

**IN THE MATTER OF AN ARBITRATION**  
Pursuant to the *Labour Relations Act*, R.S. 1995

**BETWEEN:**

**TORONTO CATHOLIC DISTRICT SCHOOL BOARD**

("Board")

- and -

**ONTARIO ENGLISH CATHOLIC TEACHERS ASSOCIATION  
TORONTO SECONDARY UNIT**

("Association")

**(Grievance re Health and Safety)**

**ARBITRATOR:** Jasbir Parmar

**On Behalf of the Board:**

Melissa Eldridge, Counsel, Toronto Catholic District School Board  
Caitlin Kavanagh, Coordinator Employee Relations  
Kristina Panayotopoulos, LPP Candidate  
Adrian Della Mora, Superintendent of Human Resources

**On Behalf of the Association:**

Adrienne Telford, Cavalluzzo LLP  
John Pecsénye, Staff Officer, Bargaining and Contract Services Dept. (Provincial Office)  
Victoria Hannah, Teacher Welfare Officer, TECT  
Pete McKay, First Vice-President, TSU  
Rene Jansen in de Wal, Councillor (Provincial Office) and Co-Chair of Joint Health and Safety Committee

This matter was heard on May 10, 2018, in Toronto, ON

## I. Introduction

1. There are two issues in dispute between the parties, relating to the Board's obligations under the *Occupational Health and Safety Act* (OHSA) and the collective agreement.
2. They are as follows:
  - a. Whether the Board must produce to the Joint Health and Safety Committee (JHSC):
    - i) reports which are created under the Safe Schools Program
    - ii) emergency evacuation response plans
  - b. Whether the Board must provide mould masks to the DWM for the purpose of conducting his/her inspections.

## II. General structure of OHSA and the collective Agreement

3. It is useful to begin by considering the Board's obligations with respect to the JHSC as set out in the collective agreement and in OHSA. While I have considered all the relevant provisions in both the collective agreement and in OHSA, my objective here is to set out the general structure of the obligations with respect to health and safety.
4. Article 32 of the collective agreement confirms that there will be a JHSC comprised of members appointed by the Association and members appointed by the Director. The parties have created a single JHSC to address health and safety issues across the entire Board, which is comprised of 33 different schools.
5. The collective agreement confirms the JHSC has a number of functions, including reviewing "all matters relating to occupational health and safety of teachers which are referred by any member of the committee". Article 32.04 provides that the Association shall designate a teacher representative (hereinafter Designated Worker Member, or DWM) to inspect all workplaces within the jurisdiction of the Board and inform the JHSC of "situations

that may be a source of danger or hazard to workers”. It is clear from this provision that the role of the JHSC, and in particular its worker members, is an active one, with a specific right to examine and inspect the workplace for the purpose of identifying and considering on its own whether there is a source of danger/hazard to workers.

6. OSHA also requires there be a JHSC, comprised of both management and worker representatives. It is an express function of the JHSC to “identify situations that may be a source of danger or hazard to workers” (Section 18(a)). It is also an express function of the JHSC to recommend to the employer “the establishment, maintenance and monitoring of programs, measures and procedures” respecting the health and safety of workers. An employer who receives such recommendations is required to respond in writing within twenty-one days, with either a timetable for implementing the recommendations or reasons for not accepting the recommendations.

7. In furtherance of the JHSC’s functions, section 18(23) provides the worker members of the JHSC, by way of a designate (or DWM), the right to inspect the physical condition of the workplace. Section 25(2)(e) confirms the employer has a duty to afford assistance and cooperation to the JHSC/DWM in the carrying out any of their functions. Section 25(2)(l) also confirms the employer’s obligation to provide the JHSC/DWM, the results of a “report respecting occupational health and safety” that is in the employer’s possession (or the portions of a report that concern health and safety).

8. Part III.0.1 of OSHA addresses workplace violence and harassment specifically. It sets out various employer obligations in this respect. In addition, it states that all of the employer obligations set out in section 25 of OSHA also apply with respect to workplace violence.

