

October 2, 2020

OLRB dismissal of unions' case leaves Ontario's flawed back to school plans without legal scrutiny

TORONTO – Ontario's four major education unions are deeply concerned by the decision of the Chair of the Ontario Labour Relations Board to dismiss our health and safety case on the re-opening of schools based on jurisdictional grounds without even hearing the substantive evidence. The case presented by the Association des enseignantes et des enseignants franco-ontariens (AEFO), the Elementary Teachers' Federation of Ontario (ETFO), the Ontario English Catholic Teachers' Association (OECTA), and the Ontario Secondary School Teachers' Federation (OSSTF/FEESO) challenged the lack of effective health and safety measures in the province's *Guide to Re-Opening Ontario Schools*, which set out the legal requirements for re-opening schools.

The OLRB complaint sought to establish provincial standards on class size and distancing, cohorts for students and teachers, masking, ventilation and busing. Evidence to be presented, by knowledgeable experts, confirming that these issues must be addressed immediately in order to make our schools safe included:

- That class size be set at 15-20 students, wherever two-metre distancing cannot be maintained in a given classroom.
- That cohorts for student-to-staff contacts be set at 50 and be applicable not just to students but also staff.
- That the American Society of Heating, Refrigerating and Air-Conditioning Engineers' "School and University Reopening Standards", as updated by that Association from time to time, be set as the minimum standards for ventilation in schools and other education worksites, as they have been set by the Province for Ontario's Court System. ASHRAE is an internationally respected standard setting organization.
- That the Ontario Public Services Health and Safety Association's busing and transportation standards as set out in the PSHSA document "Health and Safety Guidance During COVID-19 for Student Transportation Employers", be set as the minimum standards for busing and other forms of student transportation. The Association is created and supported by the Minister of Labour. We do not understand why the Minister would decline to follow its guidelines.
- That all students be required to wear non-medical masks at all times during the school day, subject to reasonable exceptions for medical accommodations. Masking is fundamental to safety in this pandemic.
- That all standards ordered by the MOL in respect of COVID-19 be reviewed every month for continuing compliance with the best science available at the time, will be updated as the original issuing body updates them, and may be replaced by more stringent or detailed standards as the science dictates and the Ministry, in consultation with stakeholders, determines.

The OLRB's decision means that educators must put forward individual complaints about health and safety violations, one at a time, for adjudication. This is not a sensible approach to the problem of the pandemic.

Despite this decision, the four major education unions will continue to demand that the Ministry of Education, Ministry of Labour and the Ford government protect educators, students and families from the COVID-19 pandemic. While the government is clearly preoccupied with finding ways to avoid responsibility, we believe Ontarians expect them to do everything they can to make schools as safe as possible, especially as we see cases of COVID-19 surging in our communities.

A media conference with union leaders, legal counsel and health and safety experts will be held next week.