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Bill 48

(Chapter 3 of the Statutes of Ontario, 2019)

An Act to amend various Acts in relation to education and child care

The Hon. L. Thompson
Minister of Education

1st Reading	October 25, 2018
2nd Reading	February 19, 2019
3rd Reading	April 3, 2019
Royal Assent	April 3, 2019



EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 48 and does not form part of the law.
Bill 48 has been enacted as Chapter 3 of the Statutes of Ontario, 2019.*

SCHEDULE 1 EARLY CHILDHOOD EDUCATORS ACT, 2007

The Schedule amends the *Early Childhood Educators Act, 2007*. The principal amendments made by the Schedule include the following:

1. The definition of “professional misconduct” is amended to include “prescribed sexual acts”, which are acts of a sexual nature prohibited under the *Criminal Code* (Canada) and prescribed by a regulation made under the Act.
2. The new subsection 1 (3) clarifies that sexual abuse of a child does not include touching or behaviour that is a necessary part of an early childhood educator’s professional responsibilities or remarks that are pedagogically appropriate.
3. Clauses 31.1 (1) (c) and 33.1 (1) (c) and subsections 35.1 (4) and 36 (4.1) and section 37 are amended to apply to prescribed sexual acts.
4. Section 33.2 of the Act is amended to require mandatory revocation of a member’s certificate if the Discipline Committee finds the member guilty of an act of professional misconduct that consists of or includes sexual abuse of a child, a prohibited act involving child pornography or a prescribed sexual act.
5. The new section 59.1 deals with transitional matters that arise in relation to the Schedule.

SCHEDULE 2 EDUCATION ACT

The *Education Act* is amended to provide that the Minister may establish policies and guidelines respecting service animals in schools, and require boards to comply with the policies and guidelines and to develop policies in accordance with those policies and guidelines.

SCHEDULE 3 ONTARIO COLLEGE OF TEACHERS ACT, 1996

The Schedule amends the *Ontario College of Teachers Act, 1996*. The principal amendments made by the Schedule include the following:

1. Various amendments are made with respect to professional misconduct:
 - i. The definition of “professional misconduct” is amended to include prescribed sexual acts, which are offences of a sexual nature under the *Criminal Code* (Canada) and prescribed by a regulation made under the Act.
 - ii. The new subsection 1 (8) clarifies that sexual abuse of a student does not include touching or behaviour that is a necessary part of a teacher’s professional responsibilities or remarks that are pedagogically appropriate.
 - iii. Section 30.2 of the Act is updated to require mandatory revocation of a member’s certificate if the Discipline Committee finds the member guilty of an act of professional misconduct that consists of or includes sexual abuse of a student, a prohibited act involving child pornography or a prescribed sexual act.
 - iv. Clauses 26.1 (1) (c) and 30.1 (1) (c), section 30.2 and subsections 32.1 (4), 33 (4.1) and 34 (2) are amended to apply to prescribed sexual acts.
2. Various amendments are made with respect to the Council of the College:
 - i. Subsection 4 (2) is amended to allow the Lieutenant Governor in Council to determine the composition of the Council by prescribing the number of members to be elected and appointed to the Council.
 - ii. The new subsection 15 (4) sets out the new requirements for the composition of the Council’s committees.
 - iii. Section 17 of the Act is re-enacted to set out the new requirements for committee panels.
3. Part II.1 of the Act, which establishes and governs the Public Interest Committee, is repealed.
4. Subsection 18 (1) of the Act is re-enacted to require applicants to satisfy requirements that relate to proficiency in mathematics.
5. Subsections 25 (1), 27 (1) and 28 (1) of the Act are amended to allow the number of members on the Investigation Committee, Discipline Committee and Fitness to Practise Committee to be prescribed by regulation.
6. Sections 40 and 42 are amended to provide new authority to make regulations that relate to other amendments made to the Act by the Schedule.

7. Section 63.2 is re-enacted to deal with transitional matters that arise in relation to the Schedule.
8. Ontario Regulation 370/07 (Public Interest Committee — Members), made under the Act, is revoked.

