# Student Violence May Form Basis For A Teacher's Lawful Work Refusal



**A recent Ontario Labour Relations Board (OLRB) decision found that two teachers engaged in a lawful work refusal when they refused to return to work following a classroom incident where a student engaged in a violent episode against another staff member.**

In *Ontario English Catholic Teachers' Association v Dufferin-Peel Catholic District School Board*, three teachers engaged in a work refusal after a student with multiple disabilities assaulted an educational resource worker with whom he worked. The student had a history of violent behaviour.

Section 43 of the *Occupational Health and Safety Act* (*OHSA*) provides that a worker may refuse work where the worker has reason to believe that (amongst other things) the worker is likely to be endangered by workplace violence. For teachers, this right to refuse work does not apply if "the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy" (Regulation 857).

The Ministry of Labour inspector (Inspector) found that the refusals were unfounded because they did not meet the requirements of Section 43. When the Inspector attended the workplace, the Inspector believed the refusing teachers were not able to clearly articulate the reason they were in danger. Their comments were directed more to concerns with the proposed safety plan. Further, the refusal occurred *after* the incident and on a subsequent day when the student was not yet at school and, as such, the teachers could not have anticipated that there would necessarily be any workplace violence on that day.

On appeal, the OLRB overturned this finding with respect to two of the teachers, whom the OLRB was satisfied were both genuinely afraid for their safety.

In reaching this conclusion, the OLRB rejected the argument that the term "reason to believe" under Section 43 is intended to have the same or similar meaning as the criminal law standard of "reasonable grounds to believe." Accepting the criminal law standard would significantly increase the standard of proof for a worker.

The OLRB also confirmed that the term "likely to endanger" means that danger is a "real or significant possibility" and this "must be analyzed having regard to the context and all the factors."

In this case, the OLRB was satisfied the right to refuse work test under section 43 was met by two teachers:

134. […] Both of them had many years of experience in special education and both were aware of violence in other settings from extraordinary students in the PIP program or similar programs. And yet neither of them had previously encountered violence as was displayed in this case. I believe that both of them were genuinely taken aback and aghast at the violence displayed here and how it could play out in their own interactions with [the student].

Given the student's history and the various protocols that had already been put in place to address his behaviour, the OLRB was satisfied the teachers held a reasonable belief they were likely to be endangered by workplace violence.

The OLRB also considered and rejected the argument that the teachers were not able to lawfully refuse work in this circumstance because of Regulation 857. In this case, the teachers had provided notice to the administration prior to attending at school that day, such that there was a potential that students could be left unattended. On this point, the OLRB stated the following:

Although it might be prudent of the teacher to ensure that the students are not in imminent jeopardy before starting a work refusal, whether such action is required or not will depend on the facts. The facts will differ from case to case but the greater the notice to the administration of the work refusal and the more the administration does not indicate it cannot cover the absence, the less the likelihood of the prudent teacher having to personally ensure the welfare of the students prior to starting the work refusal. Everything will depend on the facts of each case.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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