assault, and one count of counselling a young person to touch for a sexual purpose. These convictions related to 13 of the original complainants.

In sentencing him to a prison term of 40 months, Madam Justice Pardu stated the following about DeLuca:

This accused can only be described as a sexual predator, and he has betrayed the trust of his students, their parents, his colleagues and the community.

### **Civil Actions**

A number of DeLuca's survivors, and their families, initiated civil actions against DeLuca, the School Board, various School Board officials, and others. The plaintiffs claimed that the School Board, and certain officials and employees, failed to take reasonable steps to prevent the misconduct when they knew, or should have known, of the assaults, harassment, and invasions of privacy by DeLuca.

These civil actions were settled in 1998, resulting in a payment by the School Board of monetary damages to the plaintiffs. Following the settlement of all of the civil actions, the School Board published a public apology in the local press in November, 1998. The apology stated, in part:

The Board recognizes that no financial recompense can ever make up for the trauma and humiliation which these women have endured. The Board recognizes, as well, that had the officials involved acted in a timely and effective way when these assaults were first brought to their attention, much of this suffering would have been prevented.

The Board of Trustees, recognizes that some of its senior officials and employees entrusted with the safety of its students, failed in the discharge of their responsibilities. For this, the Board offers its most sincere and heartfelt apology to the victims and their families. . .

### **DeLuca's History of Sexual Misconduct**

The Report fully documents DeLuca's history of abuse and harassment which extended over five schools within the former Sault Ste. Marie District Roman Catholic School Board. DeLuca's sexual abuse of his many victims is clear and the substance of his conduct is now, belatedly, admitted. However, DeLuca has not acknowledged or been questioned about some of the allegations made against him.

The abuse reported by DeLuca's survivors included kissing students; inserting his tongue into students' mouths; rubbing his body against the students; touching or rubbing students' breasts; having a student hold his penis while class was in session; lying on top of students and rubbing his body against theirs; touching students' genitals; rubbing his pelvis against students; biting a student's chest and vagina through her clothes; and intercourse (with one student). The adult survivor disclosed that DeLuca grabbed her and, with his knees splayed, pulled her tight into his body while he made rutting noises with his pelvis against her private parts.

Survivors also maintained the following acts of harassment by DeLuca: pointing to the bulge in his trousers, and commenting to a student, "this is what you do to me"; telling a student, "you're a cock teaser when I thought you would be a cock pleaser"; asking a student if she ever "sucked on a man's dick"; suggesting that a student list her assets on an application form as "a nice ass, nice tits and a good lay"; constantly staring, smiling and winking at a student; commenting on how beautiful or pretty students were, or that they had a "nice ass" or "big chest" or "big boobs"; commenting that he intended to teach a student how to kiss or that he wanted to be the first male to kiss a student; indicating to a student that she would get high marks if she slept with him; encouraging a student to take his class, assuring her that she would do well and her marks would be high; asking a student if she was "horny"; noting that a student was wearing a bra and attempting to guess its size; and threatening to deny a student permission to go on a school field trip, if she didn't go into a supply room, for an inappropriate purpose, with him.

## **Conclusions Respecting the School Board**

As earlier reflected, the Report concludes that the response of the School Board and its employees to complaints or disclosures made by the victims was completely inadequate and, indeed, harmful. Detailed comments on the conduct of officials and employees of the School Board are contained in italicized passages in Chapter II. However, certain recurrent themes are developed in the chapter's conclusions.

### **(i) Failure to Provide or Check References**

For the most part, when DeLuca was transferred to a new school, no inquiries were made of his former school in order to obtain any background on him, even when the new principal admittedly heard about problems DeLuca had had at his former school. When inquiries were made, School Board members and, in particular, DeLuca's former principals, failed to provide details of complaints that had been received regarding DeLuca's inappropriate behaviour towards female students. Had proper reference checks been conducted when DeLuca was transferred between schools, his abusive behaviour may have been prevented years earlier.

### **(ii) Failure to Maintain Records**

The School Board and its principals failed to maintain adequate records of complaints against DeLuca. Despite numerous allegations of abuse or improper conduct by DeLuca, most complaints were not documented, and the few records that referred to allegations of abuse were not placed in DeLuca's personnel file. When the School Board did document complaints regarding DeLuca, the documentation was inadequate and tended to describe the allegations in innocuous terms so that the nature of the allegations would not have been apparent to anyone who reviewed DeLuca's file. As a result, when DeLuca transferred to a new school, the school administration lacked the proper context within which to evaluate complaints it received about DeLuca.

### **(iii) Reaction to Disclosure**

The School Board repeatedly failed to appropriately receive and act upon complaints regarding DeLuca disclosed by students, and failed to lend any support to students who disclosed allegations of abuse. The School Board's attitude created a climate which inhibited, rather than fostered, disclosure. According to the survivors, the School Board responded to student complaints in one or more of the following ways:

#### **(a) Denial of Complaints**

The School Board most often denied the legitimacy of allegations against DeLuca. Such complaints were typically dismissed as fabrication or rumour. Some students were directly accused of lying. Others were prevented from even voicing their complaints about DeLuca by warnings that they had better be "absolutely certain" that their complaints were legitimate, suggesting that the School Board's assumption was that their complaints were unfounded and would not be believed.

#### **(b) Minimization of Complaints Received**

The School Board minimized the complaints it received from students. Allegations were reportedly dismissed as "puppy love" or as just infatuation. Parents recall that their attempts to address concerns about DeLuca were resisted, and the School Board's reaction was to diminish the seriousness of their complaints and dismiss the parents as being over-protective.

#### **(c) Blaming the Victims**

Often, the victim was blamed for DeLuca's behaviour. One victim recalls being told that DeLuca had done nothing wrong. Several were told that they would be to blame if DeLuca lost his job, and that their allegations could ruin his career. Some girls were forced to leave the school after they complained that DeLuca had made advances towards them.

#### **(d) Failure to Investigate**

The School Board did not properly investigate allegations from students, nor did it report the allegations to the appropriate authorities. This is particularly apparent in cases where the Board had previously received complaints about DeLuca.

#### **(e) Threats and Intimidation**

Often students who complained were called into the principal's office and made to confront DeLuca with their allegations. This served to intimidate the students and encourage recantation. In addition, several parents allege that members of the Board and/or DeLuca, in the presence of school officials, warned them against pursuing their complaints, threatened that they could face a lawsuit for slander and that they would lose any action they might bring since they did not have the financial resources available to the Board or to DeLuca through his union. Students were also allegedly threatened with expulsion and criminal charges. If these and other allegations are accurate, they obviously constitute a further inappropriate response to students' complaints.

