ETFO STEWARD’S MANUAL

Your Key Roles and Responsibilities
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How to Use this Manual

At the outset, the most important and concise piece of this Manual is the Steward Checklist (on the next page). This list intends to outline the main tasks in your role as steward. Note that your local may require additional tasks that are specific to your bargaining unit. Please feel free to add to this list as needed. Immediately following the Checklist is a “Cautions to Stewards” list, which outlines what you should not do in your role as steward. Together, these two lists provide a thorough framework from which you can understand your overall role as steward.

The Manual is then organized into six parts. Part I – Steward Roles and Responsibilities – covers more general steward responsibilities. In Part II – Collective Bargaining and Part III – Grievances, more specific responsibilities related to these processes are outlined. Relevant background information is also provided in these sections as needed.

When it comes to professional and other employment issues, the steward’s responsibilities are less extensive. Therefore, at the outset of Part IV – Professional Issues and Part V – Other Employment Issues, tables are included that summarize the steward’s key responsibilities in each section (e.g., Education Law, Human Rights, Insured Benefits, Long Term Disability, etc.). These responsibilities are repeated at the beginning of each section (within Part IV and Part V) and are formatted in short bulleted lists in **bolded italics**. Background information then follows to provide a sense of context should you need it.

Part VI includes a glossary, list of acronyms and a list of relevant statutes for your reference.

Note that any references to a school’s “administrator(s)” or “administration” throughout the Manual refer to principal(s), vice-principal(s) and/or worksite supervisor(s).
Read through and study your collective agreement thoroughly – pay attention to:
• the grievance procedures – timelines are particularly important;
• specific items to monitor – make a list if that is helpful; and
• anything that seems obscure – contact your local office to clarify.

Understand your role in upholding and monitoring the application of the collective agreement – and the local released officers’ and local executive’s roles in enforcing it.

Develop an understanding of the day-to-day practices at your workplace as they relate to the application of the collective agreement.

Ensure that the collective agreement is being upheld.

Understand the roles of your local released officers, local executive and other locally appointed officers as well as any other local services, programs and resources available.

Become familiar with the main functions of the ETFO provincial office service areas – Collective Bargaining, Communications and Political Action, Equity and Women’s Services, Professional Learning/Curriculum and Professional Relations (refer to “Programs and Services” in the ETFO Reference Book).

Understand and effectively fulfill your role as steward on the school staffing committee or other committee(s) to which you are designated.

Introduce yourself as the steward to your school administrator and remember that:
• while acting in the role as steward, you and your school administrator are equals; and
• your role is to advocate on behalf of members, not act as a neutral buffer.

Establish how you will communicate (e.g., meetings, bulletin board, email, etc.) with your members – consider:
• what systems are available and accessible to you and the members;
• the varied content of your communications and your goals; and
• how best to deliver time-sensitive information.

Develop a sense for which questions from members you:
• can answer from your existing knowledge;
• can answer once you’ve looked into it; and/or
• should refer to the local or provincial ETFO office.
Where a member approaches you about an issue concerning any of the following, promptly refer the matter to Professional Relations Services:

- Ontario College of Teachers complaints;
- performance appraisals;
- criminal allegations that are related to the member’s employment responsibilities;
- civil suits related to allegations of assault/abuse which arise out of the member’s employment responsibilities;
- difficulties with students, staff, parents and administration;
- Employment Insurance;
- ethics and professionalism;
- leaves (e.g., pregnancy/parental, stress leave, sick leave, etc.);
- harassment;
- human rights issues;
- discrimination;
- long term disability;
- pension plan;
- negligence;
- resignation and termination;
- Workplace Safety and Insurance Board.

Some of these issues are discussed in Part IV – Professional Issues.

Keep a file of, and review, other pertinent documents as needed (e.g., employment-related board policies, local constitution/bylaws, etc.).

In preparation for your responsibilities during bargaining:

- develop an understanding of the interaction of central and local bargaining processes;
- be aware that your responsibilities leading up to, and during, bargaining will be to support various aspects of both central and local bargaining, as directed by your local released officers, local executive and the provincial office; and
- know that your role as steward will become more involved throughout the entire bargaining process and particularly in the case of a work-to-rule.
Cautions to Stewards

Stewards should not:

- Pressure a member who you think may be violating the collective agreement; instead, follow-up with your local released officer(s) to determine next steps.

