



# ONTARIO LABOUR RELATIONS BOARD

## RESPONSE/INTERVENTION – APPLICATION UNDER SECTION 50 OF THE ACT (UNLAWFUL REPRISAL)

*Occupational Health and Safety Act*

**Form A-54**

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

Confirmation No. [20230317135816199](#)

**OLRB File Number** [2553-22-UR](#)

**Between: \***

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

**Applicant(s)**

- and -

[Provincial Schools 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.

**Choose one of the following \***



**Response**



**Intervention**

### Part A Contact Information

#### Instructions

- Provide the contact information for each Responding Party/Intervenor on whose behalf this form is being completed and any Affected Party not previously named in the application 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). Responding Party/Intervenor

### Responding Party 1

Type \* ☒ Organization ☐ Individual

Organization Name

Provincial Schools Authority (PSA)

First Name

Scott

Last Name

Sincerbox

Position/Title

Acting Director

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

255 Ontario St S

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

City/Town

Milton

Province/State

ON

Country

Canada

Postal/Zip Code

L9T 2M5

Telephone Number

905-878-2851

Ext.

214

Fax Number

Email Address

scott.sincerbox@ontario.ca

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

## 1 (b). Representative/Contact Person for the Responding Party/Intervenor

### Contact 1

Contact Person for \* ☐ All Parties above ☒ Party No.(s) Provincial Schools Authority

Indicate if this person is a ☒ Lawyer ☐ Paralegal

Organization Name

Ministry of the Attorney General - Treasury Board Secretariat

First Name

Felix

Last Name \*

Lau

Position/Title

Counsel

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

20 Dundas St W, Suite 530C

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

City/Town

Toronto

Province/State

ON

Country

Canada

Postal/Zip Code

M5G 2C2

Telephone Number

416-557-4569

Ext.

Fax Number

416-325-9404

Email Address

felix.lau@ontario.ca

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

## 2 (a). Affected Party

Contact information for any person, trade union, employer or employers' organization which may be affected by the application and which has not already been identified by another party must be completed below.

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

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

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**Part B Material Facts and Position on Relief Sought**

**3. The following statements in the application are agreed to:**

[Please see Schedule A](#)

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**4. The following statements in the application are not agreed to:**

[Please see Schedule A](#)

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**5. In respect of the order(s) requested by the Applicant, the Responding Party states:**

Describe your position with respect to the order(s) requested by the Applicant. If you require more space, attach a separate document.

[Please see Schedule A](#)

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**6. In support of the response, the Responding Party 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 response/intervention 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.

[Please see Schedule A](#)

7. Other relevant statements:

Please see Schedule A

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	Schedule A.pdf		0.12	<input type="checkbox"/>
2	Appendices.pdf		12.2	<input type="checkbox"/>
		Total Size	12.32	
		Total space left over	2.68	
		Number of attachments	2	

## 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.

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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 response/intervention with the Board, you must deliver the following documents to each Applicant, Responding Party, Trade Union and Affected Party named in Part A of the application and to each Affected Party named in Part A of a response/intervention filed by another party:

- A completed copy of this Response/Intervention under Section 50 of the Act (Form A-54), **including all documents you are filing with this form.**

If you have named an Affected Party in Part A of your response/intervention that was **not** named in the application or in a response/intervention filed by another party, you must deliver the following documents to that party:

- A completed copy of the Application under Section 50 of the Act (Form A-53), **including all documents filed with that form;**
- A completed copy of this Response/Intervention under Section 50 of the Act (Form A-54), **including all documents you are filing with this form;** and
- A Notice to Responding Party and/or Affected Party of Application or Referral under Section 50 of the Act (Form C-26) **with the names of the parties and the date inserted.**

**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.**

☒ I have reviewed this form to confirm it is complete \*

Date (yyyy/mm/dd) \*

2023/03/17

## Certificate of Delivery

I, Felix Lau, Counsel,  
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 \*  
OSSTF, Jesse Gutman (In-House Legal Counsel)

Address or fax number to which the documents were delivered \*  
By email: jesse.gutman@osstf.ca

### Method of delivery \*

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

### Other Details \*

Please provide details as to whom, when and how the documents were delivered.  
By email: jesse.gutman@osstf.ca on March 17, 2023