#### **(f) Ill-motivated or Colourable Conduct**

The Report reflects that inadequacies in the Board's reaction to complaints against DeLuca may have represented some misguided notion by some officials of their powers and responsibilities. On the other hand, another inference is available on the evidence. A number of Board officials or employees may have been disinterested in exposing DeLuca's suspected abuse. It might be inferred that this is the real reason why complaints were dismissed or minimized; alleged abuse and harassment were characterized as misunderstandings or personality conflicts; and why inaction was rationalized on the basis of insufficient evidence. These officials or employees may have suspected DeLuca's abuse and refrained from making further inquiries out of loyalty for a colleague or concern for the reputation of their school system. Or, their conduct may have been coloured by their considerations. What cannot be disputed, the Report concludes, is that the best interests of the complainants were not given paramount consideration. Little thought was given to the ongoing risk to other students in DeLuca's classes.

### **Impact of Abuse on DeLuca's Survivors**

The trauma suffered by these women as children has cast a shadow over their lives, causing varying degrees of disruption and emotional distress, including low self-esteem, depression, nightmares, difficulty in developing meaningful and healthy relationships, inability to trust others, flashbacks, alienation from parents and other family members and an inability to concentrate. These consequences continue for some to the present time. DeLuca's sexual abuse and sexual harassment, together with the humiliation and shame attendant on his behaviour, were hard enough to endure without the added insult of being disbelieved and disregarded by teachers, principals and School Board officials.

# Chapter III: Extent and Nature of Teacher-Student Sexual Misconduct

## Introduction

This chapter examines what is known from the research literature and the reported cases about educator sexual misconduct towards students, including the nature and extent of the misconduct, the characteristics of offenders and victims, student disclosures of offences, and the impact of teacher sexual misconduct on students. Certain myths or stereotypical assumptions which serve to hinder effective identification and prevention are also examined. These include the notion that truthful disclosures will be immediate, that only a pedophile would sexually abuse a young child, and that outwardly minor offences cannot leave emotional consequences that extend into adulthood.

## Prevalence of Teacher-Student Misconduct

Studying covert behaviour is never easy because numerous cases are never discovered by authorities. Many cases remain undisclosed. Even where complaints are disclosed, it may not be possible to substantiate them, even if truthful.

However, during the course of this review, accounts of teacher-student sexual misconduct in Ontario and Canada, as documented in reported criminal cases, disciplinary and arbitration decisions and media accounts, indicate the following:

- Between 1989 and 1996, over 100 cases of sexual misconduct by teachers involving students were dealt with by the Ontario Teachers' Federation.
- Since assuming jurisdiction over teacher discipline from the OTF in 1997, the Ontario College of Teachers has dealt with about 20 such cases.
- There have been approximately 100 reported cases in Canada since 1986 of criminal proceedings against teachers, principals, volunteers and other school employees. Many cases, including guilty pleas, go unreported. The DeLuca case is an example.
- The news media provide accounts of cases that often do not appear in print anywhere else. A media search revealed a substantial number of cases of teachers charged with or convicted of sexual abuse of students. Indeed, since the review began, reports have appeared with alarming frequency in our daily newspapers of criminal and disciplinary cases against teachers for sexual offences against students. Twelve separate examples of Ontario cases are summarized in the Report.

Moreover, a number of studies from the United States indicate that a high number of students report having been the target of some sort of sexual misconduct by a teacher.

As both teachers' unions and school boards have properly stressed, the incidence of sexual misconduct is small relative to the large number of teachers and students in our school system. However, the incidence is certainly frequent enough and serious enough to deserve more attention than it presently receives.

## Characteristics of Teacher-Student Misconduct

It is evident from the relevant research literature that there is no typical offence or offender. While sexual misconduct by teachers is perpetrated overwhelmingly by males, and overwhelmingly against females, it occurs in all combinations of gender. There is no single "molester profile", and the origins of sexually abusive behaviours vary. The popular conception that anyone who sexually abuses a child is a pedophile is simply wrong. In fact, teachers who engage in sexual misconduct with children and adolescents are not pedophiles in most cases. Terms such as "boundary violators", "romantic/bad judgment abusers" or "situational offenders" have been used to describe different types of abusers.

### **Disclosure by Victimized Students**

Students abused by teachers probably delay disclosure by reason of deference to an authority figure, embarrassment, guilt and fear--fear of retaliation by the offender, fear that no one will believe them, fear of being blamed and fear of some sort of punishment. A child's desire to comply with the requests of an adult he or she trusts and by whom he or she wishes to be accepted is another inhibitor of disclosure. The genuine affection a child may have for the teacher, especially one who promotes the "special relationship" and who has spent a great deal of time in the grooming phase, should not be underestimated. Studies of child disclosure have contributed greatly to our understanding of disclosure. For example, it is estimated that only 30 percent of sexually abused children disclose their abuse during their childhoods.

### **Effects of Sexual Abuse on Students**

The impact of sexual victimization on children has been widely researched and reported on in the mental health literature. The impact is often less correlated with the severity or intrusiveness of the sexual behaviour than with the pre-abuse relationship to the abuser, the vulnerability of the victim or the way in which disclosure of abuse was responded to. Accordingly, a seemingly minor incident of sexual touching by a close and trusted adult can have a profound and lasting impact.

It must be concluded that the DeLuca case is neither aberrant or out of date. Teacher sexual misconduct is sufficiently prevalent to warrant special attention. Arguments to the contrary should not be allowed to forestall efforts to understand the problem, and actively address it.

## Chapter IV: The Law

The conduct of teachers in relation to their students is, to a great extent, regulated by law. Similarly, the duties and obligations of others, including fellow teachers, principals, school boards, police and social workers, to address suspected or proven sexual misconduct (and the consequences for breaching these duties and obligations) are also regulated by law. This chapter explores the following questions: Do these laws adequately define, and protect against, sexual misconduct towards students? Do they do so in a way which is compatible with the rights of those suspected of misconduct to fully defend themselves? To what extent are these laws fully resorted to, to prevent sexual misconduct? Do the applicable rules of procedure and evidence adequately reduce the exposure of victims to further trauma as witnesses or to re-victimization? To what extent can these rules better protect these victims in a way which is compatible with the rights of those suspected of misconduct?

The Report makes 45 recommendations on how the law can better address the problem of sexual misconduct in schools.

### Criminal Law

The *Criminal Code* sets out a variety of offences which criminalize sexual abuse by teachers against students. These include sexual interference, invitation to sexual touching, sexual exploitation, indecent acts and exposure, and sexual assault. The Report details the elements of these and other relevant offences.

Section 161(1)(b) of the *Code* provides that, where an accused is found guilty of certain sexual offences respecting a child under 14 years of age, the sentencing judge shall consider making an order prohibiting the offender from seeking, obtaining or continuing any employment or becoming or being a volunteer in a capacity that involves being in a position of trust or authority towards children under 14. Despite the fact that judges must consider whether to make such an order, the section has received relatively little judicial consideration since its enactment in 1993.

