



# ONTARIO LABOUR RELATIONS BOARD

## APPLICATION UNDER SECTION 50 OF THE ACT (UNLAWFUL REPRISAL)

*Occupational Health and Safety Act*

Form A-53

Fields marked with an asterisk (\*) are mandatory.

Confirmation No. [20230222125847102](#)

**Between: \***

[Ontario Secondary School Teachers' Federation and Tamara Witcher](#)

**Applicant(s)**

- and -

[Provincial School Authority \(PSA\)](#)

**Responding Party(ies)**

- Review Information Bulletin No. 14 – “Unlawful Reprisal Applications Under Section 50 of the *Occupational Health and Safety Act*”, the Filing Guide and the Board’s Rules of Procedure on acceptable methods of delivery and filing **before** completing this form to avoid any delay in processing.
- All forms, Notices, Information Bulletins, the Filing Guide and the Rules of Procedure may be obtained from the Board’s website (<http://www.olrb.gov.on.ca>).
- To print a paper copy of this form, use **only** the “Print” buttons located within the form.
- Save a copy of your completed form and any attachments as the Board will not return them to you. To save the form at any time, use the “Save” buttons located within the form.
- If there is insufficient space on the form, attach additional pages clearly identifying the relevant section of the form. For e-filing, you may attach files by selecting the “Attach documents electronically” option.

### Part A Contact Information

#### Instructions

- Provide the contact information for each Applicant, Responding Party, Trade Union and Affected Party below. If you wish to add additional parties, use the “Add” button or attach a separate page if completing the form by hand.
- If a party is an organization, provide the name and contact information of an individual who will be able to respond on behalf of that organization. When adding multiple individuals at the same organization, “Add” an additional contact section, repeat the organization name and provide that individual’s contact information (e.g. name, email address, phone number).

**1 (a). Applicant****Applicant 1**Type \* ☒ Organization ☐ Individual

Organization Name

Ontario Secondary School Teachers' Federation

First Name	Last Name	Position/Title
------------	-----------	----------------

Full Address (Number, Street, Unit/Apartment, Building Name)

49 Mobile Drive

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town	Province/State	Country	Postal/Zip Code
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Toronto

Ontario

Canada

M4A 2P3

Telephone Number	Ext.	Fax Number	Email Address
------------------	------	------------	---------------

416-751-8300

416-751-3875

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

**Applicant 2**Type \* ☐ Organization ☒ Individual

Organization Name

First Name	Last Name	Position/Title
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Tamara

Witcher

Full Address (Number, Street, Unit/Apartment, Building Name)

701 Briar Cres

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town	Province/State	Country	Postal/Zip Code
-----------	----------------	---------	-----------------

Milton

Ontario

Canada

L9T 3Z7

Telephone Number	Ext.	Fax Number	Email Address
------------------	------	------------	---------------

905-299-9512

psatd30president@gmail.com

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

**1 (b). Representative/Contact Person for the Applicant****Contact 1**Contact Person for \* ☐ All Parties above ☒ Party No.(s) 1Indicate if this person is a ☐ Lawyer ☐ Paralegal

Organization Name

Ontario Secondary School Teachers' Federation

First Name	Last Name *	Position/Title
------------	-------------	----------------

Jesse

Gutman

In-House Legal Counsel

Full Address (Number, Street, Unit/Apartment, Building Name)

49 Mobile Drive

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town	Province/State	Country	Postal/Zip Code
-----------	----------------	---------	-----------------

Toronto

Ontario

Canada

M4A 2P3

Telephone Number	Ext.	Fax Number	Email Address
------------------	------	------------	---------------

416-751-8300

247

416-751-3875

jesse.gutman@osstf.ca

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

Sandrim Kariakos, Legal Assistant

sandrim.kariakos@osstf.ca

416-751-8300 ext. 327

## 2 (a). Responding Party

### Responding Party 1

Type \* ☒ Organization ☐ Individual

Organization Name

Provincial School Authority (PSA)

First Name

Scott

Last Name

Sincerbox

Position/Title

Acting Director

Full Address (Number, Street, Unit/Apartment, Building Name)

255 ONTARIO STREET SOUTH

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town

Milton

Province/State

Ontario

Country

Canada

Postal/Zip Code

L9T 2M5

Telephone Number

Ext.