9. “Workplace violence” is defined in Section 1(1) of OSHA as

(a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,

(b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,

(c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker

10. Pursuant to section 32.0.1(1)(a), the employer is required to prepare a written policy with respect to workplace violence.

11. Pursuant to section 32.0.3, the employer is required to assess the risk of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, taking into account both circumstances specific to that workplace as well as similar workplaces. The employer is then required to provide the results of the assessment (or a copy if the assessment is in writing) to the JHSC or its DWM. The same applies to any reassessments.

12. Pursuant to section 32.0.2(1), the employer is required to develop and maintain a program to implement the workplace violence policy required in section 32.0.1(1)(a). This program is required to include measures and procedures to control the risks identified in the assessment of the risks of workplace violence required by section 32.0.3.

### **III. Production of documents related to the Safe Schools Program**

#### **A. Information provided by the Board**

13. The Board does provide the JHSC with certain reports, titled "Workplace Violence Risk Assessment". These are school specific, and so I will refer to these reports as site risk assessments. I was provided three examples of such reports for the following schools: Dante Alighieri Academy (revised November 15, 2016); St. Helen Elementary School (revised October 18, 2016); and Msgr Fraser – Midland & Midland North Campus (revised October 2016).

14. The Dante Alighieri site risk assessment indicates the Staff and Students section of the site assessment has been revised due to an incident of a student being stabbed with a knife by two strangers near the school.

15. With respect to 'Risks Identified', the Staff and Students section states:

- Potential risk of workplace violence between workers
- Potential risk of workplace violence from students to staff
- Potential risk of workplace violence from community members

16. With respect to 'Existing Controls', it states:

- Staff have received instruction and information on workplace violence
- Student behavioural/safety plans are shared with appropriate staffs who work with the student(s).
- Applicable workers are asked to take CPI Training
- School consults with Safe Schools Dept and/or Special Services Dept. if a student demonstrates aggressive behavior. Multiple procedures by these departments are already in place such as threat assessments, creations of safety/behavior plans. SBSLT/Case Conference Teams, etc.
- School Administration in consultation with Legal Services can issue an exclusion
- If necessary, the School Principal will consider calling the police

17. The St. Helen site risk assessment indicates the Staff and Students section is being revised due to an incident where the Toronto Police Services informed the principal about an Instagram account making reference to sending clowns for shootings to schools, including specifically St. Helen. The Staff and Students section of the St. Helen site risk assessment is are identical to the Dante Alighieri Academy assessment, with a single exception. The final bullet of the 'Existing Controls' subsection reads: "Creation of Safety Plans for workers".

18. The Msgr Fraser site risk assessment notes the following 'Risks Identified' for Staff and Students:

- Risk of workplace violence between co-workers (staff)
- Risk of workplace violence from students to staff
- Risk of student criminal activity (alleged or actual) impacting the workplace

19. The following is noted for 'Existing Controls':

- Staff have received instruction and information on workplace violence (program)
- Safe Schools protocols including threat assessments, safe plans (for individual students or the school), student re-integration/re-entry meetings/plans

- Principal can temporarily exclude a student (in consultation with Legal Services) as per 265(1)(m) of the Education Act pending outside investigation and/or securing of supports, e.g. social, medical, creation of safety plan, etc.
- School Principal, as required by the Education Act, takes steps necessary for the protection of staff and students, such as creating safety plans, working with TPS and other agencies (internal or external), and other emergency provisions as the situation warrants

## **B. Safe School Program Reports**

20. The Association seeks to have produced to the JHSC, or the DWM for his/her inspection, documents created in the context of the Board's procedures with respect to the safe schools provisions of the *Education Act* and related regulations. These documents have a variety of names, such as safety plans or transition plans. This decision addresses these specifically, since these are the reports which were provided to me. However, the principles outlined in this decision should guide the parties in respect of other reports.

