



Elementary Teachers' Federation of Ontario (ETFO)

Fédération des enseignantes et des enseignants
de l'élémentaire de l'Ontario (FEEO)

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MEMORANDUM

TO: Local Presidents
Executive Members (For Information)

FROM: Elizabeth Mitchell, Executive Assistant, Health and Safety
Michelle Leonard, Executive Assistant, Collective Bargaining

DATE: November 4, 2024

RE: **New Brunswick Teachers' Federation Decision on Violence in Classrooms**

On October 24, 2024, the New Brunswick Teachers' Federation (NBTF) informed their members of the outcome of a grievance on the subject of violence. In the decision, the adjudicator found that a school district did not fulfill their obligations under the New Brunswick *Occupational Health and Safety Act*, and the collective agreement, when they failed to protect school personnel from repeated physical and psychological harm caused by workplace violence. The NBTF noted that the adjudicator affirmed that the employer's obligation to provide inclusive education to students does not outweigh the employer's duty to ensure a safe workplace for workers and that violence ought not to be the norm for educators.

While it is a landmark decision for NBTF members, it is critical to note that it will not create a precedent or an obligation for adjudicators deciding ETFO cases in Ontario. It relied upon New Brunswick's provincial *Occupational Health and Safety Act*, and the NBTF collective agreement, neither of which apply to ETFO. It does, however, set an example for how the most egregious examples of violence can be addressed.

A careful review of the remedies awarded also highlights important distinctions in items that are compensable under their workers compensation system in New Brunswick, called "WorkSafeNB". What is different in the New Brunswick context and ours in Ontario, is the Chronic Mental Stress reporting process under Ontario's WSIB. In Ontario, workers covered by WSIB must seek redress for workplace injury and illness through that system, which includes chronic and traumatic mental stress. Outside of the WSIB system, arbitrators in Ontario do not typically award damages for workplace illness or injury. Aggravated damages, as seen in the NBTF decision, are very rare in Ontario decisions. Rather, workers in Ontario are expected to

report workplace injuries and illnesses, including chronic mental stress as experienced by members in the NBTF decision, to the WSIB for compensation.

There are a number of decisions here in Ontario that create a legal precedent and can be used in advocacy. Decisions related to health and safety, including violence, are summarized and linked in the health and safety section of [ETFO Secure](#). Ontario unions, including ETFO, have made progress in setting precedent in Ontario regarding violence in classrooms. Some of these decisions have:

- clarified the types of documents required to be provided to the JHSC with regard to student violence
- ensured JHSC access to safety plans and transition plans
- required the provision of access to information in the online reporting tool
- verified a teacher's right to refuse unsafe work
- protected members from being compelled to participate in hands-on training for responses to violence as part of Behaviour Management Systems training.
- recognized that compensation or time from work is required to fulfil JHSC duties

Building knowledge of jurisprudence on workplace violence provides local leaders with the tools to advocate for members, citing these precedents established in Ontario, and also to gather facts and build cases to expand the arbitral jurisprudence. We have also seen challenges at the WSIAT which have formed important determinations about workplace psychological illness and injury, and how violence cannot be expected to be the norm in the education sector. ETFO continues to utilize the grievance process to impact change to the safety of schools.

Next steps:

The Action on Violence Toolkit provides resources that encourage ETFO members to “Report, Recognize, Refuse”. In addition to exercising their health and safety rights, this can build a case when ETFO must push back:

- **Report:** Violent incident reports, all made online, are the evidence of a history of violent incidents. They can be used to demonstrate that there has been insufficient action taken to keep workers safe.
- **Recognize:** Workers are encouraged to recognize that injury or illness due to violence at school is a workplace injury or illness. Making a claim to the WSIB ensures that workers are appropriately compensated rather than using their own sick leave, benefits, and paying out of pocket. Denied claims can be appealed and challenged.
- **Refuse:** By exercising their right to refuse unsafe work, members force their employer to investigate and address the violence in their workplace, and may bring the Ministry of Labour, Immigration, Training and Skills Development to investigate and enforce the law. When they do not do so, it opens the opportunity to bring appeals to the OLRB.

When members and local leaders have exhausted the avenues available to them through advocacy at the board level and through recommendations at the Joint Health and Safety Committee, ETFO can assess the specific facts of each case to determine possible next steps. ETFO must ensure that a strategic approach is taken to determine which mechanisms are

likely to garner the most success in protection of the member and expand the jurisprudence through the grievance arbitration process or the Ontario Labour Relations Board. Most issues of violence in schools can be addressed through the application and enforcement of the OHSA. When local leaders are aware of an egregious case of ongoing violence causing injury or illness where the employer is demonstrably not keeping workers safe from harm, they are encouraged to bring it to the attention of their CB staff officer and the Health and Safety staff member assigned to their local.

Though the NBTF decision may not create a precedent in Ontario, it does form an example that we can learn from. What is stark in the NBTF decision is the volume of reporting and documentation, completed by Federation members, which provided the NBTF with sufficient evidence to pursue arbitration successfully. ETFO's firm stance on the employers' requirement to take every reasonable precaution in the circumstances to protect our members will be the touchstone for those fact-specific case assessments.

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