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**Submission to the Standing Committee
on Justice & Social Policy re:**

BILL 101

STUDENT PROTECTION ACT, 2001

October 30, 2001

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INTRODUCTION

Founded in 1930, the Ontario Catholic School Trustees' Association (OCSTA) represents twenty-nine Catholic English-language school boards and five school authorities. Collectively these school boards educate over 600,000 students from junior kindergarten to Grade 12/OAC.

The mission of all Catholic school boards and their schools is to create a faith community where religious instruction, religious practice, value formation and faith development are integral to every area of the curriculum. This is in addition to providing an excellent and complete curriculum as defined by the Ministry of Education. As reflected in the *Ontario Catholic School Graduate Expectations* published by the Institute for Catholic Education, our school boards and our schools expect Catholic school graduates to be able to evaluate society with a critical and even counter cultural eye. We expect our graduates to have developed positive attitudes that motivate them to contribute to the common good of a society that cares about the rights and the well-being of individuals, whatever their race, colour, sex, creed or station. The Catholic community believes that respect for the person, as created in God's image, is essential for the school and for society.

It is fundamental to our beliefs that all students should be able to receive a Catholic education in a safe, supportive and caring environment.

The Ontario Catholic School Trustees' Association appreciates this opportunity to comment on the *Student Protection Act, 2001*.

BACKGROUND INFORMATION

Our association appreciates the opportunity to speak to the Committee today on an issue of great importance to all of us – the protection of our children from sexual abuse.

Over the past several years, it has been difficult for many of society's most respected institutions, including our Catholic parishes and schools, to acknowledge and deal with revelations of such abuse within our own communities. For all the pain this matter has engendered, it has, however, been a strong motivator to learn about abuse and to put in place structures and procedures to reduce the incidence of sexual exploitation of children in every way we can.

The Catholic Church has shown leadership in this area. In the introduction to the Canadian Conference of Catholic Bishops' document on this issue entitled, *Breach of Trust: Breach of Faith*, Archbishop Roger Ebacher says, "*Recent government initiatives on family violence in general and child sexual abuse in particular have emphasized that everyone must become involved if the violence and abuse that are so prevalent in our most intimate and trusting relationships are to be eliminated*".

In his report on child abuse in Canada, Mr. Rix Rogers, special advisor to the Minister of National Health and Welfare, identified the key role of the church in the healing process. He said, "*The trauma of child sexual abuse affected people physically, psychologically and spiritually. It can be argued that the combined efforts of secular expertise and spiritual healing are needed to help victims, survivors and offenders heal their wounds*". The church is called to offer this spiritual healing, comfort and strength to those who suffer as a result of child sexual abuse. All church members have parts to play in this ministry and can draw on the rich spiritual tradition of the church. As institutional expressions of the church, Catholic school boards and Catholic schools share this ministry and the obligation to develop administrative procedures and protocols to ensure the safest and most supportive school environments possible for our students and employees.

As you know, the incidents that gave rise to the Robins Report happened in one of our Catholic school boards – a board which has since become a leader in developing policies, procedures and training programs to prevent such incidents from occurring. The Catholic community learned from this tragic

experience and set to work to share our own knowledge and the expertise of others in order that all of our Catholic school boards would make this a concern of highest priority.

Following the revelations in Sault Ste. Marie in 1993, the Ontario Catholic School Trustees' Association issued to all Catholic school boards in 1994, a document titled, *Child Abuse Prevention Guidelines*. These guidelines were updated this past year to include recommendations from the Robins Report and recent changes to the Child and Family Services Act and the Safe Schools Act (Bill 81). They provide school boards with information on how to establish policies that would include definitions, programs for education and training of staff, protocols for responding to complaints, investigating and reporting procedures, screening and reference procedures for employees and record keeping procedures. OCSTA therefore welcomes Bill 101 and the additional requirements to protect children it proposes, as these new safeguards will augment the policies and procedures most Catholic school boards currently have in place.

BILL 101 – STUDENT PROTECTION ACT - 2001

OCSTA supports the overall purpose of Bill 101, the *Student Protection Act - 2001*, as it responds to the issues outlined in the Robins Report. It does so by setting out a clear definition of sexual abuse, strengthening the Ontario College of Teachers' authority to take action on instances of sexual abuse involving its members, outlining responsibilities for the College and its teachers, and imposing stronger reporting requirements on employers. These requirements are similar to those already in place for other professionals and their governing colleges.