905-878-2851

Fax Number

Email Address

Scott.Sincerbox@ontario.ca

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

Claudine Munroe, Director Special Education and Success for All Branch and Acting Chair of PSA

Claudine.Munroe@ontario.ca

## 2 (b). Representative/Contact Person for the Responding Party, if known

## 3. Trade Union (if applicable)

If you are represented by a trade union, identify the union (under "Organization") and a contact person who will be able to respond on behalf of the union and provide complete contact information for that person.

## 4 (a). Affected Party

Contact information for any person, trade union, employer or employer's organization which may be affected by the application must be provided below.

## 4 (b). Representative/Contact Person for the Affected Party, if known

## 4 (c). The person, trade union, employer or employers' organization named above is affected by the application for the following reason(s):

See Schedule "A"

## Part B Material Facts and Relief Sought

### 5. Have you lost your employment? \*

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☐ Yes ☒ No

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**6. The Applicant requests that the Labour Relations Board order the following remedies:**

For example, are you asking the Board to order that you get reinstated to your job, or that you get financial compensation?  
If you require more space, attach a separate document.

[See Schedule "A"](#)

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**7. In support of its request, the Applicant relies on the following material facts:**

Include **all** of the material facts on which you rely. You will not be allowed to present evidence or make any representations about any material fact that was not set out in the application and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board. If you require more space, attach a separate document.

[See Schedule "A"](#)

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**8. Attached documents:**

Provide a list of the documents you are filing together with this form as instructed below.

Name your documents/attachments so that they are easily identifiable.

If you are e-filing this form, select the "Attach documents electronically" option below and attach each document using the "Add File" button.

If you are filing in a manner other than e-filing, provide the numbered list of documents in the box below.

☒ Attach documents electronically

Note: If your attachments exceed 15MB, you may not e-file. File a paper copy of this form with all attachments using an alternative method permitted by the Board's Rules of Procedure.

No.	File	Description	Size (MB)	
1	SCHE A and TABS final.pdf		9.99	<input type="checkbox"/>
2	Witcher - Authorities.pdf		0.08	<input type="checkbox"/>
3	Letter to parties encl. Application package 2		0.64	<input type="checkbox"/>
		Total Size	10.71	
		Total space left over	4.29	
		Number of attachments	3	

## IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website <http://www.olrb.gov.on.ca> or by calling 416-326-7500 or toll-free at 1-877-339-3335.

### FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

### CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

### ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

### COLLECTION AND DISCLOSURE OF INFORMATION AND DOCUMENTS

Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. Personal information collected on this form and in written or oral submissions may be used and disclosed for the proper administration of the Board's governing legislation and case processing. In addition, the *Tribunal Adjudicative Records Act, 2019* requires that the Board make adjudicative records (which include applications filed and a listing of such applications) available to the public. The Board has the power to make part or all of an adjudicative record confidential. The *Freedom of Information and Protection of Privacy Act* may also address the treatment of personal information. More information is available on the Board's website [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca). If you have any questions concerning the collection of information or disclosure of adjudicative records, contact the Solicitors' Office at the number listed above or in writing to the OLRB, 505 University Ave., 2nd floor, Toronto, ON M5G 2P1.

### E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. **In the event of emergencies or other circumstances, the Board may post a Notice to Community on its website, which will prevail over the Rules of Procedure and Filing Guide. You should check the Board's website prior to filing.** Note that the e-filing system is not encrypted. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

### HEARINGS AND DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and [www.canlii.org](http://www.canlii.org). Some summaries and decisions may be found on the Board's website.

## Documents to be Delivered

Before you file your application with the Board, you must deliver the following documents to each Responding Party and Affected Party named in Part A of this application:

- A completed copy of this Application under Section 50 of the Act (Form A-53), **including all documents filed with that form;** and
- A Notice to Employer and/or Affected Party of Application Under Section 50 of the Act (Form C-26) **with the names of the parties and the date inserted.**

**Note to Responding Party and Affected Party:** The documents listed above should have been delivered to you by the Applicant. The applicable response/intervention form is **Form A-54**.

**Once the above-listed documents have been delivered to the other parties, you must complete the following Certificate of Delivery before filing the completed form and attachments with the Board.**

<input checked="" type="checkbox"/> I have reviewed this form to confirm it is complete *	Date (yyyy/mm/dd) * 2023/02/22
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## Certificate of Delivery

I, Sandrim Kariakos, Legal Assistant to Jesse Gutman,  
Name \* Title

certify that the documents identified above were delivered to each of the parties as set out below:

**Note: You must complete delivery information for each party separately.**

Use the "Add" button below if completing electronically.

### Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered \*  
Provincial School Authority (PSA) - Scott Sincerbox, Acting Director and Claudine Munroe, Acting Chair of PSA

Address or fax number to which the documents were delivered \*  
255 Ontario Street South  
Milton, ON L9T 2M5

### Method of delivery \*

☐ Hand Delivered ☒ Courier ☐ Fax ☐ Regular Mail ☐ Other

### Courier Details \*

The documents were given to Purolator on 2023/02/22  
and I was advised they would be delivered not later than 2023/02/23, at 9 : 00 ☒ a.m. ☐ p.m.



## File with the Board

- File the completed form and any attachments using a method permitted by the Board's Rules of Procedure.
- Save and Print a copy of your completed form and all attachments as the Board will not return them to you.
- To e-file, click the "Submit" button below. You will receive a confirmation email once the form has been successfully submitted.
- If you choose not to e-file, print this form by clicking on the "Print" button below and then file with the Board together with any attachments.

### For E-Filing only

You must provide a valid email address in order to file this form electronically so that a confirmation email may be sent to you. If you do not have a valid email address, file a paper copy of this form using an alternative method permitted by the Board's Rules of Procedure.

Submitted By:

First Name *	Last Name *
<a href="#">Sandrim</a>	<a href="#">Kariakos</a>
Email Address *	Confirm Email Address *
<a href="mailto:sandrim.kariakos@osstf.ca">sandrim.kariakos@osstf.ca</a>	<a href="mailto:sandrim.kariakos@osstf.ca">sandrim.kariakos@osstf.ca</a>

***Via Courier***

Scott Sincerbox, Acting Director  
Claudine Munroe, Acting Chair  
Provincial School Authority (PSA)  
255 Ontario Street South  
Milton, ON L9T 2M5

February 22, 2023

Greetings:

**RE: Ontario Secondary School Teachers' Federation and Tamara Witcher v.  
Provincial School Authority (PSA)  
Our File No. OLRB-23-0007**

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Please find enclosed a copy of the OSSTF's Application under section 50 of the OHSA for "Unlawful Reprisal" in the above noted matter, which is being served upon you pursuant to the Board's Rules of Procedure.

Yours truly,



Jesse Gutman  
Legal Counsel

c. John Wells, Advisor of OSSTF  
David Sykes, PSAT District Officer D30  
Tamara Witcher, PSAT District President D30

JG/sk cope 343

Encl.

# **SCHEDULE A**

## SCHEDULE “A”

### OVERVIEW

1. Pursuant to section 50 (1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 (the “*Act*”), the Ontario Secondary School Teachers’ Federation (“OSSTF”) and Tamara Witcher file an unlawful reprisal complaint following the Ministry of Labour, Training and Skills Development (“MOL”) inspection and issuance Orders against the Provincial Schools Authority (“Authority”) pertaining to workplace violence (**Tab 1**).
2. On January 31, 2023, President of the OSSTF D.30, Tamara Witcher, wrote a letter to Deputy Minister, Nancy Naylor regarding the inspection and issuance of Orders (**Tab 2**). On February 1, 2023, Ms. Witcher was suspended with pay, reassigned to home duties, pending investigation. The reason given was allegations of “inappropriate professional behaviour.” (**Tab 4**)

### PARTIES

3. Ms. Witcher is a teacher in the Provincial Schools Branch. She received her Ontario College of Teachers Certificate of Qualification and Registration in 2006. She holds Specialist qualifications in relation to teaching Deaf students. She is herself profoundly Deaf and comes from a Deaf family. She holds the role of President of the OSSTF D.30 bargaining unit, representing both elementary and secondary school teachers across the Provincial Schools.
4. The OSSTF is an education sector union pursuant to the *Labour Relations Act*, 1995 SO 1995, c 1, Sch A (“LRA”). and the *School Boards Collective Bargaining Act, 2014*, S.O. 2014, c. 5 (the “SBCBA”). The OSSTF is the designated bargaining agent under the SBCBA for approximately 32,000 secondary school teachers and occasional teachers that work at public district school boards in Ontario. In addition, the OSSTF represents approximately 31,000 French and English education workers, including educational assistants, continuing

education teachers and instructors, early childhood educators, professional student services personnel, busing professionals, office, technical and clerical staff, and plant support personnel, that work at secondary and elementary schools and other worksites across the Province.