The Report concludes that perpetrators who commit the crimes listed in section 161 (together with additional recommended offences) should, in the interest of children's safety, generally be disqualified from employment, or from serving as volunteers in a capacity that involves being in a position of trust or authority towards children. The length and conditions of disqualification should depend upon the circumstances of each case. Evidence that the accused is a pedophile or a demonstrable risk to children, while relevant, is not a precondition to the imposition of a section 161(1)(b) order.

Section 161(1)(b) represents an important tool for enhancing public safety and student security. Prosecutors and sentencing judges need to be more mindful of its appropriate scope and application. Recommendations 1 to 4 address the deficiencies in the legislation and in its current use.

### Ontario Human Rights Legislation

The *Ontario Human Rights Code* specifically addresses sexual discrimination, sexual harassment, sexual solicitations, advances and reprisals. Some of the *Code's* provisions are capable of being utilized by students seeking a remedy for sexual misconduct by their teachers but, in practice, understandably, are not resorted to. However, the *Code* has primacy over other Ontario legislation, over collective agreements between school boards and teachers' unions and, as such, will be interpreted and applied in proceedings that may result in a teacher being decertified, dismissed or otherwise sanctioned.

The *Code* sets standards for conduct which have fundamental importance to the school environment. It should inform the content of sexual harassment policies of school boards. Though this review is concerned with sexual abuse or harassment by teachers against students, students may sexually harass other students on a daily basis. A school environment which is not respectful of the rights of everyone to be free from discriminatory comments or conduct is more likely to condone sexual abuse or harassment by teachers and students. The Report strongly encourages school boards to implement sexual harassment policies which regulate the conduct of teachers and students.

The *Code's* provisions and supporting jurisprudence clarify what sexual harassment is and are therefore fully analysed in the Report. However, the *Code* cannot exhaustively articulate the appropriate boundaries for teachers in their relationships with students. Conduct must be "unwelcome" to constitute sexual harassment under the *Code*. Certain conduct, such as sexual advances or highly sexualized comments by a teacher to a student, are completely inappropriate in the school environment, regardless of whether any student finds the conduct to be unwelcome. The *Code* represents an important *starting* point for defining the appropriate boundaries of teacher-student relationships.

### **Child and Family Services Act**

Section 72 of the *Child and Family Services Act* imposes a statutory duty on *every person* to report reasonable suspicions of child abuse, including *sexual molestation or exploitation*, and the information upon which those suspicions are based, directly to a children's aid society. In addition, section 72 makes it an offence for *certain professionals*, including teachers and principals, to fail to so report. The Report analyses the difficult interpretive issues which this section presents.

Section 72 is designed to provide a moral and legal incentive to early reporting of suspected child abuse which, in turn, makes it more likely that such abuse will be identified and ended early. The legislation, particularly as recently amended, is intended to put the best interests of the child first. A standard of "reasonable grounds to suspect", a requirement that reporting be done "forthwith" and that there need only be reasonable grounds to suspect that "there is a risk" of future sexual abuse all support an approach that favours early, outside intervention. Putting children's safety first necessarily means that there will be cases reported to a children's aid society that ultimately, after investigation, will not warrant criminal or disciplinary proceedings. This is inevitable.

However, section 72 contemplates a *limited* scope for some preliminary evaluation by a school before a report is made. While the threshold is a low one, it does not contemplate the automatic reporting of any information communicated, regardless of its ambiguity or patent frivolousness. For example, sexual misconduct unrelated

to abuse is not contemplated by section 72 and should be addressed within the school system. All of this assumes that any decisions not to report are made free from stereotypical notions about student unreliability or a failure to appreciate the kinds of grooming activities that may evidence a risk of sexual abuse. The education and training of educators as to the scope and application of section 72 is all important. Recommendation 5 is directed at clarifying who the assailant must be before the duty to report is triggered.

Once it has been determined that conduct is reportable (either to the police or children's aid society), it is the role of these authorities, and not school officials, to investigate the conduct. Chapter VI establishes the protocols for ensuring that official investigations are not compromised (and students not unduly traumatized) by schools.

### **Education-Related Statutes**

The *Education Act*, the *Teaching Profession Act*, and the *Ontario College of Teachers Act, 1996* all play a role in regulating the conduct of the educational community. The duties of educators and their school boards are, to varying degrees, defined in each statute or in the regulations thereunder. The legislative articulation of these duties is intended to inform educators as to the standards expected of them, and to form a basis for disciplinary proceedings against educators where there has been a significant breach of these duties. Disciplinary proceedings may be of two kinds: those relating to employment and those relating to professional status.

Though sexual misconduct would clearly constitute "just cause" for discipline as well as professional misconduct, the standards, as presently stated, provide little or no insight as to what sexual misconduct is. The regulation to the *Ontario College of Teachers Act, 1996* represents the only specific reference in the three education-related statutes to sexual impropriety. It identifies "sexual abuse" as professional misconduct. Sexual abuse is not defined. The term "sexual abuse" is ill-suited to embrace the full range of sexual activity that should constitute professional misconduct. Though such conduct might be captured by the other heads of professional misconduct in the regulation, these heads of misconduct provide little guidance as to what sexual misconduct is.

Recommendations 6 to 11 provide for a definition of "sexual misconduct" to be included in the regulation to the *Ontario College of Teachers Act, 1996* and to be elaborated upon in a Code of Ethics to be adopted by the Ontario College of Teachers. The definition (contained in recommendations 6.2 and 7.2) not only draws upon criminal and human rights law, but also specifically prohibits any sexual relationship with a student or a former student under the age of 18 and any conduct directed to establishing such a relationship. Commentary to the College's Code of Ethics should explain and provide illustrations of sexual misconduct and dispel misconceptions commonly held or advanced in response to allegations of misconduct. These are identified in the Report.

To ensure that codes of conduct are disseminated and made known to all interested parties, and are applicable to school volunteers and employees who need not be members of the College of Teachers, school boards should have policies that incorporate the minimum standards of conduct that apply across Ontario. However, school boards are free to impose higher standards of conduct in their own policies and protocols.

Apart from establishing what sexual misconduct is, a number of interested parties urged the review to address related conduct, such as gift-giving, writing personal letters, driving students home, and allowing students to stay at teachers' residences. Some of these activities, such as writing notes of a personal nature, may manifest sexual harassment or conduct leading to a sexual relationship between teacher and student and, therefore, would already constitute sexual misconduct. Other activities may be entirely appropriate or inappropriate, depending upon the circumstances. The challenge is to create rules that do not inhibit normal social interaction between teachers and students, but enhance a nurturing environment while protecting students.