We will comment briefly on a number of these areas and provide some suggestions for strengthening the Bill.

Definitions

The definition of sexual misconduct for purposes of reporting and information sharing by employers and the Ontario College of Teachers is adopted from the regulated *Health Professions Act*. While the definition is clear, we believe it would be improved by expanding the definition of professional misconduct to include other behaviours more widely defined in the Robins Report as “grooming behaviours”. These are acts of perpetrators of sexual abuse that often precede and are directed to establishing a sexual relationship with a pupil. Grooming behaviour usually involves favours, compliments and attention aimed at creating a dependency on the adult by the young person. That dependency is then exploited sexually. Grooming activity, while it may not amount to sexual abuse, is harmful to students and amounts to sexual misconduct.

Requirements of Boards

It has been standard practice in Catholic school boards to remove from the classroom those teachers or employees charged with a sexual offence or other Criminal Code offences until the criminal proceedings are complete. If convicted, employees are dismissed. Even when employees are acquitted or when prosecution has been suspended, our school boards make assessments to determine appropriate employee work placements that will ensure the safety of our students.

As previously mentioned, Catholic school boards welcome the new reporting requirements of this Bill. These new standards require us not only to report, as is presently the case, those convicted of offences, but also those who have been charged with offences. In cases where an employee has been charged, care and sensitivity for all parties are required. There are interests to be balanced, such as the protection of students, the protection of privacy and the presumption of innocence. Although the protection of students is their paramount responsibility, school boards must also ensure that, in the interests of their employees, and as required by Sec.43.3(2) of the Bill, the withdrawal or staying of charges or the discharge or acquittal of the accused are promptly reported to the College of Teachers. Mandatory reporting of those who have resigned while under investigation will help in the tracking of teachers who may seek employment in other school jurisdictions.

Reporting Requirements

The reciprocal reporting arrangements between boards and the Ontario College of Teachers will be most helpful to employers in their communication and record keeping procedures and for maintaining a central record of individuals who have been charged or convicted of sexual abuse.

Application of the Legislation

We appreciate that the legislation applies to all teachers employed by school boards in the four publicly-funded systems in Ontario and to qualified teachers in the independent school system. We are concerned, however, that there still remains a significant number of teachers in the independent system that are not caught by this legislation. We urge the government to find a way to address this concern so that all children in Ontario can enjoy the same measure of safety and security as the regulation provides to the publicly-funded school systems.

Prevention Programs

Abuse prevention is a moral duty and a legal duty in all school boards.

Since abuse is foreseeable in many instances, the law imposes on school boards a duty to protect students from abusive circumstances where it knows, or ought to know, that the potential for abuse exists.

This *duty of care* requires a school board to take reasonable measures to protect students from abuse and the effects of abuse. Failure to adopt such reasonable measures can cause harm to students, their families and staff, and expose the school board to liability for the harm.

Since school boards, principals and teachers, are often understood by the law to stand *in loco parentis* to their students, or in a quasi-parental relationship, the law can impose a fiduciary duty or a duty of utmost good faith that repeats and underlines the duty of care.

In recent days the courts have imposed on employers vicarious liability for the actions of their employees relating to sexual abuse. This imposition of liability without fault on the part of the employer is an attempt to ensure that the victim is properly compensated and to encourage employees to take special care to prevent abuse. School boards take these responsibilities seriously and are very aware that the key to successful prevention programs is education and training.

It must be pointed out that there are significant extra costs associated with doing this prevention work effectively. We urge the government to seriously consider providing appropriate funding so as to support the timely development and implementation of these programs in school boards.

A final matter we wish to address is the timely sharing of information on matters of child sexual abuse between school boards, the police and child protection services. It is often difficult for school boards to obtain information from these organizations who sometimes feel that the disclosure of information may impair an ongoing investigation or court conviction. There needs to be a real effort by all government ministries to require a complete sharing of information in these matters.

CONCLUSION

In closing, we commend the government for introducing Bill 101 and pledge to work with all partners to implement this legislation on behalf of our students in the Catholic schools of Ontario.