5. The OSSTF is the bargaining agent for all teachers in the Provincial Schools, save and except Occasional teachers. The Bargaining Agent is statutorily designated as per the *Provincial Schools Authority Act*, RSO 1990, c P.35. The unit is otherwise known as the “Provincial Schools Authority Teachers” (PSAT).
6. The Respondent is the Provincial Schools Authority (the “Authority”). The Authority is designated as per the *Provincial Schools Authority Act*, RSO 1990, c P.35 as the employer of teachers, principals and vice-principals within the Provincial Schools. The Ministry of Education operates the Authority.

## **FACTS**

### ***Work Refusal & Inspectors Report***

7. On January 25, 2023 the Ministry of Labour was called into the Provincial School E.C. Drury Sr, School for the Deaf, at 255 Ontario St South, Milton, Ontario in response to a health and safety issue – a work refusal - from January 24, 2023 (“ECD Elementary”).
8. The Inspector conducted an investigation under the Occupational Health and Safety Act, and visited the location of the Teachers Lounge, CI – 126 A. One order was issued, one requirement was issued.

9. On January 24, 2023 the Ministry of Labour was called into E.C. Drury in response to a health and safety issue. Inspector Chelsea Henry attended with Inspector Andrew Tin. **(Tab 1 – “The Inspector’s Report”)**
10. The health and safety issue reported was workplace violence. One worker in the elementary school unit made a work refusal.
11. The worker who filed the work refusal is profoundly Deaf with Cerebral palsy. The measures for communicating violence in the workplace were considered inadequate for this employee. The worker was accompanied by Union Representation.
12. The Provincial School currently has a “card system” for alerting people of workplace violence. A teacher is required to walk into the hallway and hold out a red card in the hopes someone sees it and recognizes there is an emergency situation.
13. As noted by the Inspector’s Report, the Card System was implemented by the Employer without consulting or collaborating with the Joint Health and Safety Committee.
14. It was further discovered, unbeknownst to many employees that the Provincial School had a further “Cow Bell System” for emergency situations. **(Tab 2)** From the outset, as expressed the worker and the OSSTF expressed that usage of the Cowbell was offensive.
15. Despite the supposed existence of this system, many employees did not know existed, had no knowledge of the location of the “Cow Bell”, and there had been no training on use of the “Cow Bell.” **(Tab 3)**

16. On January 20, 2023 a student became aggressive in a teacher's classroom.

The teachers working with this student had not been given a safety plan for the student until the morning of January 24, 2023. PPE was provided to the teachers working with this student only on January 23, 2023.

17. The Inspector Ordered the Employer to conduct a risk assessment regarding workplace violence with a deadline of February 14, 2023. Specifically, the order directed that:

The employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, where considerations of the assessment shall take into account, circumstances that would be common to similar workplaces and circumstances specific to the workplace. At the time of the visit, an assessment with respect to workplace violence had not been conducted with the above considerations.

18. The Inspector's Order further required that this action be completed in written form by February 16, 2023.

### ***Letter to Deputy Minister Naylor***

19. On January 31, Tamara Witcher, in her capacity as President of OSSTF D.30, wrote a letter to Nancy Naylor, Deputy Minister of Education, entitled, "Audism and Ableism". (**Tab 2**)

20. Ms. Witcher highlighted the events of January 24, 2023, linking them to the issue of Audism and health and safety for Deaf people. She referenced the Provincial School's Anti-Audism Policy. (**Tab 5**)

21. Ms. Witcher continued by addressing the "Cow bell Plan" and the use of Cow bells with Deaf students and workers. In the letter she describes the cowbells as "ineffective" and an example of Audism. She writes, "in addition to being incredibly audist, a cowbell is not a reliable way to immediately summon help." She concludes, "not only is it an ineffective communication tool, it is an insult

steeped in audism and hearing privilege.” She notes that with modern technology it is surprising to use a communication tool associated with “farm animals”.

22. She further describes the “card system” as “ineffective” and another example of “Audism”.

23. The Letter focused on the Union’s opposition to the use and inclusion of these methods and how the concerns raised were “trivialized and dismissed”. The two plans were imposed unilaterally, “without any input from Deaf and disabled staff.”

24. She concludes by requesting, at the four Provincials Schools, an effective communication system as well as a process to find supply teachers – since the workplace issues are alleged by the Union to be linked to a lack of staffing.