21. The safe school procedures are discussed in a Ministry of Education resource document, titled "Caring and Safe Schools in Ontario". The focus of these procedures is to promote student engagement while responding constructively to student behavioural challenges. This Ministry document identifies a variety of approaches and sources of information schools can draw on in meeting student needs. Two such identified tools are risk assessments (which I will refer to as a student risk assessment, to distinguish it from the site risk assessment report the Board does produce to the JHSC) and safety plans.

22. A student risk assessment is defined in this document as "an assessment used to identify sources of potential harm to students and adults, such as inappropriate behaviour by a student that shows signs of escalating". A safety plan is defined as a "crisis-response plan that outlines the roles and responsibilities of staff in dealing with risky or potentially risky behaviour by a student".

23. Transition plans are documents that are prepared when a student transitions to a new school. These documents require a "full threat assessment", and identification of "safety interventions".

24. These documents are prepared through a consultation process, including when and if appropriate consultation with teachers who work with the students in question, administration (principal/vice-principal), education assistants, special education teachers, child youth workers, social workers, and parents. The completion of these documents require identification of “behavior(s) that presents risk of injury to self/and or others”, and identification of interventions that will be used to de-escalate such risk.

### **C. Brief Summary of the Parties’ Positions**

25. The dispute is whether documents created by the Board in the context of its obligations under the safe schools provisions of the *Education Act* must be produced to the JHSC/DWM pursuant to the requirements of OHSA.

26. The Association submits that these reports must be produced pursuant to two different OHSA obligations.

27. First, it is submitted these documents concern occupational health and safety, since they contain information about risks to the health and safety of staff as well as measures to control those risks. Pursuant to section 25(1)(l), the Association submits that all such documents are required to be provided to the JHSC or the DWM.

28. Second, it is submitted that these documents are in fact assessments of risk of violence under Section 32.03(1) as they speak to a direct assessment of any risks to staff. Therefore, the Association submits, they must be provided to the JHSC/DWM as set out in Section 32.02(3)(a).

29. The Association notes that these reports contain the measures and procedures the Board has put in place to control the risks identified in these same reports. The Association notes it is the role of the JHSC to make recommendations about measures and procedures about the health and safety of workers, and this can only be done by knowing what the specific measures and procedures the Board has in place. The Association submits that just

because these reports are created to fulfill obligations under different legislation (i.e. the *Education Act*) does not mean they cannot simultaneously meet the definition of an assessment of risk of violence under OHSA.

30. The Association submits that the site risk assessments currently being provided to the JHSC are generic and fail to provide the JHSC with substantive information about the measures and procedures the Board has implemented to address risk of workplace violence. The Association submits that in failing to provide the JHSC with substantive and specific information detailed in reports such as safety plans and transition plans, the Board is interfering with the JHSC's ability to fulfil its role under OHSA and the collective agreement.

31. The Association submits that if there are any privacy concerns, they cannot override the need to ensure compliance with OHSA obligations; Section 2 makes it clear that OHSA prevails over any other general or special Act. Nonetheless, the Association notes such concerns can be easily addressed by redacting identifying personal information.

32. The Association relied on the following authorities: *Ontario (Ministry of Labour) v. Hamilton (City)*, [2002] OJ No. 283 (CA); *Ontario (Ministry of Labour) v. United Independent Operators Ltd.*, 2011 ONCA 33; *R. V. Campbell*, [2004] OJ 129 (CJ), affirmed [2006] OJ No. 731; *R. v. Enbridge Gas Distribution*, [2010] OJ No. 1504 (SCJ); *Kingston (City) v. CUPE, Local 109*, 2011 CarswellOnt 9046; *Ljuboja v. The Aim Group Inc. and General Motors of Canada Limited*, 2013 CanLii 76529 (ON LRB); and *Toronto Elementary Catholic Teachers v. Toronto Catholic District School Board*, 2017 CanLii 37597 (ON LRB)

33. The Board submits the Association's position fails to recognize that the ultimate responsibility for health and safety lies with the employer. The Board submits that while the JHSC has a role in being consulted in respect of the Board's workplace violence policies and programs, it does not mean the JHSC is supposed to be involved in the day to day implementation of measures that address workplace violence.