SCHEDULE 4
TEACHING PROFESSION ACT

The Schedule amends the *Teaching Profession Act* by adding a new subsection 12 (3.1) that clarifies that sexual abuse of a student does not include touching or behaviour that is a necessary part of a teacher's professional responsibilities or remarks that are pedagogically appropriate.

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Her 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) Subject to subsections (2) and (3), 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 *Safe and Supportive Classrooms Act, 2019*.

**SCHEDULE 1
EARLY CHILDHOOD EDUCATORS ACT, 2007**

1 (1) The definition of “professional misconduct” in subsection 1 (1) of the *Early Childhood Educators Act, 2007* is amended by adding the following clause:

(c.1) engaging in a prescribed sexual act,

(2) Subsection 1 (1) of the Act is amended by adding the following definition:

“prescribed sexual act” means an act of a sexual nature that is prohibited under the *Criminal Code* (Canada) and is prescribed by a regulation made under clause 45 (1) (c.2) of this Act; (“acte sexuel prescrit”)

(3) Section 1 of the Act is amended by adding the following subsection:

Exception

(3) For the purposes of clauses (b) and (c) of the definition of “sexual abuse” in subsection (1),

“sexual nature” does not include,

- (a) touching or behaviour that is necessary for the purposes of diapering, toileting, washing or dressing a child as part of an early childhood educator’s professional responsibilities, or
- (b) remarks that are pedagogically appropriate.

2 The French version of subsection 31 (9) of the Act is amended by striking out “a été accusé ou déclaré coupable d’une infraction au *Code criminel* (Canada)” and substituting “a été condamné pour une infraction au *Code criminel* (Canada), ou déclaré coupable d’une infraction à ce code”.

3 Clause 31.1 (1) (c) of the Act is amended by striking out “sexual misconduct or a prohibited act involving child pornography” at the end and substituting “sexual misconduct, a prohibited act involving child pornography or a prescribed sexual act”.

4 Clause 33.1 (1) (c) of the Act is amended by striking out “sexual misconduct or a prohibited act involving child pornography” at the end and substituting “sexual misconduct, a prohibited act involving child pornography or a prescribed sexual act”.

5 (1) Subsections 33.2 (1) and (2) of the Act are repealed and the following substituted:

Orders relating to sexual abuse, child pornography, etc.

(1) If, under section 33, the Discipline Committee finds a member guilty of an act of professional misconduct consisting of, or including, an act listed in subsection (2) of this section, the Committee shall, in addition to anything else the committee may do under subsection 33 (5),

- (a) make an order requiring that the member be reprimanded by the Committee;
- (b) make an interim order directing the Registrar to suspend the member’s certificate of registration until the Committee makes an order under clause (c); and
- (c) make an order directing the Registrar to revoke the member’s certificate of registration.

Same

(2) The acts of professional misconduct referred to in subsection (1) are the following:

- 1. Sexual abuse of a child.
- 2. A prohibited act involving child pornography.
- 3. A prescribed sexual act.

(2) Subsection 33.2 (6) of the Act is amended by striking out “that is listed in subsection (2)”.

6 Subsection 35.1 (4) of the Act is amended by striking out “sexual misconduct or a prohibited act involving child pornography” and substituting “sexual misconduct, a prohibited act involving child pornography or a prescribed sexual act”.

7 Subsection 36 (4.1) of the Act is repealed and the following substituted:

Same

(4.1) Despite subsections (3) and (4), if a person has had a certificate revoked pursuant to an order made under section 33 for committing an act of professional misconduct that consisted of or included any of the following, an application under subsection (1) of this section to have a new certificate issued shall not be made earlier than five years from the date of the order:

1. Sexual abuse of a child.
2. Sexual misconduct.
3. A prohibited act involving child pornography.
4. A prescribed sexual act.

8 Subsections 37 (2) and (3) of the Act are repealed and the following substituted:

Same, sexual abuse, etc.

(2) Subject to subsections (3) and (4), if a person has had a certificate revoked for committing an act of professional misconduct that consisted of or included any of the following, an order under paragraph 1 of subsection (1) shall not be made earlier than five years from the date of the order under section 33 that revoked the certificate:

1. Sexual abuse of a child.
2. Sexual misconduct.
3. A prohibited act involving child pornography.
4. A prescribed sexual act.