- Direct members to refuse to carry out a duty assigned to them by school administrators; instead, members should be advised to comply and that you will contact the local to follow-up in terms of a possible grievance.

- Be involved in the evaluation process of another member; this is the role of a local released officer.

- Favour one member over another; it is the legal duty of the union, including stewards, to fairly represent members.

- Let personal animosity get in the way when working with school administrators; instead, try to understand the administrator’s point of view without losing track of your own.

- Get sidetracked during a discussion on behalf of member(s) when dealing with school administrators; instead, stick to the issue at hand.

- Ask a member any questions, or encourage a discussion, about a criminal allegation; instead, direct the member to Professional Relations Services at the ETFO provincial office.

- Hold the position of teacher-in-charge or acting principal/vice-principal during your term(s) as steward; know that this would be in contradiction with your duty to fairly represent members.
Stewards should not:

- Attend a meeting with a member and school administrator(s) as the member’s advocate; instead, this should be the role of a local released officer.

- Represent or directly advise members on other professional matters, e.g., Ontario College of Teachers investigations, human rights complaints, occupational health and safety concerns or parent-teacher relationship conflicts; instead, members should contact the local office and/or Professional Relations Services as soon as possible for assistance.

- Provide advice to members on other employment issues, e.g., denial of EI benefits, concerns related to insured benefits, personal pension planning, Workplace Safety and Insurance Board claims, etc. instead, members should contact the local office and/or Professional Relations Services as soon as possible for assistance.
As steward, you may find yourself in the position of referring members to the ETFO provincial office, particularly for professional and general employment issues (as discussed in Part IV – Professional Issues and Part V – Other Employment Issues).

Usually, for such issues, *members should be directed to contact Professional Relations Services staff* who can be reached through the general ETFO phone numbers provided below.

**Elementary Teachers’ Federation of Ontario**

136 Isabella Street  
Toronto ON  M4Y 0B5  
Telephone: 416-962-3836  
Toll Free: 1-888-838-3836  
Fax: 416-642-2424  
[www.etfo.ca](http://www.etfo.ca)
PART I – STEWARD ROLES AND RESPONSIBILITIES
What is a Steward?

The steward is a communicator, representative, advocate and organizer. The steward is ETFO’s representative in the workplace, someone who welcomes new members and represents a positive union presence. Members in difficulty can rely on their steward, who is also an on-site co-worker, to provide assistance.

While you may be the steward for your workplace, ideally you will also be able to draw on the talents and skills of co-workers to help accomplish some of the roles and responsibilities outlined in this section. A team approach makes the best use of human resources, helps alleviate the steward’s workload and promotes continued active participation in ETFO by its members.

If you are new to being a steward – don’t panic – you are not expected to be an expert on everything. Members will understand if you need to double check your facts or refer a question to someone else. This manual is intended to help you understand and sort out the information that is important to your role as steward.

As well, once you are in the role of steward – don’t worry – you are not expected to be the steward forever. You can assist in recruiting your successor by encouraging those who show particular interest in union activities.

Steward’s General Roles

The following are general roles of the steward:
- Communicator;
- Advocate;
- Organizer; and
- Representative.

In order to be an effective steward, it is important to understand how these roles are interlinked. Be mindful of these links as you go through the responsibilities of each role.

Steward’s General Responsibilities

The general responsibilities under each role are outlined below. Specific responsibilities with respect to school committees, grievances, collective bargaining, professional issues and other employment issues are discussed in further detail later in this manual.
Communicator

Being an effective communicator is critical and relies on acting in a timely manner. A vital part of the steward’s role is to connect the local and/or provincial office(s) of the union with members in the workplace and make the local and/or provincial office(s) aware of members’ needs. With the timely transferring of information, ETFO can be responsive and accountable to its members.

General responsibilities under this role include:
- refer (as appropriate) member workplace concerns to your local’s representatives dealing with work-related issues;
- refer members to services, programs and resources offered by the local or provincial and to individuals or committees that will support members’ needs;
- ensure that information from the local or provincial office is posted, copied and/or distributed promptly (e.g., monthly stewards’ mailings that announce upcoming events or ongoing campaigns); and
- ensure that all members are aware of upcoming union meetings or other union activities and do your best to prevent, decrease or eliminate obstacles that might impede full participation (timing/location, access to childcare/transportation, etc.).