34. It is not, the Board submits, the JHSC's role to "add ink to the page" for each specific act the Board undertakes that involves health and safety issues. The Board submits that the JHSC is overreaching when it seeks to access documents that are specific to individual students. The Board notes that those documents are crafted by a group of experts, and shared with all the individuals who deal with the student. The Board submits that it is not the role of the JHSC to oversee the decisions of these experts, and submits the JHSC members do not have a special expertise in health and safety warranting overriding their decisions.

#### **D. Analysis**

35. I have considered all of the submissions of the parties.

36. OHSA is a remedial statute and should be interpreted with regard to the fact that it is protective legislation designed to promote public health and safety: see Ontario (*Ministry of Labour*) v. *Hamilton (City)*, *supra*.

37. The Board is correct when it notes that the primary responsibility for health and safety lies with employers. They after all are the ones with the authority to manage and control the workplace operations. Thus, the majority of obligations set out in OHSA are those of employers.

38. However, it is clear from the structure of OHSA that the legislature has recognized that the best way to achieve the goal of a safe workplace for all employees is to involve the workers from that very workplace. OHSA requires the involvement of workers in two ways. One is by placing specific obligations on all workers (see section 28). The other is through the mandatory creation of a JHSC, of which at least half must be worker members.

39. The creation of a JHSC is a critical component of the legislative approach to achieving safe workplaces. As noted by the Court of Appeal in *Ontario (Ministry of Labour)* v. *United Independent Operators Ltd.*, *supra*:

JHSCs are intended to play a central role in achieving the objective of safe and healthy workplaces in Ontario. They form an integral part of the internal responsibility system, the underlying philosophy of the OHS Act. The concept of an internal responsibility system comes from the Royal Commission on the Health and Safety of Workers in Mines (Toronto: Ontario Ministry of the Attorney General, 1976), the genesis of the OHS Act in its current form.

40. Worker involvement through the JHSC is the method through which OHS Act gives workers a truly active and significant role in achieving a safe workplace. The JHSC has special powers, which the average worker does not have. The two most relevant for the purposes of the instant case are the powers of inspection and recommendation.

41. Unlike the average worker, the worker members of the JHSC are given the responsibility and power, by way of a DWM, to actually inspect the workplace. As such, the JHSC does not have to simply rely on information provided by the employer or through individual worker complaints. Nor does it have to wait until an incident which compromises health and safety actually happens and is then reported to them. Through the DWM, the worker members of the JHSC can go out to the workplace itself and conduct their own inspection – ‘see for themselves’ so to speak. The collective agreement makes it clear that the purpose of these inspections is to identify sources of danger/hazard to workers, which means *before* the danger/hazard results in an actual injury.

42. Having received the report of the DWM, the JHSC has a knowledge base upon which it can exercise its power to make recommendations to the employer with respect to measures and procedures respecting health and safety. This is a power of recommendation only, and so the JHSC’s role is limited. However, the legislature clearly intended employers to give due regard and consideration to these recommendations, despite whatever other steps the employer may have taken in designing its own measures and procedures to ensure the health and safety of workers.

43. This structure, and the power to inspect and make recommendations, belies the notion that JHSCs are not to be involved in the “day to day” operations. The very role of the

JHSC is to assist employers in ensuring the health and safety of workers by providing an additional perspective with which an employer can address and design the working conditions of workers. I note that a workplace is not just a theoretical construct comprised of broad policies; it exists as a functional reality in the day to day experience of workers. Accidents do not only happen because of policies/procedures; they also happen because of day-to-day implementation of those policies/procedures. The design of OHS is to give workers an opportunity to participate in reducing injuries as a result of both. I refer to the description of the JHSC's purpose in *R. v. Enbridge Gas Distribution Inc.*:

[24] The OHS strives to make every party, every employer, and every individual in the workplace responsible in some measure for health and safety. Accidents can and do happen. However, they do not always happen simply because of one incident. They can happen because of several incidents or omissions, as the appellants contend was the case here. The responsibilities under the Act overlap, creating a redundancy which operates to the advantage of workers. The parties in this appeal described this as the "belt and braces" approach to occupational health and safety, which means the Act and Regulations use more than one method to ensure workers are protected. So, if the "belt" does not work to safeguard a worker, the backup system of the "braces" might, or vice versa. If all workplace parties are required to exercise due diligence, the failure of one party to exercise the requisite due diligence might be compensated for by the diligence of one of the other workplace parties. The purpose is to leave little to chance and to make protection of workers an overlapping responsibility.

44. Given its role to serve as a "backup system", an argument that there is no need for the JHSC to consider certain elements of the workplace because they have already been considered by the employer is inconsistent with the primary reason for the JHSC's existence. While employers may undertake certain workplace measures and procedures with the best of health and safety intentions and even perhaps through well-considered actions, that does not mean there is no role for JHSCs to consider those measures and procedures as part of the "internal responsibility system". In fact, the requirement for a JHSC is intended to serve as an additional tool, a redundancy, to ensure health and safety above and beyond any actions taken by employers on their own.

45. Thus it is a flawed analysis to consider whether the documents/reports at issue involve day-to-day issues, or whether they have been prepared by other persons with expertise which JHSC members may not have, or even whether the documents at issue address issues other than health and safety.

46. Under OHSA, the only issue is whether, as noted in Section 25(l), the documents are “a report respecting occupational health and safety in the employer’s possession”, or whether portions of the document are such a report. If so, section 25 requires the Board provide those reports (or portions thereof) to the JHSC, or the DWM.

47. I turn now to the documents at issue, documents created as part of the safe school procedures under the *Education Act*. I find that these documents are reports concerning occupational health and safety. On their face, safety plans contain identified student behaviours that “present risk of injury to self and/or others” as well as “strategies used to...prevent injury to self and/or others”. The same can be said for transition plans, which explicitly require a “full threat assessment” and set out “safety interventions”.

48. A document that addresses risks of injury to staff is a report concerning occupational health and safety. As such, these documents, or at least the portions that address risk of injury to staff, are required to be produced to the JHSC, or DWM, pursuant to section 25.

49. The Association also argued that these documents should be disclosed pursuant to Section 32.03(3), which requires the Board to produce to the JHSC a copy of an assessment of a risk of workplace violence. The Board acknowledges this obligation but submits that the JHSC is not entitled to go beyond the site risk assessment and access the documentation which supports the measures and procedures put in place to address the risk - documents that are about specific staff or students. The Board acknowledges that such specific information does need to be provided to the actual workers who come into contact with the specific student in question. However, the Board submitted it is enough for the JHSC to simply know that it has measures such as safety plans in place.

50. Sections 32.02 and 32.03 require the Board to assess risk of workplace violence and develop and maintain a program that includes measures and procedures to control those risks. In doing the risk assessment the Board is statutorily mandated to take into account “circumstances specific to the workplace” or that “would be common to similar workplaces”. This indicates the JHSC, upon receipt of this assessment, is supposed to be aware of the specific risks of workplace violence in that workplace, and not just the general types of risks that may be expected in similar workplaces.

51. The information with respect to workplace violence currently provided to the JHSC through the site risk assessments, at least in respect of the staff and students section, is *pro forma*. This is glaringly evident from the fact it is virtually identical for each site.

52. Furthermore, simply saying there is a “potential risk of workplace violence from students to staff” is akin to not giving the JHSC a copy of a risk assessment, since it does not give them any information about what are the specific risks in each school or what are the specific measures and procedures being implemented to control those risks. The JHSC cannot serve as a ‘back-up system’, as noted in *Enbridge*, if it does not have any meaningful information about the specific risk of workplace violence. The purpose of requiring an employer to provide a copy of a risk of workplace violence assessment to the JHSC is so that they have meaningful information to fulfil their role.