## 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 *
Felix	Lau
Email Address *	Confirm Email Address *
felix.lau@ontario.ca	felix.lau@ontario.ca



## **A. Overview**

1. The Employer, the Provincial Schools Authority ("Employer"), denies any and all allegations that the Applicant faced any workplace reprisal as a result of attempting to assert her rights as set out in the *Occupational Health and Safety Act* ("OHSA").
2. The Employer denies all facts as set out in the Application except as expressly set out in this Response.
3. Specifically, the Employer denies that the Applicant was subjected to reprisal through her reassignment to home with pay pending investigation. In this instance, the Employer had received a serious and credible allegation that the Applicant had breached student privacy by inappropriately accessing and copying Ontario Student Record (OSR) files. Such inappropriate access is expressly prohibited by the *Education Act* and also by the OSR guideline established by the Ministry of Education.
4. The credibility of the allegations against the Applicant was confirmed through verbal and written information from the witness and through a review of the CCTV footage. The reassignment to home duties was based solely on valid considerations, namely to protect the integrity of the investigation and to prevent further unauthorized access of the OSR files by the Applicant.
5. This Application is a blatant attempt by the Applicant to subvert the Employer's legitimate efforts to investigate a serious breach by the Applicant of the students' privacy, and is an abuse of the protections offered by the *OHSA*. The Employer submits that the Application should be dismissed as lacking any merits.

## **B. Background on the Applicant and Employer**

6. The Provincial Schools and Demonstration Schools are part of the Provincial Schools Authority (PSA), which was established under the [Provincial School Negotiation Act](#). These schools are operated by the Ministry of Education's Provincial and Demonstration Schools Branch (PDSB) and provide education for elementary and secondary school students who are Deaf or hard of hearing, who are blind or have low vision, who are deafblind, and/or who have severe learning disabilities. The schools also provide outreach services and opportunities for professional development for staff working for school boards.
7. The Ernest C. Drury (ECD) School for the Deaf is located in Milton, Ontario, and is one of four Provincial Schools in Ontario. ECD provides elementary and secondary school programs for students from kindergarten to the end of high school. The

programs follow the Ontario curriculum and parallel courses and programs provided in school boards.

8. The Applicant currently holds the position of Educational Coordinator at ECD. An Educational Coordinator is a teacher who is appointed to assist in the improvement of instruction and the development of curriculum in specified areas or units of a school program. The Applicant is also the President of the OSSTF D.30 bargaining unit.

### **C. Background on Ontario Student Records**

9. The Ontario Student Record is the record of a student's education progress through schools in Ontario. The components of the OSR include but are not limited to an OSR folder containing the student's biographical data and any special health information, the student's report cards, and a documentation file that may include sensitive information such as medical reports, formal diagnostic and assessment results.
10. The confidential nature and the authorized uses of the OSR are expressly prescribed by the *Education Act*. Under section [266\(2\)](#) of the *Education Act*, only supervisory officers and the principal and teachers of the school have access to the OSR and only for the purpose of improving the instruction of the student. Additional access may be permitted under specified and limited circumstances. Further, section [266\(10\)](#) of the *Education Act* specifies that except for the very limited exceptions set out, every person shall preserve secrecy in respect of the content of a record that comes to the person's knowledge in the course of their duties or employment, and no such person shall communicate any such knowledge to any other person.
11. Beyond the requirements set out in the *Education Act*, the Ministry of Education has also established the Ontario Student Record (OSR) Guideline, 2000 (revised 2020), which sets out the Ministry's policies regarding the establishment, maintenance, use, retention, transfer, and disposal of the OSR. **(TAB A)** Pursuant to this guideline, the principal of a school has a duty to ensure the security of the OSR and to ensure that the materials are collected and stored in accordance with the applicable policies. The guideline reiterates that access to the OSRs by education personnel is for the purpose of improving the instruction of the student. The guideline further notes that the PDSB is subject to the *Freedom of Information and Protection of Privacy Act*.
12. At the E.C. Drury Secondary School, the OSR files are held in filing cabinets located in the front office. The cabinets are behind a service counter which has a

plexiglass window. The cabinets are adjacent to the administrative staff's desk. Staff are reminded of the permissible use of the OSRs through signage that is displayed prominently beside the filing cabinets. The signage is printed in colour on three letter-sized pages, with the title "OSR Guidelines" printed in large bold font. The signage highlights the following:

- Teachers may ONLY access OSRs for students they currently teach
- OSRs may NOT be removed from the office
- Confidential documents may NOT be copied without permission from the author
- Information regarding may be shared with an EA who works with that student via a discussion only
- Teachers MUST sign and date the front of the OSR (September and June)

The signage also provides the internet link to the Ministry of Education's OSR Guideline. **(TAB B)**

13. Teaching staff are required to remain current with the applicable policies and procedures. Every September, new and returning teachers are required to complete the Annual Policy and Training Checklist. The Policy and Training Checklist ensures that all staff have reviewed and are familiar with the required applicable policies and procedures and have completed mandatory training.

#### **D. Decision to Reassign the Applicant to Home Pending Investigation**

14. On the afternoon of Wednesday February 1, 2023, an allegation was made that student OSRs were inappropriately accessed by a teacher. Specifically, the Principal, Jeanne Leonard, was informed via email by a school administration assistant that they witnessed the Applicant accessing and taking pictures of student OSRs with her personal phone. While there are situations where a teacher may legitimately access the OSRs, the Applicant's behaviour on that day was sufficiently troubling to the witness such that they reported the incident to the Principal.
15. The allegation was extremely troubling to the Employer as well, given that the use of a personal phone to record the OSRs would strongly suggest that the access was unauthorized and therefore a breach of student privacy. Typically, if a teacher requires a copy of an OSR, the teacher will request the assistance of the school administration assistant to make a copy. To follow up on the allegation, the

Principal immediately notified the school superintendents, the Executive Director Scott Sincerbox, and senior management team.

16. Based on the initial review of the allegations and in consultation with the school executive team and labour relations, the Executive Director authorized the immediate reassignment of the Applicant to home duties with pay, pending investigation, effective Thursday February 2, 2023. The Applicant was advised in writing on February 2, 2023 of the suspension pending investigation. The Applicant's PDSB and OPS IT accounts were suspended effective the same date on February 2, 2023.
17. On Thursday, February 2, 2023, a formal fact-finding meeting was held to gather further information from the school administration assistant. The witness corroborated their previous statements. They were not able to provide exact detail on which student file(s) were accessed, although they did identify the filing cabinet drawers with the alpha split of B-C and M-P as having been accessed by the Applicant.
18. The Employer also reviewed CCTV footage, which supported the witness's statements regarding the Applicant's proximity to the Administration office, the timeframe of the incident, and the retrieval of items from the printer (no CCTV cameras are in the Administration office itself).
19. In this case, there are credible allegations that the Applicant breached her statutory obligations under the *Education Act* and her obligations to the PDSB by appropriately accessing OSRs. The credibility of these allegations was supported by the initial witness's statements along with the review of CCTV footage. The decision to remove the Applicant from the workplace was driven by a number of considerations, foremost of which was the need to prevent further unauthorized access of the OSR files by the Applicant. Further, as with most if not all investigations into serious workplace misconduct, there was a concern that a subject employee could interfere with the investigation if allowed to remain in the workplace. Neither the MLITSD Inspector's order dated January 30, 2023 nor the Applicant's letter to Deputy Minister Naylor dated January 31, 2023 played any role in the decision to reassign the Applicant to home duties. The Employer's decision to reassign the Applicant was based solely on the serious and credible allegations regarding the inappropriate access and copying of OSR files that came to light on February 1, 2023.
20. The Employer's concerns about the possibility of further unauthorized access would prove to be warranted. On February 7, 2023, the Applicant appeared in a video posted on YouTube urging teachers to review their timetables and access

students' OSRs for the purpose of determining their "ME" status and confirming the accuracy of class sizes. The video also urges teachers to do this review by the end of the week, because of the 20-day time limit for filing grievances. The teachers were asked to share the requested information with another official within PSAT and also with the Applicant if the teacher so wishes.