The Report concludes that it would be unwise to create a province-wide policy that defines, for example, when a teacher can or cannot drive a student home from school. Answer may depend upon the locale, personal circumstances and exigencies that cannot be exhaustively articulated. Instead, recommendation 10 suggests that the College's Code of Ethics should state a teacher's duty to avoid activities that, standing alone, may not constitute sexual misconduct but would raise concerns in the minds of a reasonable observer as to their propriety. Considerations that teachers should be mindful of in evaluating the propriety of their activities are detailed in the Report. Each school board should, where desirable, refine these general principles through policies and protocols that address issues of particular concern and application to their community.

If sexual misconduct is to be effectively identified and addressed, students (and others within the school system) must feel secure in coming forward with complaints or other information about alleged sexual misconduct. In order to foster such a safe and supportive environment, Recommendation 11 suggests an anti-reprisal provision be included in the Ontario College of Teacher's Code of Ethics.

This section of the Report also focuses upon the duties and obligations of school boards, fellow educators, principals and supervisory officers to address known or suspect sexual misconduct by other school employees or volunteers. Recommendation 13 proposes that the College's Code of Ethics specifically provide that all members of the College (teachers, principals and supervisory officers) have a duty to protect students by intervening in cases of suspected sexual misconduct. The ways in which members are expected to intervene are outlined in the Report.

A significant issue that arose during this review was the interaction between a teacher's duty to report known or suspected sexual misconduct and a teacher's duty to a fellow teacher under section 18(1)(b) of the Regulation under the *Teaching Profession Act*. Under section 18(1)(b), a teacher has a duty to other teachers "on making an adverse report on another member, [to] furnish him or her with a written statement of the report at the earliest possible time and not later than three days after making the report." This section should have no application to cases of suspected sexual misconduct. However, the evidence before the review demonstrated that some teachers continue to believe that the "adverse report" provision does apply to such cases and, as a result, are inhibited in reporting their suspicions. Indeed, a number of teachers and a principal reported anxiety in reporting DeLuca, based, at least partially, upon their perceived duty to advise DeLuca under section 18(1)(b). As well, a mandated disclosure in writing to a party suspected of sexual impropriety could adversely affect the investigation or the emotional well-being of the complainant. Recommendation 12 is designed to clarify that section 18(1)(b) should have no application to reports of suspected sexual misconduct.

School boards are presently obligated to report certain conduct by teachers (such as convictions for sexual offences) to the Ontario College of Teachers. Otherwise, they are given wide discretion under the legislation. This unfettered discretion has resulted in inappropriate non-reporting of some cases. The Report identifies deficiencies in the present reporting obligation and, in recommendation 14, suggests changes that ensure that the College is appropriately notified of cases deserving review. Situations where a school board disciplines a teacher in its employ for engaging in sexual misconduct or where a teacher resigns during an investigation into allegations of sexual misconduct are specifically addressed. Recommendation 15 proposes a complementary amendment to the *Education Act* to ensure that school boards are fully informed by principals and supervisory officers of the information relevant to the boards' obligation to report. Finally, recommendation 16 ensures that the College is able to share information with a school board regarding the discipline of a member employed by that board.

### **Common Law and Civil Liability**

Recent developments in the law relating to the doctrine of vicarious liability suggest that school boards may be at a greater risk of being held vicariously liable for the sexual misconduct of their employees. The financial consequences that may flow by way of compensatory or punitive damages when reasonable steps are not taken to protect students from such misconduct underscore the need for school boards to develop and implement effective policies or protocols to identify and prevent such misconduct in their schools.

### **Special Evidentiary and Procedural Considerations**

Students who allege they have been the victims of sexual misconduct by their teachers may be called upon to testify about this misconduct or describe it in statements provided to investigators. These accounts may be required in both criminal and administrative proceedings.

It is now well recognized that providing evidence in a formal setting can be very traumatic for a child. The imposing atmosphere of a court or hearing room, the repetition of details of an event to strangers in public, cross-examination, face-to-face confrontation, and physical separation from a parent or trusted relative are some aspects of providing evidence which profoundly affect child witnesses. The search for the truth may also be thwarted if children and adults are treated in the same way.

The heightened sensitivity to the difficulties that face children when called upon to testify has been reflected in a number of relatively new evidentiary and procedural rules that apply to various kinds of proceedings involving child witnesses.

There is also a new appreciation of how children's evidence should be evaluated for accuracy and reliability. Central to this appreciation is the removal of the stereotypical notion that such evidence is inherently unreliable or always less reliable than the evidence of adults and must be treated with special caution.

Some of this analysis also has application to complainants, whether adults or children, in prosecutions for sexual offences. As is the case for children generally, it is also recognized that sexual complainants are often deeply affected by their testimonial involvement and that certain stereotypical notions have been applied in the past to influence the assessment of their credibility.

The Report recognizes that special evidentiary and procedural rules that govern child witnesses and sexual complainants need to strike a balance between the interests of such witnesses and those of the adverse party. However, in administrative proceedings, greater accommodation can appropriately be shown to the interests of child witnesses and sexual complainants. This accords with the interests at stake in administrative as opposed to criminal proceedings.

The Report concludes that some administrative tribunals give inadequate consideration to the needs of child witnesses or sexual complainants by approaching the issue as though they were conducting a criminal trial. In some areas, special and more relaxed evidentiary and procedural rules apply to administrative proceedings, such as those found in sections 18.1 to 18.6 of the *Ontario Evidence Act*. These rules, which are not always known or understood, strike an appropriate balance between the interests of witnesses and responding parties, and should be utilized in administrative proceedings.

Indeed, several rules of practice adopted by the Ontario College of Teacher's Discipline Committee may be less mindful of the interests of child witnesses than the *Ontario Evidence Act* provisions.

Recommendations for change in this section of the Report are designed to address what evidentiary and procedural rules should apply to administrative proceedings in particular and, as well, to ensure that these rules are known to the parties and to the decision-makers and are adopted in practice. The chapter also revisits the stereotypical notions which need to be avoided in the assessment of credibility and reliability.

The Report notes that the above commentary assumes that students or former students need testify in administrative proceedings. Too little attention has been given to when, and to what extent, children or sexual complainants need provide *viva voce* testimony in such proceedings, particularly where they have previously testified in the related criminal proceedings. Recommendations address these issues, as well as the use generally to be made of evidence, findings of fact and reasons for judgment in related proceedings.

#### **(i) Obviating the Need for Student Testimony**

Generally, out-of-court statements cannot be introduced in a criminal case as proof of the truth of their contents. This is known as the hearsay rule. It reflects a well-established recognition of the dangers associated with out-of-court statements.

However, an out-of-court statement is admissible in a criminal trial where its admission is reasonably necessary to the determination of a fact in issue and where the circumstances surrounding the making of the statement provide sufficient indicia of reliability.