53. This conclusion is consistent with the recommendations in a Ministry of Labour Field Visit Report, conducted at one school after a student had injured several staff members. The inspector made a number of conclusions about the Board’s non-compliance with the OHS duty to provide information to workers. The Board submitted there was nothing in the inspector’s recommendations indicating that the assessments of the students should be submitted to the JHSC for review.

54. However, the inspector stated the following:

*The Michael Power annual 'Workplace Violence Risk Assessment' [site risk assessment] should include the specifics of which students are known violent risks, and an audit to ensure the workers potentially at risk have been trained and the specific appropriate measures and procedures have been put in place. The current assessment, in this area, is pro-forma and does not address any specifics.*

55. Since the assessment referenced in the above excerpt is the very document the Board provides to the JHSC, the inspector was in fact indicating that the Board should be providing the JHSC with specific information about the risks of violence from students when she stated this document should include such specifics.

56. In order to meet its obligations under section 32.03(3)(b), the Board must provide the JHSC with the information about the specific risks and the specific measures in place to control those risks.

57. I have also considered the "Workplace Violence in School Boards: a guide to the law" (hereinafter Guide). The Guide is a resource document recently produced jointly by the Ministries of Labour and Education, and developed after consultation with a provincial working group made up of a variety of education-sector parties, including the Association. The Guide is quite clear that it does not replace OHSA or its regulations, and should not be considered legal advice. However, both the Association and the Board referred to this document as being relevant to the issue before me.

58. The most pertinent statements in the Guide with respect to the issue before me are the following:

- A risk assessment under the OHSA is not an assessment of an individual or student.  
....
- As a leading practice, a [workplace violence] risk assessment conducted in a school board setting should include assessing: ...current measures and procedures...which may include...measures and procedures to develop and/or revise student safety plans, [and] sharing of information as appropriate, and consistent with OHSA and other applicable legislation.  
....
- Development of a student safety plan is not an assessment or reassessment of risk in itself of the work or the workplace as required under the OHSA. However, the measures and procedures in the workplace violence program may include safe work practices (e.g. student safety plans) to support and protect students and workers.

- .....
- The measures and procedures to control workplace violence risks will be more effective if their development is based on local workplace circumstances, student needs, and collaboration and consultation with the JHSC, MJHSC, and/or the health and safety representative and workers.
- .....
- A student safety plan is a plan developed for a student whose behavior is known to post an ongoing risk to themselves, other students, workers or other people in general. It can serve as a crisis-response plan that outlines the roles of the workers dealing with specific problem behaviours.
- ....
- Who should be involved in the development of a student safety plan? [The JHSC is not included in this list.]...Procedures should be in place so that all workers (teaching and non-teaching, permanent or occasional) have access to the student safety plan.

59. The Board submits the Guide indicates that the JHSC is not entitled to receive a copy of the student safety plan. It is not clear to me that it does assert that. In my view, the Guide is addressing obligations under OHSA but noting that school boards take other actions pursuant to different legislation which are relevant when considering OHSA obligations.

60. However, if that is what the Guide is suggesting, I find that that suggestion is not consistent with the proper interpretation and application of OHSA based on the facts of instant case. As noted by the Guide itself, the Guide does not replace OHSA which must be applied “based on the facts in the workplace”. It is within my jurisdiction to determine whether the Board is complying with its obligations under OHSA and the collective agreement, pursuant to section 48(12) of the *Labour Relations Act*.

61. I agree that student safety plans are not in and of themselves “assessments of risks of violence” under section 32.03(1). They are created and prepared in fulfillment of the Board’s obligations in respect of the *Education Act* and contain a variety of information which is not related to workplace violence. For example, they may contain academic programming interventions.