21. The term "ME" appears to be a reference to "multiple exceptionalities," meaning that the student has a combination of learning or other disorders, impairments, or physical disabilities such that they require teachers with specialized qualifications and additional support services. While all information in an OSR file is confidential, a student's ME status by its very nature is considered to be even more sensitive. It further goes without saying that accessing OSR files to help advance grievance matters is not a permissible use of the files. On its face, such access is not for the purpose of improving the instruction of the student.
22. In response to the Applicant's video, the PDSB issued a memo to its teachers with a reminder of the importance of student privacy and the circumstances under which a teacher is authorized to access the OSR. **(TAB C)** The memo further reminded the teachers that inappropriate access of the OSR is a violation of the *Education Act*, the PDSB Code of Conduct, and the general standards of professionalism and ethical behaviour required of teachers working within the PDSB. The letter stated that such violations could lead to discipline, up to and including dismissal.
23. As such, even prior to the filing of the instant s. 50 Application, the Employer has consistently taken the position that the unauthorized access of OSRs is a serious matter that could give rise to discipline, up to and including dismissal.
24. As part of its obligations to maintain student privacy, PDSB has also reported the apparent breach by the Applicant on February 1, 2023 to the FOI Coordinator, and is currently working with their staff to take any required remedial actions.

#### **E. Fact-Finding Meeting**

25. On February 13, 2023, the Employer advised the Applicant that she has been scheduled for Fact-Finding meeting for February 16, 2023, regarding the allegations of inappropriate professional behaviour. Specifically, the Applicant was advised of the alleged contraventions of s. 266 of the *Education Act*, the PDSB Code of Conduct and OSR Guideline as a result of the following:
  - The inappropriate access and copying of OSR files on February 1, 2023; and

- Subsequent to her reassignment to home effective February 2, 2023, the uploading of a video to YouTube on February 7, 2023, wherein the Applicant strongly encouraged PDSB teachers to inappropriately access information in their students' OSRs.
26. On February 16, 2023, the Employer held the fact-finding meeting with the Applicant and her union representative. During this meeting, the Applicant admitted to having accessed one student's OSR at the request of the adult student, although she refused to identify the student. The Applicant further asserted that she took a picture of the record in question, due to the secretary not being present to assist with making a copy. Of note, it had been the secretary who had witnessed the Applicant accessing and photographing the OSR files. The Applicant also denied having seen the signage displayed beside the OSR filing cabinets or the Ministry of Education's Ontario Student Record Guideline, 2000.
  27. As to the second allegation, the Applicant acknowledged that she had posted the video. Her union representative also acknowledged that the information was being solicited for the purpose of supporting grievance activities and denied any wrongdoing.
  28. As of the date of this response, the investigation remains ongoing and the Employer has not reached any final decision regarding any discipline for the allegations discussed in the initial Fact-Finding meeting.

#### **F. The Employer did not reprise against the Applicant**

29. The Applicant has asserted that she was suspended with pay pending investigation "as a result of her seeking the enforcement of an order."<sup>1</sup> An order dated January 30, 2023 by a Ministry of Labour, Immigration, Training and Skills Development (MLITSD) inspector was attached to the Application as Tab 1.
30. The Employer states that this assertion has no merit. As noted earlier, the reassignment to home was based solely on the serious and credible allegations regarding the inappropriate access and copying of OSR files that came to light on February 1, 2023. The Employer had not at any point sought to appeal or otherwise suspend the application of the Inspector's order. Instead, the Employer had worked diligently over the following two weeks to comply with the order, such that the Employer was able to file the Notices of Compliance (NOCs) by their respective due dates of February 14 and 16, 2023. Further, the Employer had

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<sup>1</sup> Schedule A of Application, at para 36.

acted on a number of the recommendations by the Inspector, even though these items were not required for the Employer to complete its NOCs.

31. There is simply no basis for suggesting that the Employer opposed the enforcement of the order, much less that the Employer reprised against the Applicant for having sought enforcement.
32. The January 30, 2023 order was the result of a January 24, 2023 field visit by a MLITSD inspector, who attended the E.C. Drury (ECD) Elementary School in response to the work refusal/complaint by a Classroom Teacher. In attendance during this field visit were representatives from the Employer and the Union, the Refusing Worker, and ASL interpreters. The Applicant was not present during this field visit. To the Employer's knowledge, the Applicant does not have any formal role in the JHSC.
33. One order and one requirement were issued by the Inspector and were delivered onsite at ECD on January 30, 2023:
  - Section 32.0.3(1): "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"
  - The requirement: The employer shall complete, in written form, the assessment of the risks of workplace violence specified in Order #1
34. The Inspector also made a number of recommendations regarding the following:
  - Clarification to staff on the processes under the Ontario Public Service's Workplace Violence Prevention Policy and the program in place at PDSB including the Workplace Violence Risk Assessments (WVRA)
  - Training with respect to the program
  - Mandatory training for workers
  - Reporting of incidents
  - Workers' ability to immediately summon assistance in the event of danger
35. Following the receipt of the Inspector's order on January 30, 2023, PDSB worked on the compliance with the order over the following two weeks. As of February 14,

