



What's New in HR Law

OLRB Holds that Teachers Can (Sometimes) Refuse Work Due to Student Violence

July 8, 2024 | By Michael Halliburton and Emily Elder

BOTTOM LINE

On May 24, 2024, the Ontario Labour Relations Board (the “OLRB”) released its decision in [Ontario English Catholic Teachers’ Association v Dufferin-Peel Catholic District School Board](#). This decision provides guidance as to when teachers have the right under the Ontario *Occupational Health and Safety Act* (the “OHSA”) to refuse unsafe work due to a student’s violent behavior.

TEACHERS AND WORK REFUSALS

Teachers – like all workers in Ontario – have a right to refuse unsafe work: Section 43(3)(b.1) of the OHSA states that “a worker may refuse to work [...] where he or she has reason to believe that... workplace violence is likely to endanger himself or herself.”

However, unlike most workers, a teacher’s right to refuse unsafe work is limited by *Teachers*, RRO 1990, Reg 857 under the OHSA (“Regulation 857”). Regulation 857 states that teachers may not refuse work “where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy”.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

THE INCIDENT AND INITIAL REFUSALS

These proceedings arose out of work refusals following the violent outburst of a student (the “Student”) on March 21, 2018 which seriously injured an Educational Resources Worker. Following this incident, two teachers engaged in work refusals on the morning of March 22, 2018 and three teachers, including the two from the previous refusal, engaged in work refusals on March 26, 2018.

The Student was prone to outbursts and violent behaviours, and so was subject to a safety plan. The safety plan outlined the Student’s triggers, the risk of harm posed by the Student, and required interventions. The Student’s safety plan had been updated three times leading up to the incident in question.

Following discussions with the refusing teachers and, separately, the School Board, an OECTA representative contacted the Ministry of Labour. This call prompted an investigation by a Ministry of Labour Inspector, which took place on March 22, 2018. Two Ministry Investigators met with the teachers on March 26, 2018 following their subsequent work refusals.

INSPECTION BY THE MINISTRY OF LABOUR AND SUBSEQUENT REFUSALS

The Inspector found that there was no basis for the work refusal initiated by the three teachers, and that the teachers were not refusing work based on a demonstrable cause of danger, but instead were questioning the efficacy of the Student’s safety plan. Specifically, the Inspector took issue with the facts that the work refusals followed the incident and that the March 22, 2018 work refusal came when the Student was not present at school.

THE BOARD’S DECISION

The Union appealed the Ministry of Labour decision pursuant to section 61 of the OHS Act. The appeal was granted, though only for two of the teachers in question. In doing so, the Board provided guidance with respect to the meaning of “reason to believe” and “likely to endanger” under section 43(3)(b.1) of the OHS Act, as applied to teachers.

The Board applied the two-part test that is used to determine whether a work refusal is lawful. That test requires the teacher to have: i) reason to believe that workplace violence is ii) likely to endanger himself/herself. The refusing worker’s belief must be assessed from the perspective of the worker, and must be subjectively honest but objectively reasonable that there is a “real or significant possibility” that they will experience some danger sometime in the near future. Notably, the Board rejected the School Board’s argument that a student had to be present at the time of the work refusal to meet the “likely to endanger” standard.

The Board also considered how Regulation 857 applied, asking whether any students were in jeopardy at the time of the work refusals. Because the teachers advised the administration of their work refusals before classes started, and the administration did not say that the work refusal would create jeopardy for any students, the Board refused to hold that teachers had to attend the classroom before refusing unsafe work.

The Board found a number of factors relevant to the finding that two of the refusing teachers had legitimate reason to believe that working with the Student would likely cause endangerment, including:

- The teachers were aware of multiple changes to the student’s safety plan that had not changed his behaviour;
- The teachers had not been trained in a way that would prepare them for a physical attack, on themselves or others;
- The teachers had no reason to accept the suggestion by others that they would not be attacked; and
- The teachers had many years of experience in special education but had never previously experienced this level of violent behavior from a student.

However, the Board found that the third teacher’s refusal was motivated by his belief that the Student was not getting the support he needed, rather than a legitimate fear for his own safety. This finding took his refusal outside the protection granted by section 43(3) of the OHS Act. The appeal for the third teacher was therefore not upheld.

TAKEAWAYS

School Boards, and employers generally, should take note of the following with respect to situations where employees may be exposed to workplace violence:

- This decision confirms a teacher’s right to lawfully refuse work related to student violence. School Boards should be mindful of this possibility and prepare plans and responses accordingly.
- Similarly, where a workplace involves any potential for workers to be exposed to violent behavior – whether from students or not – employers should consider safety plans and procedures for addressing work refusals.
- The threshold question remains whether the teacher who initiated the refusal had reason to believe that a situation was likely to endanger them. This test requires consideration of both objective and subjective factors.
- A number of objective factors will support the reasonableness of a teacher’s belief (including the number of Educational Resources Workers a student requires, the need for personal protective equipment during interactions with a student, the need for crisis prevention training, frequent changes to a student’s safety plans, etc.).
- Teachers may NOT be required to attend the classroom before initiating a work refusal. However, the Board noted that “it may be prudent” for a teacher to ensure that students are not in imminent danger.
- Similarly, the student may not necessarily have to be present at the time of the initial work refusal for the refusal to be lawful.

- Where a teacher advises administration in advance of the work refusal, the refusal is more likely to comply with the OHSA, as alternate student supervision may be arranged with advanced notice.

Although Regulation 857 limits a teacher’s entitlement to refuse work, it does not eliminate that right. Rather, a teacher may, in certain circumstances, refuse to work where they have reason to believe that student violence is likely to endanger them. In light of this recent decision confirming those principles, education employers may wish to look at their policies and practices regarding work refusals, as well as assessing student safety plans.

Need More Information?

For more information or assistance with work refusals in the education sector, contact [Michael Halliburton](#) at mhalliburton@filion.on.ca or your [regular lawyer](#) at the firm.



Toronto
416.408.3221
toronto@filion.on.ca

London
519.433.7270
london@filion.on.ca

Hamilton
905.526.8904
hamilton@filion.on.ca

Kitchener-Waterloo
519.433.7270
kitchener-waterloo@filion.on.ca