62. However, under OHSA the Board is required to engage in an assessment of the risk of workplace violence that is “specific to the workplace”. Working with students is obviously a

“condition of work” for education-sector staff, and the particular students with whom they work inform the “type of work” the staff engages in. If there is any risk posed by any student to any staff, then that risk must be assessed.

63. Simply saying ‘there is a risk from students’ or that the safety measure to control that risk is to ‘have safety plans as needed’ is not sufficient to meet that obligation. I reiterate that the structure of OHSa is to involve the JHSC as a back-up system in respect of all health and safety matters, including workplace violence. How is the JHSC supposed to do that if all they are told is there are ‘safety plans as needed’?

64. A situation common to at least four Ministry of Labour Field Visit Reports in response to worker injuries as a result of interactions with student illustrates the problem. Various inspectors found that the Board had safety plans in place. However, inspectors repeatedly found that the information in the safety plan had not been shared appropriately with all the workers who were at risk. Clearly, telling the JHSC ‘safety plans are developed as needed’ is useless to protect the workers given this material failing in the design and implementation of safety plans.

65. In order for the OHSa assessment and reporting obligations to have any meaning, the assessment must go beyond the generic (i.e. risks from student) and address the “circumstances specific to the workplace”. The workplace violence risk assessment must be of the *specific* risk that arises from the *specific* behaviours of a student at a *specific* school. It must also include the *specific* measures put in place to control that risk. Only with this information can there be any logical expectation that the JHSC could possibly assist in achieving the goal of a safe workplace.

66. Failing to disclose this information to the JHSC/DWM highlights an inconsistency in the Board’s approach to workplace violence. This is evident from the following example. Appropriate lighting can be a measure to control the risk of workplace violence. The JHSC may be told that lighting has been put in place. The DWM then can see the lighting when



he/she conducts the inspection to assess whether the measure is actually appropriate in design and implementation – whether there needs to be any recommendations in respect of it because there is still a source of danger to workers. If safety/transition plans are a measure to control a different risk, then the DWM should similarly be able to inspect those documents to see if this measure is appropriate in design and implementation. There is no basis in OHSA to draw a distinction between these two measures.

67. There is no doubt that Board is complying with its obligation to conduct the appropriate workplace violence risk assessment, as required by Section 32.0.2 and 32.0.3. However, it is doing so at the same time it is complying with its obligations under the *Education Act*, which is an understandable approach given similar considerations are obviously required in order to meet those obligations. However, as a result, the Board is storing the assessment of workplace violence risks required by OHSA in a section of the student safety/transition plans. This information is not stored anywhere else that I have been advised.

68. Since the Board, pursuant to Section 32.0.3(3)(a), is required to provide the JHSC/DWM with a copy of the written workplace violence risk assessment, the Board must therefore provide the portion of the safety/transition plans that deal with risk of workplace violence to the JHSC. Of course, the Board may withhold any identifying personal information that is not necessary to complying with its obligations under OHSA. In fact, the Association does not object to withholding of such information.

69. With respect to the Board's arguments that the JHSC has no role in "putting pen to paper" or being involved with the development of the student safety plans, and the argument the JHSC should not be "overseeing" the work of the experts involved in developing students safety/transition plans, the Board is technically correct that the JHSC has no legal authority with respect to the development of student safety plans.

70. However once the JHSC is informed of the risk assessment of workplace violence (which must include information about the specific risks of workplace violence and specific measures to control those risks), the JHSC has the statutory right to make recommendations about measures and procedures concerning health and safety of workers. This includes the specific measures, such as safety plans, the Board has in place with respect to the specific risk of workplace violence from a specific student. If the Board chooses to implement those recommendations, then this may result in the Board changing a portion of a student safety plan. If the Board chooses to disagree with those recommendations, OHSa sets out what they must do in that circumstance. That is very different from saying the JHSC has the 'final say' in the development of the safety plan.