2023, PDSB had addressed the MLITSD inspector's order by updating the WVRA to include an entire subsection of questions to address the additional considerations outlined by the order. PDSB also coordinated a special meeting of the JHSC committee on February 8, 2023, in order to review, update and provide feedback to the new revised WVRA document.

36. Also, by February 14, 2023, PDSB has acted on a number of the recommendations from the Inspector, through the following:
- Identifying and/or deploying interim IT solutions (ZOOM conferencing platform, iPads) as additional means for summoning immediate assistance.
  - Coordinating and having the refusing worker complete Behavioural Management System (BMS) training. PDSB also set up additional time on February 17, 2023 for any other staff that have not completed their BMS training.
  - Re-sending a reminder to all teaching staff on February 2, 2023 with the information on reporting incidents, student behavior management, and student progressive discipline. The original reminder was sent on December 23, 2022.
  - Engaging with the Public Services Health & Safety Association, as recommended by the MLITSD inspector, to review PDSB actions taken and to consult with them on any further guidance/recommendations they may have with the proposed remediation plans to address the MLITSD order.
37. As noted, the Employer submitted the Notices of Compliance (NOC) on the respective deadlines of February 14 and 16, 2023. The worker JHSC members did agree to sign the NOCs but opted to select the "Disagree" option as to whether they agreed that the Employer has complied with the order for both of the NOCs submitted.
38. On March 3, 2023, the Employer met with MLITSD regarding the Inspector's order dated January 30, 2023. As an outcome of the meeting, the MLITSD agreed with the Employer that it has complied with the order as set out in its NOCs dated February 14 and 16, 2023.
39. In her Application, the Applicant has focussed on her January 31, 2023 letter to Deputy Minister Naylor as the incident which led to her reassignment to home on February 1, 2023. The Employer submits that this purported nexus is speculative



and is contradicted by the Applicant's own history of correspondence. In her role as the President of the OSSTF D.30 bargaining unit, the Applicant has on a number of occasions written to senior government officials (Deputy Minister, Assistant Deputy Minister, Chair of the PSA) on matters of concerns to the bargaining unit, including on matters of student and teacher safety. The Employer has not reprised against the Applicant for these previous correspondence, nor has the Applicant alleged any such history of reprisal.

**G. Application is without merit**

40. The Employer submits that the Application should be dismissed as without merits. Section 50(3) of the *OHSA* provides:

50(3) The Board may inquire into any complaint filed under subsection (2) 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.

41. The Employer notes that under subsection 50(1) of *OHSA*, the Board is limited to adjudicating complaints that a worker has suffered reprisals because the worker has acted in compliance with or sought enforcement of the *OHSA* or Regulations. The Employer submits that in order to establish a breach of section 50(1) of the *OHSA*, the Applicant must show:

- a) That they invoked, or attempted to invoke, their rights under the Act; and
- b) That the Employer dismissed, disciplined, suspended, threatened to dismiss, discipline or suspended, imposed a penalty, intimidated or coerced them; and
- c) That the Employer did so because they invoked or sought to invoke their rights under the Act.

42. At all times, the Employer has the right to manage the workplace, including by investigating allegations of serious and credible workplace misconduct. The decision to reassign the Applicant to home with pay was driven by the Employer's wish to prevent further unauthorized access of the OSR files and to preserve the integrity of the investigation. Neither the January 30, 2023 MLITSD Inspector's order nor the Applicant's letter to Deputy Minister Naylor dated January 31, 2023 played any role in the decision to reassign the Applicant to home duties.
43. Further, the Employer has not challenged the Inspector's order dated January 30, 2023, and it was able to comply with the order prior to the filing of the instant Application. The fact of this compliance has since been confirmed by the MLITSD. There is simply no basis for suggesting that the Employer opposed the

enforcement of the order, much less that the Employer reprised against the Applicant for having sought enforcement.