The same necessity/reliability exception has application to administrative proceedings such as disciplinary hearings before the Ontario College of Teacher's Discipline Committee or arbitration hearings under the *Labour Relations Act, 1995*. Indeed, the Report concludes that it is appropriate to apply a lower threshold of reliability and necessity in the administrative law context. This accords with the interests at stake in these proceedings. In striking the balance between competing interests, the rights of children or sexual complainants may acquire equal or greater prominence, particularly where the adverse party cannot lay claim to a right to make full answer and defence arising out of a potential deprivation of liberty. This position also

accords with the very broad discretion conferred upon administrative tribunals to admit relevant evidence and the less formalistic approach adopted generally by such tribunals. This means, for example, that in administrative proceedings, a determination of reasonable necessity may be made with greater regard to the best interests of the child.

Further, where the reliability of a hearsay statement is particularly high, a compelling argument can be made that a determination of reasonable necessity can largely be dispensed with in administrative proceedings. The prior testimony of a witness taken under oath or solemn affirmation, who was cross-examined at an earlier proceeding by the party against whom the evidence is to be used, will often be highly reliable hearsay.

Students are sometimes requested to give testimony in both criminal and disciplinary proceedings. Occasionally, they may be called upon to testify both in grievance hearings and proceedings before the College's Discipline Committee. Each of these proceedings may themselves involve multiple interviews, formal statements and repeated testimony. Testimony may span many days. For those students who were victims of sexual misconduct by their teachers, the multiplicity of proceedings is at times unbearable, contributes to their emotional distress, interferes with counselling and delays well-being, discourages seeking legitimate redress for wrongs, and ultimately deters other victims from coming forward. A broader, principled approach to the admissibility of testimonial hearsay can better address these concerns in a way which is fair and not incompatible with the rules of natural justice.

Recommendations 18 to 22 address the admissibility of hearsay evidence in administrative proceedings. Recommendation 19 favours the admission of prior testimonial statements as evidence in administrative proceedings, subject to articulated pre-conditions and a residual discretion to exclude, that ensure fairness to all parties. Certain complementary amendments to existing legislation are also proposed.

The Report also addresses the evidentiary value of a finding of guilt, and the trial judge's reasons for judgment and sentence which relate to that finding, at subsequent administrative proceedings. Recommendations 23 to 25 outline the appropriate use of a Certificate of Conviction or Discharge, as *prima facie* proof that the crime was committed and the specific findings of fact contained in reasons for judgment or sentence, as *prima facie* evidence of those facts. Such findings of fact explain the finding of guilt and should be regarded as incidental to the Certificate of Conviction or Discharge.

Recommendation 26 addresses the use to be made of findings of fact, other than those which support a finding of guilt. Of course, even an acquittal does not foreclose subsequent administrative proceedings for two reasons. First, proof beyond a reasonable doubt represents a higher burden of proof than that needed to establish sexual misconduct in non-criminal proceedings. Second, conduct which does not amount to a crime may nonetheless constitute disciplinary misconduct. This recommendation suggests that findings of fact, other than those which support a finding of guilt, may be treated as *prima facie* evidence of those facts in the discretion of the administrative hearing. However, important factors informing the exercise of that discretion and ensuring fairness to the affected teacher are fully outlined in the recommendation.

## **(ii) Accommodating the Student Witness**

This section of the Report examines in more detail the ways in which student witnesses may be better accommodated when they must give testimony. Again, applicable rules must be designed to accommodate the interests of such witnesses and the need to discover the truth in ways which remain consistent with the adverse party's interests.

Recommendations 17 and 27 to 44 specifically address existing and recommended evidentiary and procedural rules that may apply to child witnesses or sexual complainants such as the use of a screen and closed-circuit televised evidence, support persons, limitations upon personal cross-examination by an unrepresented adverse party, publication bans and in camera hearings and videotaped statements. These recommendations generally favour greater recognition of the best interests of vulnerable witnesses in applicable rules and through procedures that ensure that parties tendering such witnesses, administrative tribunals and the witnesses themselves are fully conversant with these rules. Considerable emphasis is also placed upon the desirability of early videotaped interviews of complainants and young witnesses by trained investigators.

### **(iii) Speculative Myths, Stereotypes and Generalized Assumptions**

The perpetuation of stereotypes regarding child witnesses significantly impacts upon the identification and prevention of sexual misconduct in several ways. They may skew the investigative process and lead to an unwarranted conclusion as to the validity of a complaint. Similarly, they may distort the adjudicative process itself. The Report identifies six myths and stereotypes regarding children and sexual complainants: children and their accounts of sexual abuse are inherently unreliable; a student's allegation of sexual abuse is unreliable unless he or she made the complaint or disclosure shortly after the event; a student's allegation of sexual misconduct is unreliable if he or she has previously been involved in sexual activity (specifically addressed in recommendation 45); all teachers who sexually abuse young children are pedophiles; teachers only sexually abuse children in seclusion; and the psychological and emotional trauma associated with sexual abuse is absent where less physically intrusive abuse is involved.

The objective is to identify and thereby avoid assumptions which may not be borne out in individual cases. The objective is not to replace these stereotypes with equally rigid assumptions which operate to the detriment of the responding teacher.

## Chapter V: Avoiding False Accusations

The review's mandate is designed to facilitate the identification and prevention of sexual misconduct by teachers. Its prime focus must inevitably be upon the relatively small, though significant, number of educators who sexually mistreat students. However, this focus did not blind the Chair to the concerns raised by teachers about false allegations of sexual impropriety. Recommendations as to the law and as to policies and protocols contained in this Report are designed to promote child safety, but not at the expense of fairness to teachers.

Teachers' concerns, however, are not confined to false accusations. Education and training of teachers, financial resources, enhancing the school environment, and sexual harassment policies are some of the topics that teachers' representatives raised with members of the review staff.

According to teachers, concerns about false accusations of sexual misconduct are presently manifested in various ways. Fear of false accusations causes some teachers to avoid the most innocent physical contact with students. After-hour activities with students are sometimes curtailed. Some teachers will never meet with a student alone. Classroom doors are kept open during such meetings that do take place. Teachers also maintain that a culture of over-reporting complaints which are either groundless or do not involve criminality may result in children's aid societies and police officers being brought in to address unclear boundary issues, or frivolous, ill-motivated complaints rather than true crimes.

There is no means of quantifying the number of false accusations of sexual impropriety made against teachers. Diametrically opposed views on the prevalence of false complaints were presented. The Report does not reach the conclusion that there is a plethora of false accusations of sexual impropriety made against teachers. In particular, it does not conclude that young children routinely or commonly lie about sexual abuse. Nor does the Report conclude that false accusations are extremely rare. However, this debate is beside the point. False complaints are made against teachers. These may represent a deliberately false accusation or a misinterpretation of a teacher's conduct. Once one recognizes that false complaints of sexual impropriety do occur, in whatever number, the issue must be addressed. Such complaints can be devastating to an accused person, and the stigma associated with the complaint may linger, regardless of its disposition.