### ***Employer Suspension and Response***

25. Nancy Naylor responds to Ms. Witcher on January 31, 2023 promising to inquire into the issues raised in her letter. **(Tab 6)**

26. The following day, on February 1, 2023, Ms. Witcher received a text message from Principal Jeanne Leonard at or around 5:47pm: “Hi Tamara, it’s Jeanne. Are you there? I have something for you.” **(Tab 9)**

27. Ms. Leonard proceeded to send Ms. Witcher the Suspension letter in an email titled, “Confidential” to her personal email address, her Provincial Schools gmail address, and her Ontario work address – respectively: tamwitch@gmail.com; witcheta@pdsbnet.ca; and, tamara.witcher@ontario.ca.



28. The Letter stated that Ms. Witcher had been reassigned to home pending investigation for “inappropriate professional behaviour”. **(Tab 4)** In addition to the suspension of her accounts, she was barred from attending E.C. Drury campus. The Union was not on copy of this message.
29. The next day, on February 2, 2023 Ms Witcher was able to access her work email accounts to work from home all day until the afternoon, when she discovered her email accounts were locked, and an auto-reply was turned on. At about that moment, Ms. Witcher observed that she had been locked out of her Ontario email as well as her Provincial Schools Google workspace accounts. **(Tabs 10 and 11)**. Someone had entered her accounts and set up out of office responses. The response to the Ontario account appeared as only stating “I am currently out of the office.” The response to the Provincial Schools email address returns as “Undeliverable”. Ms Witcher was not informed that her email accounts would be locked and that she would be unable to work from home.
30. On February 13, 2023, Ms. Naylor finally responded to Ms. Witcher’s letter. **(Tab 7)**
31. Ms. Naylor assured Ms. Witcher that she “takes all issues very seriously” and is “committed to ensuring that a positive environment is provided to all staff and students.”
32. Ms. Naylor states they are “working through the next steps in relation to the recommendations and work order”, and continues by “directing this inquiry to the attention of” Mr. Scott Sincerbox, Acting Executive Director of the Provincial Schools, to address her concerns. Mr. Sincerbox is not on copy on the message.
33. Also on February 13, 2023, Mark Zonneveld, Acting Superintendent of the Provincial Schools, wrote to Ms. Witcher inviting her to a fact-finding meeting regarding matters of February 1, 2023 and February 7, 2023, the issues

purportedly giving rise to Ms. Witcher's administrative suspension. The letter was only sent to Ms. Witcher's OSSTF D.30 President email account. **(Tab 8)**

34. The Parties met on February 16, 2023 to discuss the suspension and assignment to work from home. **(Tab 8b)** The Authority was unable to demonstrate any of the purported allegations which they alleged to have been the reason for Ms. Witcher's administrative suspension. It was nevertheless expressed that both of the allegations against Ms. Witcher related to Union Activity and not 'inappropriate professional behaviour' as set out in the original suspension letter.

## Legal Issues

### ***A. Unlawful Reprisal***

35. The OSSTF alleges that the responding party, the Crown, has breached the *Occupational Health & Safety Act*, R.S.O. 1990, CHAPTER 0.1, including section 50, which states,

#### **REPRISALS BY EMPLOYER PROHIBITED**

##### **No discipline, dismissal, etc., by employer**

**50.** (1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or,
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the *Coroners Act*. R.S.O. 1990, c. 0.1, s. 50 (1).

#### Arbitration

- (2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding

settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint. 1998, c. 8, s. 56 (1).

#### Inquiry by Board

(3) The Board may inquire into any complaint filed under subsection (2) or referral made under subsection (2.1) and [section 96](#) of the *Labour Relations Act, 1995*, except subsection (5), applies with all necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act. 1998, c. 8, s. 56 (1); 2011, c. 11, s. 13 (2).

36. The OSSTF alleges that Ms. Witcher was suspended with pay and assigned to home duties as a result of her seeking the enforcement of an order. She was thereafter suspended in contravention of Section 50 (1) (b) of the *Act*.

37. Ms. Witcher acted in her capacity as a representative of the Union. The Board has recognized that union representatives terminated and / or disciplined in the execution of their role in the investigation of health and safety issues are covered by the ambit of the *Act*.

*DeFazio v Toronto Transit Commission*, 1999 CanLII 20118 (ON LRB)

38. As stated in the jurisprudence of the Board, in order to conclude that section 50(1) of the *Act* has been contravened, the Board must conclude that: First, an employee has engaged in a protected activity; second, that the employee has been punished in some way; and third, that there exists a causal link between the protected activity and the punishment.