Same

(3) An order under subsection (1) shall not be made if,

- (a) a person's certificate was suspended or revoked as the result of a complaint made under subsection 31 (1) involving an act of professional misconduct referred to in paragraph 1, 2 or 3 of subsection (2) of this section; and
- (b) the complaint was made on or after December 5, 2016.

Same

(4) An order under subsection (1) shall not be made if,

- (a) a person's certificate was suspended or revoked as the result of a complaint made under subsection 31 (1) involving a prescribed sexual act; and
- (b) the complaint was made on or after the day that offence was prescribed under clause 45 (1) (c.2) as a prescribed sexual act.

9 Clause 45 (1) (c.2) of the Act is repealed and the following substituted:

(c.2) prescribing provisions under the *Criminal Code* (Canada) that are prescribed sexual acts;

10 (1) Subsection 58 (7) of the Act is amended by striking out “that involved sexual abuse of a child, as described in paragraph 1 of subsection 33.2 (2)”.

(2) Subsection 58 (8) of the Act is amended by striking out “that involved sexual abuse of a child”.

11 Section 59.1 of the Act is repealed and the following substituted:

Transition: *Safe and Supportive Classrooms Act, 2019*

59.1 Section 33.2, as amended by section 5 of Schedule 1 to the *Safe and Supportive Classrooms Act, 2019*, applies to an act of professional misconduct that consists of or includes sexual abuse of a child that occurred on or after August 31, 2015 but before the day section 11 of that Schedule came into force, if no order has been made in respect of the matter under subsection 33 (4) before that day.

Commencement

12 This Schedule comes into force on the day the *Safe and Supportive Classrooms Act, 2019* receives Royal Assent.

**SCHEDULE 2
EDUCATION ACT**

**1 Subsection 8 (1) of the *Education Act* is amended by adding the following paragraph:
service animals**

29.5 establish policies and guidelines respecting service animals in schools, and require boards to,

- (a) comply with the policies and guidelines, and
- (b) develop policies in accordance with those policies and guidelines;

Commencement

2 This Schedule comes into force on the day the *Safe and Supportive Classrooms Act, 2019* receives Royal Assent.

**SCHEDULE 3
ONTARIO COLLEGE OF TEACHERS ACT, 1996**

1 (1) The definition of “professional misconduct” in subsection 1 (1) of the *Ontario College of Teachers Act, 1996* is amended by striking out “or” at the end of clause (c) and by adding the following clause:

(c.1) engaging in a prescribed sexual act, or

(2) Subsection 1 (1) of the Act is amended by adding the following definition:

“prescribed sexual act” means an act of a sexual nature that is prohibited under the *Criminal Code* (Canada) and is prescribed by a regulation made under clause 42 (1) (c.1) of this Act; (“acte sexuel prescrit”)

(3) Section 1 of the Act is amended by adding the following subsection:

Definition

(8) For the purposes of clauses (b) and (c) of the definition of “sexual abuse” in subsection (1),

“sexual nature” does not include,

- (a) touching or behaviour that is necessary for the purposes of diapering, toileting, washing or dressing a student as part of a teacher’s professional responsibilities, or
- (b) remarks that are pedagogically appropriate.

2 (1) Clause 4 (2) (a) of the Act is amended by striking out “23 persons” at the beginning and substituting “the prescribed number of persons”.

(2) Clause 4 (2) (b) of the Act is amended by striking out “14 persons” at the beginning and substituting “the prescribed number of persons”.

3 Subsection 5 (3) of the Act is repealed.

4 Section 15 of the Act is amended by adding the following subsection:

Composition of committees

(4) The membership of a committee shall be composed, in accordance with the regulations, of persons elected to the Council under clause 4 (2) (a) and persons appointed to the Council under clause 4 (2) (b).

5 Section 17 of the Act is repealed and the following substituted:

Committee panels

17 (1) The powers and duties of a committee mentioned in paragraph 2, 3, 4 or 5 of subsection 15 (1) may be exercised by a panel established in accordance with a regulation made under paragraph 14 of subsection 40 (1).