The investigation and evaluation of sexual complaints must make the best interests of children paramount. However, the serious impact of false complaints compels an approach to such complaints which remains open-minded and fair in all respects. Each case should be evaluated on its own merits, devoid of stereotypical notions about either party or about sexual misconduct itself. Students need to feel that they will be heard, that their accounts will not be discounted or minimized solely because they are students and the alleged offender is a teacher. Teachers also need to feel that they will be heard and that complaints will not be accepted just because they are made by children.

Reference was earlier made to the fact that heightened awareness of sexual abuse may, as a byproduct, alter the ways in which teachers interrelate with children, sometimes to the detriment of those children. However, teachers are not rendered immune from false complaints by withdrawing from students and focussing on the possibility of false allegations. The Report concludes that better education and training of teachers, parents and students about boundary issues, and the existence of a system in place that is perceived by teachers to fairly address complaints offer the best hope for ensuring that teachers are not unduly inhibited in their appropriate interchanges with students.

Much of teachers' concerns regarding false accusations reflect, at least in part, in level of distrust between teachers' unions and children's aid societies. While a close examination of this issue was beyond the scope of the review, it is clear that the suspicion and distrust between children's aid workers and teachers is inconsistent with the ability of each to perform their respective jobs to their fullest potential. Recommendations 46 to 47 promote the education and training of children's aid society workers and teachers, including joint educational programming, on the investigation and evaluation of sexual misconduct. Such educational programming should address, among other things, the exchange of information between children's aid investigators and counsel for the suspected party during the investigative process. Recommendation 48 addresses concerns about "over-reporting" through further education as to the meaning and use of section 72 of the *Child and Family Services Act*.

## Chapter VI: Policies and Protocols

### Introduction

Policies and protocols represent important tools for the prevention and early identification of sexual misconduct, and for protecting those already victimized by such misconduct. For example, a school board policy on how complaints of sexual abuse should be acted upon that is clear, fair and known to all is likely to help protect children, ensure fairness to the affected teacher, provide assurance to the community and enhance the school environment. The absence of such a policy often produces uneven or inappropriate treatment of students and teachers, unnecessary uncertainty, speculation, gossip and innuendo, heightened trauma to the interested parties, particularly children and, overall, a process that is seen to be arbitrary and unfair.

Existing school board policies and protocols across the province respecting sexual misconduct by teachers are varied. A number of school boards have skeletal or no related policies in place. Some boards are in the process of developing policies. Some school boards, particularly small boards, revealed that they lacked the resources to develop extensive policies. By way of contrast, some boards have obviously put considerable time and effort into policy development. These boards have protocols in place that address, sometimes in exemplary fashion, some of the issues raised in the Report. However, few boards have a comprehensive and complete set of policies.

While local circumstances and resources justify some differences in policies and protocols, basic school board policies across the province are fragmented and uneven. School boards often act in isolation and have had limited opportunity to share or draw upon the experiences of other boards. There is an absence of direction at the provincial level, which has contributed to a somewhat unsatisfactory state of affairs in some school districts.

Existing school board policies often demonstrate deficiencies. Some important topics are not dealt with adequately or at all. For example, a number of school boards have policies on student misbehaviour but no policies on teacher misbehaviour. A sizable number of boards acknowledged that they have no protocols on how to deal with complaints or disclosures of teacher sexual misconduct. A comparison of school board protocols demonstrates significant differences in their interpretations of legislation that has province-wide application. Some of these differences result in significantly divergent practices regarding the duty to report sexual abuse, to inform the suspected teacher and to investigate alleged abuse internally. Some policies need to be updated, in any event, to reflect recent amendments to the *Child and Family Services Act*.

Having identified significant deficiencies and inconsistencies in existing policies and protocols, the Report makes recommendations for change. These are contained in recommendations 49 to 101. The components of suggested policies and protocols are also summarized in a detailed checklist, with supporting commentary,

which follows Chapter VI. Only highlights of these extensive recommendations are contained in this Executive Summary.

The finest policies and protocols are less likely to be created or, if created, adhered to fully by individual school boards unless there is a recognition that sexual misconduct by teachers is a concern worth addressing. Some school boards believe that sexual misconduct by school employees is not an issue in their jurisdiction and that they need not worry about it. These boards expressed the belief that it does not occur in their schools and, should it occur, they would recognize it immediately.

Unfortunately, communities cannot be inoculated against the problem of sexual misconduct by remoteness, social class, size or religious beliefs. A complacent "it can't happen here" attitude might make undetected abuse almost inevitable. Such an attitude can colour how sexual misconduct complaints are viewed and evaluated and, thereby, place students at greater risk. Placing students at risk is particularly likely if such attitudes prevent or inhibit the development of preventative measures and protocols to address suspected cases. Often, boards with more extensive policies and protocols, such as the Huron-Superior Catholic District School Board, have already experienced high profile abuse cases involving their staff. Such cases focus attention on the problem and the need to address it.

Recommendations 49 to 51 suggest that all school boards in Ontario should establish, and promote adherence to, policies and protocols pertaining to sexual misconduct by teachers, other staff and volunteers. Given the shared responsibility and necessary interaction between school boards, children's aid societies and police for the reporting and investigation of sexual abuse, protocols should also be developed cooperatively between school boards, local police forces, and children's aid societies. Finally, all policies and protocols should be regularly reviewed and updated to reflect changes to existing laws or to accommodate improvements which flow from the implementation of these policies.

### **Problem Areas**

Through survey responses and consultation with school boards and other stakeholders, the review identified problem areas that school boards need to address in developing policies and protocols regarding sexual misconduct. Though the stakeholders sometimes had very different views on how these areas should be addressed, the following represent the most prominent problem areas that were identified: defining boundaries of behaviour; screening of applicants for teaching positions; hiring practices, including reference checks with past employers; responding to complaints; reporting suspected misconduct; duties to students as complainants; documenting complaints or suspicions; disclosure to the Ontario College of Teachers; and resignations of teachers.

To address these and other issues, the Report identifies both *prevention* strategies, which are designed to reduce the likelihood that sexual misconduct will occur or re-occur, and *intervention* strategies which are designed to encourage disclosures of true sexual misconduct, and the responses to complaints or suspicions of sexual misconduct that best protect students, while treating suspected teachers fairly. Of course, prevention and intervention strategies often overlap.

### **Prevention Strategies**

## **(i) Overview**

Prevention strategies are twofold: (i) education and training on what constitutes sexual misconduct and how it can be identified and prevented; and (ii) ensuring, so far as possible, that sexual perpetrators do not enter the profession and that, when discovered, they are not permitted to continue to teach or move from school to school. This strategy involves adherence to policies and protocols that ensure that new teachers or those seeking to transfer to another school, are fully screened. It requires prospective employers to have access to accurate and complete information about the applicant. Both strategies are enhanced by clear and unequivocal policy statements that reflect no tolerance for sexual misconduct and that define the boundaries of acceptable behaviour.

