



Education Law eBulletin

A newsletter for educators

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All school boards must adopt a Trustee code of conduct

Regulation 246/18 made under the *Education Act* was filed on April 16, 2018, requiring all school boards to adopt a code of conduct for Trustees by no later than May 15, 2019. In addition, all Trustee codes of conduct must now be made available to the public.

If a school board already has a Trustee code of conduct, it must review it by May 15, 2019 and every school board must review its Trustee code of conduct by May 15th every fourth year thereafter.

When reviewing an existing code of conduct by the deadline, a school board must pass a board resolution confirming that either: (a) no changes are required and therefore must confirm the existing code of conduct, or (b) changes are required and shall be made.

When is it appropriate for a teacher to engage in a work refusal?

A recent decision of the Ontario Labour Relations Board ("OLRB") serves as a reminder of when it is appropriate for a teacher to raise a work refusal under the *Occupational Health and Safety Act* (the "OHSA").¹

A kindergarten teacher had a student with violent behaviour issues in her senior kindergarten class. The student had a full-time Educational Assistant as support and the class had an Early Childhood Educator. Some of the student's behaviours and prior violent incidents included: punching, pushing, kicking, biting, scratching, running out of the classroom and out of the school, and he had poked another student's eye with a stick and threw a stool at the teacher. The student had an IEP and a Safety Plan in the event that a serious violent outburst occurred. In particular, the student had an incident where he kicked the teacher and scratched her face, including her eye, which resulted in a hospital visit. The teacher had filled out health and safety incident reports and made a WSIB claim relating to the scratch to her eye.

On one particular day, the student's regular EA was not present and on that day the student had hit another student. The teacher called the school principal to attend the classroom and address the violent incident that had occurred. The student was taken from the classroom for a short period of time and when he was brought back, the teacher had all the other students taken to the library early for their music activity, as the student continued exhibiting aggressive behaviour in the classroom. Once the student was alone in the classroom with the EA, he began to hit the EA, throw objects at the window, kick and swear. The teacher did not feel safe to return to the classroom and advised the principal that she was

¹ *Toronto Elementary Catholic Teachers/Ontario English Catholic Teachers Association v. Toronto Catholic District School Board*, 2017 CanLII 37597 (ON LRB), dated June 12, 2017

exercising her right to refuse unsafe work. The teacher's concern was that the student's violent behaviours had no triggers and he was unpredictable. The student was removed and the teacher agreed to return to the classroom.

The next school day, the teacher was surprised to see the student back in her classroom, as she had not heard from the principal and she assumed the student was removed from her class. The student's regular EA was present. The teacher advised the principal that she again did not feel safe and was concerned that the student would have another violent outburst. The teacher was advised to remain in the staff room for the remainder of the day.

An inspector from the Ministry of Labour determined that the teacher had no valid reasons for refusing work in both instances, pursuant to the work refusal provisions in the *OHSA*. The OLRB decision also noted that the school board had not followed the correct work refusal procedures pursuant to the *OHSA*. Regulation 857 made under the *OHSA*, which prohibits a teacher from raising a work refusal if the "life, health or safety" of a student is in "imminent jeopardy", was interpreted by the OLRB for the first time. The OLRB found that on the first day, the student's safety was in imminent jeopardy as he was "not in control of his emotions" and he was acting in a violent manner. In addition, the OLRB found that there is nothing in the Reg that permits a teacher to transfer its duty to care for the student to another individual so that the teacher can engage in a work refusal. Therefore, the OLRB concluded that if the health and safety of a student is in imminent jeopardy, a teacher cannot refuse to work, and in this case, the teacher's work refusal was improper.

On the second day, the OLRB applied s. 43 of the *OHSA*, as the student's health and safety was not in imminent jeopardy at the time of the work refusal and concluded that the teacher properly engaged in a work refusal. The OLRB found that the teacher had "reason to believe" that workplace violence is likely to endanger herself, pursuant to sub-paragraph 43(3)(b.1) of the *OHSA* and the teacher had a reasonable and genuine concern for her safety as a result of the student's violence.

The school board filed a request for reconsideration of the OLRB decision and the inspector also made submissions requesting same. The OLRB was not convinced that it made an obvious error and declined to reconsider the decision for any other reason, noting that the issue is now moot as the student was no longer in the teacher's classroom.²

In sum, based on the OLRB's decision, in the case of a violent student, a teacher can refuse unsafe work under the *OHSA* with respect to that student if the teacher has a reasonable belief that the violence is likely to endanger him or her, at present or in the immediate future, so long as the health and safety of the student or any student is not in imminent jeopardy.

Shibley Righton LLP partner **Sheila MacKinnon** and associate **Jessica Koper** will be speaking at the Ontario Public School Board Association's annual Education Labour Relations and Human Resources Symposium at the Sheraton Centre Hotel in Toronto on April 26-27th, 2018.

We welcome your comments and questions. Send them, and any updated contact information, to jessica.koper@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to christen.broadbent@shibleyrighton.com

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² *Toronto Elementary Catholic Teachers/Ontario English Catholic Teachers Association v. Toronto Catholic District School Board*, 2017 CanLII 80535 (ON LRB), dated November 23, 2017