Principals and vice-principals

(2) The powers and duties of a committee mentioned in paragraph 2, 3 or 5 of subsection 15 (1) to hear or review a matter relating to the conduct or actions of a person who, at the time the conduct or actions occurred, was employed as a principal or vice-principal, may be exercised by a panel that,

- (a) is established in accordance with a regulation made under paragraph 14 of subsection 40 (1); and
- (b) includes at least one person who is employed as a principal or vice-principal or who was previously employed as a principal or vice-principal and is still a member of the College.

Complaint resolution processes

(3) Subsections (1) and (2) apply for the purposes of sections 26.1 and 30.1 but, for greater certainty, do not apply if a single member of the Investigation Committee is acting on the Committee’s behalf in accordance with subsection 26.1 (12).

Roster of eligible panellists

(4) The Council shall establish a roster of eligible panellists for a committee mentioned in paragraph 2, 3, 4 or 5 of subsection 15 (1) consisting of such persons as the Council considers qualified to serve as members of a panel of the committee.

Same

(5) The Lieutenant Governor in Council may appoint such persons as they consider appropriate to a roster of panellists established under subsection (4).

Same, requirements and restrictions

(6) The inclusion of any person on a roster of panellists for a committee is subject to any requirements that may be prescribed by the regulations or by-laws.

Not member of committee

(7) A person included on a roster of panellists for a committee is not a member of the committee by reason of their inclusion on the roster or their service on a panel of the committee.

Decision of committee

(8) A decision, finding, order, opinion or action of a panel of a committee is deemed to be the decision, finding, order, opinion or action of the committee.

6 Part II.1 of the Act is repealed.**7 Subsection 18 (1) of the Act is repealed and the following substituted:****Registration**

- (1) The Registrar shall issue a certificate of qualification and registration to a person who,
- (a) applies for the certificate in accordance with the regulations;
 - (b) fulfils the requirements specified in the regulations for the issuance of the certificate; and
 - (c) successfully completes any prescribed examinations relating to proficiency in mathematics that are required for the issuance of the certificate.

8 (1) Subsection 25 (1) of the Act is amended by striking out “at least seven” and substituting “the prescribed number”.

(2) Subsection 25 (2) of the Act is repealed.

9 The French version of subsection 26 (9) of the Act is amended by striking out “a été accusé ou déclaré coupable d’une infraction au *Code criminel* (Canada)” and substituting “a été condamné pour une infraction au *Code criminel* (Canada), ou déclaré coupable d’une infraction à ce code”.

10 Clause 26.1 (1) (c) of the Act is amended by striking out “sexual misconduct or a prohibited act involving child pornography” at the end and substituting “sexual misconduct, a prohibited act involving child pornography or a prescribed sexual act”.

11 (1) Subsection 27 (1) of the Act is amended by striking out “at least 11” and substituting “the prescribed number”

(2) Subsection 27 (2) of the Act is repealed.

12 (1) Subsection 28 (1) of the Act is amended by striking out “at least five” and substituting “the prescribed number”.

(2) Subsection 28 (2) of the Act is repealed.

13 Clause 30.1 (1) (c) of the Act is amended by striking out “sexual misconduct or a prohibited act involving child pornography” at the end and substituting “sexual misconduct, a prohibited act involving child pornography or a prescribed sexual act”.

14 (1) Subsections 30.2 (1) and (2) of the Act are repealed and the following substituted:

Orders relating to sexual abuse, child pornography, etc.

(1) If, under section 30, the Discipline Committee finds a member guilty of an act of professional misconduct consisting of or including an act listed in subsection (2) of this section, the Committee shall, in addition to anything else the Committee may do under subsection 30 (5),

- (a) make an order requiring that the member be reprimanded by the Committee;
- (b) make an interim order directing the Registrar to suspend the member’s certificate of qualification and registration until the Committee makes an order under clause (c); and
- (c) make an order directing the Registrar to revoke the member’s certificate of qualification and registration.