## **(ii) Education and training**

To combat sexual misconduct effectively, education and training needs to be directed to (i) prospective teachers; (ii) current teachers, volunteers and other school staff; and (iii) students and parents.

Recommendations 52 to 60 address education and training and include the following:

- students at faculties of education should be fully educated on sexual misconduct policies and protocols and on their professional and ethical duties
- teachers, principals, vice-principals and other school staff and certain designated volunteers should receive ongoing in-service training on sexual misconduct policies and protocols and on their professional and ethical duties;
- topics of education should include: board policies and protocols regarding sexual misconduct; what constitutes sexual misconduct; boundaries between acceptable and unacceptable interaction with students; recognition of the early warning signs of sexual misconduct; issues surrounding student disclosure of sexual misconduct; protecting a student from further potential harm; documenting disclosures; duty to report sexual abuse under the Child and Family Services Act and the duty to protect students from other forms of sexual misconduct; the procedures that follow initial disclosure, including those applicable to a teacher suspected of misconduct; the avoidance of stereotypical notions about sexual misconduct, its perpetrators and its victims;
- students in elementary and secondary schools should receive age-appropriate education on sexual misconduct;
- strategies should be developed to make information and education regarding sexual misconduct available to parents.

## **(iii) Screening of Teaching Applicants and Reference Checks**

Adequate screening of potential employees represents an important strategy for preventing sexual misconduct. A criminal record check, while one component of an effective screening strategy, is not sufficient. The most meaningful screening process entails a detailed application form, a thorough interviewing process, and verification, including reference checks that involve a full and candid exchange between the prospective and former employers. Recommendations 62 to 69 all address the screening of teachers and include these features to be incorporated into school board policies and protocols:

- a criminal and disciplinary record check should be performed with respect to every applicant for a teaching position, and other staff positions that involve exposure to children;
- the screening process for these applicants should generally entail a detailed application form, in-depth personal interviews, and verification of references through direct contact with the references;

- no offer of employment should be made by a school board until a full investigation has been conducted;
- volunteers who are endowed with exceptional levels of trust involving frequent, lengthy and unsupervised contact with students should be screened in a manner consistent with their voluntary status.

These recommendations also detail the kinds of inquiries that should be made through the application form, interviews with the applicant and through direct contact with references to address concerns about sexual misconduct.

#### **(iv) Codes of Conduct**

In Chapter IV, the Report earlier recommended that codes of conduct for teachers, other school staff and volunteers be included in school board policies and protocols. These codes of conduct should incorporate the minimum standards of conduct that apply across Ontario (and as may be reflected in the College's Code of Ethics), but may impose higher standards of conduct to address local concerns and circumstances. In Chapter VI, recommendations 70 and 71 specify what such codes of conduct should state, together with commentary and examples for inclusion in school board policies.

### **Intervention Strategies: Responding to Complaints or Suspicions**

#### **(i) Receiving a Sexual Misconduct Complaint**

The Report recognizes that the emotional impact of sexual misconduct may depend in large measure on how the complaint is first received. Because school boards cannot control how, when, and to whom students make such disclosure, they must ensure that all board employees are prepared to respond appropriately upon receiving disclosure of alleged sexual misconduct. Recommendations 72 and 73 suggest that all board employees receive training on how to detect the warning signs of sexual misconduct and, further, how to respond to disclosures of sexual misconduct. The Report recommends that school board policies contain "dos and don'ts" to guide employees in such situations.

#### **(ii) Reporting Sexual Abuse, Harassment and Other Misconduct**

School board policies and protocols should define the reporting obligations of staff and volunteers. Recommendations 74 to 81 specify what policies and protocols should state, together with commentary for inclusion in such policies. Important distinctions are drawn between the reporting of sexual abuse and other sexual misconduct or inappropriate behaviour that can be addressed informally. Distinctions are also drawn based upon the age of the student involved. Policies must also provide for a "reporting chain" within the board to ensure that the appropriate officials are informed of complaints. Recommendation 80 specifically states that section 18(1)(b) of the regulation under the *Teaching Profession Act* has no application to reports of sexual misconduct. Recommendation 81 suggests that policies should specifically protect anyone from threats or reprisals for disclosing, reporting or otherwise providing information with respect to alleged sexual misconduct.

Students who disclose sexual abuse have immediate needs, while awaiting formal investigation by a children's aid society and/or the police. Recommendation 77 outlines some of these needs that should be addressed by school boards in their own policies and through joint protocols with police and children's aid societies. These include if, how and when the student's parents should be contacted.

### **(iii) Reporting to the College of Teachers**

Chapter IV earlier recommended an amendment to the *Ontario College of Teachers Act, 1996* to better address the obligations of school boards to disclose suspected sexual misconduct of teachers to the College. Whether or not these amendments are made, school boards are entitled to create protocols that impose a higher obligation upon themselves, consistent with the protection of their students and the public interest. The Report recommends protocols that articulate disclosure obligations consistent with the boards' responsibility for student safety. Recommendations 82 to 83 address these issues.

### **(iv) Investigating Allegations of Sexual Misconduct**

Any investigation of sexual abuse will be conducted by the police and/or the local children's aid society. These investigations should be governed by joint protocols between police, children's aid societies and school boards. School board investigations may be conducted into sexual misconduct or other unacceptable behaviour unrelated to abuse which need not be reported to the children's aid society or to the police. As well, school boards will generally need to evaluate how to proceed after the children's aid society or the police have declined to conduct an investigation, have completed an investigation or after criminal proceedings have taken place.

The desirability of minimizing the number of instances where victims of sexual misconduct should be obliged to testify or recount their own victimization should figure prominently in the development of protocols on how allegations of sexual misconduct are to be investigated and by whom. Such protocols should minimize the number of times that an alleged victim is required to be interviewed by the various agencies involved before criminal or administrative proceedings are commenced. This objective is best achieved by inter-agency cooperation from the earliest stages of the investigation.

School boards should recognize that the police and children's aid societies, jointly, are better equipped to investigate alleged sexual abuse. An outside investigation also protects a school board from allegations of bias. However, where allegations do not raise concerns of sexual abuse, and a board is obligated to conduct its own investigation, it should again adopt a strategy designed to reduce the number of times an alleged victim is interviewed. Any internal investigation should be conducted by school staff with appropriate training and skills.

Recommendations 84 to 86 suggest, in some detail, the components of school board and interagency protocols on investigating sexual misconduct.

### **(v) Duties to Students as Complainants: Support Structures**

School boards must recognize the tremendous vulnerability of students who disclose sexual misconduct by a teacher or other person in authority. Recommendations 87 to 91 are designed to ensure that school board policies specifically provide for support structures for students who disclose sexual misconduct. These structures contemplate support persons for student complainants, the availability of ongoing counselling and therapy, the designation of school board employees to facilitate support for students and express recognition that a student who has reported sexual misconduct must not be required, other than as may be necessary in legal proceedings, to confront the suspected or accused person directly.