*Robert McLaughlin v Bluewater District School Board*, 2016 CanLII 75728 (ON LRB), para 64.

39. Section 50(5) of the *Act* places the onus on the Provincial Schools in this case to establish that it did not act contrary to section 50(1). It is not enough for the Provincial Schools to demonstrate that the applicant engaged in some conduct that was worthy of discipline. As stated by Vice-Chair Turtle, at paras 69-70 of *McLaughlin*:

[...] It must go further. It must establish, on a balance of probabilities, that its decision to impose the discipline was not influenced in any way by the fact that the applicant took steps to enforce the Act.

70. It is rare, of course, for an employer to admit that its decision was influenced by the employee's actions in seeking to enforce the Act. In many cases the Board's finding that section 50(1) was contravened is predicated on inferences that the Board has drawn from all of the surrounding circumstances.

*Ibid.*, paras 69-70.

## **B. Discrimination**

40. This application is routed directly in the *Act*, the work refusal at the Provincial Schools, and the advocacy of a union representative for better health and safety in the workplace.

41. Despite this, the OSSTF alleges many of the alleged contraventions of the *Act* are connected to discrimination against Deaf people, otherwise called "Audism."

42. The Board has historically declined jurisdiction to handle unlawful reprisal matters under the *Act* where discrimination claims accompany the complaint. The Board makes the determination as to whether the "pith and substance" of the complaint is indeed health and safety, or a discrimination claim disguised in another form. The Board will indeed encourage Applicants, where a section 50 complaint includes elements of discrimination or harassment, to file Applications under the *Human Rights Code*, or a grievance under an applicable Collective Agreement.

*Armstrong v. Orenda Aerospace Corp.*, 2004 CanLII 22055 (ON LRB), para 106, *inter alia*

43. The OSSTF asserts that the pith and substance of the present complaint is fully covered by the *Act*. It involves a suspension following a letter and complaint regarding workplace violence and health and safety. It is a corollary fact that the responses of the Provincial Schools, in addition to being allegedly ineffective,

were also allegedly discriminatory. As such, this is the most appropriate forum to present these issues.

44. The correlation between health and safety concerns and discrimination in the Provincial Schools has a long history. Indeed, in December 1991, the Ministry of Education's *Review of Student Care Report* ("the Report") was presented to Ontario's Parliament. The Report tackled the systemic discrimination and history of physical and sexual abuse in the Provincial Schools against Deaf students.

**(Tab 12)**

*Ministry of Education, Report of the Review of Student Care at the Provincial Schools for the Deaf and Blind and Demonstration Schools, December 1991, Ontario*

45. The Report makes extensive recommendations relating to health and safety, as well as intercultural – Deaf and hearing – relations. When in an environment with large numbers of Deaf people it is common sense that any health and safety measure be interpreted with that community in mind.

*Ibid.*

46. It stands to reason that failures in health and safety in such environments, which amount to insulting or degrading implications for historically disadvantaged groups (i.e. having to ring the cow bell).

47. Although written prior to *Parry Sound & OPSEU* as well as amendments to the *Act* to include harassment, Vice-Chair Surdykowski still does not preclude jurisdiction to consider human rights. When a matter includes allegations of discrimination, an unlawful reprisal under the *Act* may still be heard by the Board.

I am satisfied that the Board's jurisdiction to deal with questions of harassment and discrimination in a complaint under section 50 of the OCCUPATIONAL HEALTH AND SAFETY ACT, is at best indirect, and indeed rather remote, when compared to the jurisdiction of the Human Rights Commission and human rights Boards of Inquiry to do so in the exercise of their specific and direct jurisdiction under the HUMAN RIGHTS CODE. This does not mean that the Board will decline to inquire into a complaint under section 50 of the OCCUPATIONAL HEALTH AND SAFETY ACT merely because the factual basis asserted for the complaint includes discrimination or harassment.

*Scarborough (City)*, [1997] O.L.R.D. No. 4247

**C. Remedies**

48. The OSSTF seeks the following remedies:

- a. Reinstatement of the Applicant, Tamara Witcher, without any loss of pay, credits or another other entitlement;
- b. A posted notice in the Provincial Schools outlining the role of the Union in the Health and Safety Process as per the *Act*;
- c. Damages;
- d. Interest as per the *Courts of Justice Act*;
- e. Any other remedy the Board deems fit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.