Same

(2) The acts of professional misconduct referred to in subsection (1) are the following:

1. Sexual abuse of a student.
2. A prohibited act involving child pornography.
3. A prescribed sexual act.

(2) Subsection 30.2 (6) of the Act is amended by striking out “that is listed in subsection (2)”.

15 Subsection 32.1 (4) of the Act is amended by striking out “sexual misconduct or a prohibited act involving child pornography” and substituting “sexual misconduct, a prohibited act involving child pornography or a prescribed sexual act”.

16 Subsection 33 (4.1) of the Act is repealed and the following substituted:

Same

(4.1) Despite subsections (3) and (4), if a person has had a certificate revoked pursuant to an order made under section 30 for committing an act of professional misconduct that consisted of or included any of the following, an application under subsection (1) to have a new certificate issued shall not be made earlier than five years from the date of the order:

1. Sexual abuse of a student.
2. Sexual misconduct.
3. A prohibited act involving child pornography.
4. A prescribed sexual act.

17 (1) Subsection 34 (1) of the Act is amended by striking out “member or former member” in the portion before paragraph 1 and substituting “person”.

(2) Paragraph 1 of subsection 34 (1) of the Act is amended by striking out “member or former member” at the end and substituting “person”.

(3) Paragraph 2 of subsection 34 (1) of the Act is amended by striking out “member’s or former member’s” and substituting “person’s”.

(4) Subsection 34 (2) of the Act is repealed and the following substituted:

Exception

(2) An order under subsection (1) shall not be made if the person’s certificate was suspended or revoked for committing an act of professional misconduct that consisted of or included any of the following:

1. Sexual abuse of a student.
2. Sexual misconduct.
3. A prohibited act involving child pornography.
4. A prescribed sexual act.

18 (1) Paragraph 6.1 of subsection 40 (1) of the Act is repealed.

(2) Paragraph 9 of subsection 40 (1) of the Act is amended by striking out “the Discipline Committee, the Fitness to Practise Committee and the Public Interest Committee” at the end and substituting “the Discipline Committee and the Fitness to Practise Committee.”

(3) Paragraph 9 of subsection 40 (1) of the Act, as amended by subsection (2), is amended by striking out “other than the Investigation Committee, the Discipline Committee and the Fitness to Practise Committee.”

(4) Paragraph 10 of subsection 40 (1) of the Act is amended by striking out “other than the Public Interest Committee” at the end.

(5) Paragraph 11 of subsection 40 (1) of the Act is amended by striking out “other than the Public Interest Committee” at the end.

(6) Paragraph 14 of subsection 40 (1) of the Act is repealed and the following substituted:

14. governing the establishment, composition, powers and duties of panels of committees required by this Act;

(7) Paragraph 14.1 of subsection 40 (1) of the Act is repealed.

(8) Paragraph 14.2 of subsection 40 (1) of the Act is amended by striking out “subsection 17 (3)” in the portion before subparagraph i and substituting “subsection 17 (4)”.

19 (1) Paragraph 17.1 of subsection 41 (1) of the Act is amended by striking out “other than the Public Interest Committee”.

(2) Paragraph 21 of subsection 41 (1) of the Act is amended by striking out “other than the Public Interest Committee” at the end.

(3) Paragraph 23 of subsection 41 (1) of the Act is amended by striking out “other than the Public Interest Committee”.

(4) Paragraph 26 of subsection 41 (1) of the Act is amended by striking out “other than the Public Interest Committee” at the end.

20 (1) Subsection 42 (1) of the Act is amended by adding the following clause:

(a.1) prescribing the number of persons elected to the Council under clause 4 (2) (a) and the number of persons appointed to the Council under clause 4 (2) (b);

(2) Clause 42 (1) (b.1) of the Act is repealed and the following substituted:

(b.1) respecting the appointment of the Chair of the Council;

(b.2) prescribing duties of the Chair of the Council, in addition to any duties that may be set out in a by-law made by the Council under paragraph 7 of subsection 41 (1);

(3) Clause 42 (1) (c) of the Act is amended by striking out “subsection 17 (4)” and substituting “subsection 17 (5)”.