## **(vi) Actions Respecting the Suspected Employee or Volunteer**

Practices vary between school boards on how employees are dealt with, pending internal or external investigations or legal proceedings. School board policies should specifically address the actions to be taken, pending a determination whether sexual misconduct has occurred. Recommendations 92 to 95 address these issues. Where a formal investigation of sexual abuse or harassment is to occur, school employees or volunteers should generally be removed from the classroom pending a determination whether sexual misconduct has occurred. This protects both students and teachers. A range of options, including suspension or re-assignment to non-classroom duties can be addressed.

An acquittal in criminal proceedings does not preclude subsequent disciplinary proceedings. This reflects the higher standard of proof in criminal cases and the fact that non-criminal behaviour may nonetheless constitute sexual misconduct. However, misunderstandings as to the meaning and effect of acquittals persist. Recommendation 95 addresses this issue.

## **(vii) Communications Subsequent to Disclosure**

Where school staff have been accused of sexual misconduct, particularly abuse of multiple students, other students, school staff, parents and the community may be deeply shaken. As well, speculation, gossip and innuendo may circulate, adversely affecting both the students and school staff directly involved. Effective communication can avoid or reduce the adverse effects upon the school and its community and promote fairness to all parties. A communication plan, such as that suggested in recommendation 96, avoids or reduces the adverse effects upon the school and its community and promotes fairness to all parties. The plan should address the privacy rights of all affected parties, the need for factual accuracy, fairness to all parties, and the desirability of affirming or supporting students who disclose sexual misconduct while maintaining the presumption of innocence.

### **Barriers to full disclosure**

The evidence presented to the review established that certain barriers may prevent prospective employers from obtaining full and accurate information from employment references:

- (a) material facts have never been documented or documentation has not been retained;
- (b) the former employer perceives, incorrectly, that privacy legislation prevents disclosure of material facts; or
- (c) the former employer was a party to a settlement with the teacher that compels non-disclosure or limited disclosure of material facts to a prospective employer.

Recommendations 97 to 98 address the making and retention of records pertaining to complaints of sexual misconduct committed by school employees and volunteers. Measures are suggested to ensure that the confidentiality interests of students or informants are preserved, to the fullest extent possible. The destruction of documentation is specifically addressed in recommendation 97.4.

While the Report does not embark on an exhaustive analysis of the relevant privacy legislation, it concludes, contrary to what some believe, that the *Ontario or Municipal Freedom of Information and Privacy Acts* do not apply to or limit the disclosure of, information contained in a teacher's personnel file to another school or school board considering the teacher's application for employment. (Otherwise, a legislative amendment is called for.) Full disclosure is precisely what is contemplated by reference checks. Misleading disclosure or non-disclosure of material information about the teacher entirely undermines the verification process and potentially places students at risk.

The review received extensive evidence about settlements negotiated between school boards and teachers' unions to resolve sexual misconduct cases. A teacher may agree to resign, and the board may agree to provide a neutral letter of reference or to not disclose the allegations that brought about the teacher's resignation. While the benefits of such an agreement to the parties involved are apparent, such agreements seriously undermine the ability of another school board to protect its students from sexual misconduct through adequate screening procedures. Recommendation 98 suggests that no resignation of a school employee should be secured by agreement not to disclose facts relating to allegations of sexual misconduct to a prospective employer. Distinctions are drawn between unfounded allegations and unsubstantiated or unproven allegations.

### **Financial and Other Resources**

Many of the recommendations contained in the Report have financial implications. Many interested parties, particularly school boards, made their financial concerns known during the review. In large part, these concerns form part of the very public debate over the adequacy of public funds allocated by the provincial government to education. While a determination of that issue is well beyond the scope of the review's mandate, the Report emphasizes that the safety of our children must be one of Ontario's highest priorities.

It is the Government of Ontario which bears the responsibility of ensuring that financial and other resources are available to achieve the important objectives of protecting our children and ensuring a school environment free from violence, abuse, harassment, and discrimination. Recommendations 61 and 99 specifically address the need for adequate financial resources.

### **How to Develop Policies and Protocols on Sexual Misconduct**

This Report is designed to facilitate the development of new or modified policies on sexual misconduct by school employees and volunteers. Chapter VI ends with an extensive checklist of topics that should or might be addressed in such policies. Brief commentary is provided to many of these topics. Recommendations 100 and 101 suggest that the development of school board policies and protocols on sexual misconduct by school employees and volunteers should, at least in part, be informed by this checklist of topics. Further, such policies and protocols should be the subject of periodic review by the Ministry of Education, in cooperation with Ontario school boards.

Some school boards are to be commended for their commitment to addressing the problem of sexual misconduct by school employees and school volunteers. One school board has indicated that its existing policies have been informed by changes in the duty of the board and its employees to detect and report abuse

and neglect, by the possibility of stricter civil liability for harm inflicted by employees or volunteers, and by the convening of this review. Hopefully, this Report will motivate other school boards to develop meaningful new policies on sexual misconduct or to significantly revise existing policies.

The recent amendments to the *Child and Family Services Act* provide further impetus for reform. These amendments will require immediate revisions in policies and procedures and in the training of school staff. As well, it is anticipated that many new teachers will be hired in the next year or two. All of this makes reform timely and important.

School boards should not feel wed to existing policies or protocols. Variations in protocols between different school boards is to be expected. What might be appropriate for Toronto may not be appropriate for rural, northern or smaller communities.

Policies and protocols to identify and prevent sexual misconduct by teachers and others may, and, indeed should, be established within larger initiatives to create a school environment free from violence, abuse, harassment and discrimination. These initiatives could address student-to-student or student-and-teacher activities, as well as a wide range of conduct, including physical abuse and harassment unrelated to sexual misconduct. The integration of policies and protocols on sexual misconduct with other policies can be accomplished in a variety of acceptable ways. Similarly, sexual abuse as well as other sexual misconduct can be addressed in one document or in two. What is important is that all kinds of sexual misconduct be addressed. The development of policies that ignore sexual harassment short of abuse would be misguided.

The process of developing policies is enhanced by close collaboration with many stakeholders. Policy development planning committees or task groups addressing these issues may draw upon trustees, directors of education, superintendents, principals, teachers and their association representatives, school advisory councils, community groups and parents, students, survivors' groups, aboriginal groups and resource centres, police, children's aid societies, legal counsel, experts in child sexual and physical abuse and in the special needs of children with disabilities. The process itself is a valuable one. The partnerships and discussions that will evolve at meetings build consensus and ultimate acceptance of the new policies. Indeed, the recommendations and the checklist attached to this chapter already reflect the views of many stakeholders.