### **III. Production of Emergency Evacuation Response Plans**

71. The Association seeks production of emergency evacuation plans, such as the "School Emergency Response Plan" to the JHSC/DWM. The Association submits that production is required pursuant to the Board's obligation to provide all reports respecting health and safety (section 25(2)(l)).

72. The Board agrees that it should provide the School Emergency Response Plan to the JHSC. However, the Board expressed a concern about the term 'evacuation plans' as not being an agreed-upon term, and noted caution should be exercised in requiring disclosure of such documents as blanket term in the circumstances.

73. As the only specific document identified to me was the School Emergency Response Plan, I confirm only that the Board is required to provide that document to the JHSC. In the absence of any other identified documents, I do not make any other orders.

74. However, I do offer the following observation, given the comments about the possibility that some documents may be school specific. Disclosure to the JHSC under section 25(2)(l) is premised only on whether the document concerns occupational health and

safety. The fact that it may only concern health and safety in a portion of the workplace, does not seem to be a basis to preclude disclosure.

#### **IV. Mould Masks**

75. The Association submits the Board must provide mould masks to the DWM while performing his/her duties of inspection.

76. Section 25(2)(h) of OHSA provides that an employer must “take every precaution reasonable in the circumstances” for the protection of a worker. Section 25(1) requires that an employer provide protective devices as prescribed.

77. A Ministry of Labour resource document, titled “Alert: Mould in workplace Buildings confirms mould is a health risk. Specifically, it states:

Workers and the public may be exposed to mould on water-damaged building materials inside buildings and during building maintenance and repair operations. The most common types of mould are generally not hazardous to healthy individuals – but some moulds may be hazardous to certain individuals.

People who have asthma, bronchitis, hay fever, other allergies, or have weakened immune systems are more likely to react to mould. The most common symptoms are runny nose, eye irritation, skin rash, cough, congestion and aggravation of asthma. Symptoms usually disappear after mould exposure stops. Most often there are no known long-term consequences to workplace exposures.

78. I have also been provided with a Government of Canada resource document which also confirms that mould is a health risk, and recommends the wearing of an adequate breathing mask when engaged in clean-up of the mould in case it becomes air-borne.

79. The Association notes that a DWM may come across mould, for example in a cupboard or corner, in the course of his/her workplace inspections. As a health risk, mould is something the DWM would be expected to report upon. The Association submits the DWM should be provided a mould mask, so that the DWM has it ready in case he/she encounters

mould. The Association submits that the mould may become air-borne through disturbances caused by the DWM's investigation.

80. The recommendation to wear a mask is for the task of cleaning up mould. The DWM is not expected to clean up the mould.

81. The concern is only if the DWM happens to come across mould in the course of his/her investigation. There is no evidence before me upon which I could conclude that the likelihood of exposure to mould, including through the accidental disturbance of it, is any greater for the DWM than the employees who work in that workplace. The same cupboard the DWM is inspecting could well be used by another staff member. The Association does not suggest all staff members must be provided masks in order to comply with the Board's obligation to provide appropriate protective equipment to workers and take all reasonable precautions. Nor is there any evidence that there are areas which would be inspected by the DWM where employees working in that area are provided mould masks (even though they are not engaged in the cleaning of mould). If it is not essential for them, I do not see how it can be considered a reasonable precaution for the DWM.

82. I find the Board is not required to provide the DWM with a mould mask for the purposes of carrying out workplace inspections as a general requirement.

## **V. SUMMARY**

83. In summary, I find the Board is required to produce to the JHSC/DWM the portion of documents such as student safety/transition plans which relate to the assessments of the specific risk of workplace violence from specific persons and the specific measures to control such risk.

84. The Board must also produce to the JHSC/DWM School Emergency Response Plans.

85. The Board is not required to provide DWMs with mould masks for the performance of workplace inspections.

86. I am seized with respect to any issues relating to implementation of my award.

Dated this 12<sup>th</sup> day of June, 2018.

"Jasbir Parmar"

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JASBIR PARMAR