(4) Subsection 42 (1) of the Act is amended by adding the following clause:

(c.0.0.1) respecting examinations that relate to proficiency in mathematics for the purposes of clause 18 (1) (c), including but not limited to the development, form, content, administration and provision of such examinations, any exemptions from such examinations and any other matters the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of such examinations;

(5) Clause 42 (1) (c.1) of the Act is repealed and the following substituted:

(c.1) prescribing provisions under the *Criminal Code* (Canada) that are prescribed sexual acts;

(6) Subsection 42 (1) of the Act is amended by adding the following clause:

(d.2) providing for any transitional matters the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments to this Act made by Schedule 3 to the *Safe and Supportive Classrooms Act, 2019*.

(7) Subsection 42 (2) of the Act is repealed and the following substituted:

Regulations — transition

(2) A regulation made under clause (1) (d.1) may provide that it applies despite this Act.

Same

(3) A regulation made under clause (1) (d.2) may provide that it applies despite this Act and any by-laws or other regulations made under this Act.

(8) Section 42 of the Act is amended by adding the following subsections:

Conflicts

(4) If there is a conflict between a regulation made under clause (1) (b.1) and a by-law made under paragraph 11 of subsection 41 (1), the regulation prevails.

Same

(5) If there is a conflict between a regulation made under clause (1) (b.2) and a by-law made under paragraph 7 of subsection 41 (1), the regulation prevails.

(9) Section 42 of the Act is amended by adding the following subsection:

Same

(6) If there is a conflict between a regulation made under clause (1) (c.0.0.1) and a regulation made under paragraph 18 of subsection 40 (1), the regulation made under clause (1) (c.0.0.1) prevails.

21 (1) Paragraph 1 of subsection 63.1 (2) of the Act is repealed and the following substituted:

1. Subsection 17 (2.1), as it read on the day before section 5 of Schedule 3 to the *Safe and Supportive Classrooms Act, 2019* came into force, applies to the matter, in the case of a committee to which the matter was referred on or after the commencement date but before the day section 5 of Schedule 3 to the *Safe and Supportive Classrooms Act, 2019* comes into force.

1.1 Subsection 17 (2) applies to the matter, except in the case of a committee to which the matter was referred before the commencement date.

(2) Subsection 63.1 (5) of the Act is amended by striking out “that involved sexual abuse of a student, as described in paragraph 1 of subsection 30.2 (2)” and substituting “that consisted of or included sexual abuse of a student”.

(3) Subsection 63.1 (6) of the Act is amended by striking out “involved” and substituting “consisted of or included”.

22 Section 63.2 of the Act is repealed and the following substituted:

Transition: *Safe and Supportive Classrooms Act, 2019*

Sexual abuse

63.2 Section 30.2, as amended by section 14 of Schedule 3 to the *Safe and Supportive Classrooms Act, 2019*, applies to an act of professional misconduct that consists of or includes sexual abuse of a student that occurred before the day section 23 of that Schedule came into force if no order has been made in respect of the matter under subsection 30 (4) of this Act before that day.

Plan for Care and Opportunity Act (Budget Measures), 2018

23 Subsection 1 (4) of Schedule 19 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* is repealed.

Revocation

24 Ontario Regulation 370/07 (Public Interest Committee — Members), made under the Act, is revoked.

Commencement

25 (1) Subject to subsection (2), this Schedule comes into force on the day the *Safe and Supportive Classrooms Act, 2019* receives Royal Assent.

(2) Sections 2, 4, 5, 7, 8, 11 and 12 and subsections 18 (3) and (8), 20 (1) to (4) and (8) and (9) and 21 (1) come into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE 4
TEACHING PROFESSION ACT**

1 Section 12 of the *Teaching Profession Act* is amended by adding the following subsection:

Exception

(3.1) For the purposes of clauses (b) and (c) of the definition of “sexual abuse” in subsection (3), “sexual nature” does not include,

- (a) touching or behaviour that is necessary for the purpose of diapering, toileting, washing or dressing a student as part of a teacher’s professional responsibilities, or
- (b) remarks that are pedagogically appropriate.

Commencement

2 This Schedule comes into force on the day the *Safe and Supportive Classrooms Act, 2019* receives Royal Assent.