Representative

The duty of fair representation is the legal obligation of a union, in the persons of any of its agents, to treat fairly the bargaining unit members it represents. This duty applies to stewards as well as local and provincial elected or appointed officials, provincial staff and any other agents of the union. The fair representation of members requires that a union not act in a manner that is arbitrary, discriminatory or in bad faith.

General responsibilities under this role include:
- be equitable in your treatment of members and don’t play favourites;
- take all concerns seriously, even if the merits of a case may initially seem unfounded or unfavourable;
- identify small problems before they become big ones;
- contact your local or the provincial office if you need advice and assistance;
- promptly refer members who may be dealing with professional-related issues to local and/or provincial representatives who can provide assistance and support;
- ensure that local released officers are promptly informed about workplace issues that may lead to a grievance or of any ongoing practices that could have short or long-term consequences to members;
- keep a general and organized log of your activities as a steward including issues, queries, discussions, meetings, etc. – write things down while they are fresh to help sort out who did, or said, what and when;
- keep confidential log/notes in a secure location – provide the notes to the local office upon request;
- be proactive in your monitoring of how the collective agreement is being implemented at your workplace – failure to challenge violations of the collective agreement can have serious consequences;
- do your best to promote a positive image of the union among staff members; and
- during negotiations, keep members informed about membership meetings, votes and the progress of negotiations as informed by the local or provincial.
Advocate

Another key role is to advocate on behalf of your members. In other words, advocate for members rather than mediating disputes between members and school administrators.

General responsibilities under this role include:
- help members understand that you are their advocate – and not a neutral buffer;
- serve as required on the school staffing committee – your role here is to be an active advocate for members rather than a neutral party;
- establish a relationship with the principal/vice-principal which is cordial and business-like;
- ensure that your principal/vice-principal is observing the collective agreement provisions on the rights of stewards (e.g., representation on committees, access to information, bulletin boards, etc.); and
- be aware of your right to be forthright with your school administrators on employment-related issues.

Organizer

Political action campaigns have become increasingly important for everyone employed in education. The steward plays an active role in ensuring that campaigns at the local level are a success.

General responsibilities under this role include:
- encourage members to become involved with the union;
- ensure that local and/or provincial campaigns are a success through effective communication with members at the worksite; and
- during bargaining, should the need arise, fulfill the role of picket captain (refer to the Work-to-Rule section in Part II – Collective Bargaining).
Sources of Authority

Your Collective Agreement

Your collective agreement grants you the ability to carry out your work as a steward in two ways. First, its “recognition clause” identifies ETFO as the bargaining agent responsible for dealing with your employer in all collective agreement matters. You, as a steward, are a designated representative of that bargaining agent.

Second, your agreement may contain various provisions which refer to the specific rights of stewards, for example, access to the employer’s premises and equipment, the use of a bulletin board, the right to sit on school committees, etc. It is important to become familiar with these portions of your agreement and to make use of the rights they give you.

Note that your collective agreement will include both central and local provisions. In some cases, your collective agreement may have superior provisions to central provisions (e.g., pregnancy or parental leave top-up). Superior provisions will be outlined in the local section of your collective agreement and there should be a reference to such provisions in the central section.

The Ontario Labour Relations Act (OLRA) and the School Boards Collective Bargaining Act (SBCBA)

Under the law, ETFO and the steward as a representative of ETFO are subject to various rights and responsibilities with respect to the overall way members are represented. The employer and its agents are also subject to rights and responsibilities (such as not interfering in union affairs).

Under the OLRA, every member of a union has the right to: participate in the lawful activities of their union; and be free from discrimination or penalty by an employer as a result of members exercising their union rights under the OLRA.

The OLRA and SBCBA set forth the rules under which boards and unions must operate in bargaining and strikes. The SBCBA mandates a system of two-tier bargaining at central and local tables for teacher and occasional teacher bargaining units. ETFO is the designated bargaining agent for teachers and occasional teachers at all English-language public district school boards.

There is also a provision for a central bargaining table for ETFO Designated Early Childhood Educator (DECE), Education Support Personnel (ESP) and Professional Support Personnel (PSP) locals where legislative requirements are met. ETFO does represent DECE, ESP and PSP members at the local and central tables.
Relevant Case Law

There is a substantial body of case law around the rights of stewards and other union officials. Arbitration boards, labour boards and the courts have upheld the principle that unions and their agents have a right to carry out their legitimate functions in representing the membership. Blatant attempts to intimidate union officials are simply not permissible as demonstrated by applicable case law.

Union officials must also play by the rules, of course. While they may be forthright in challenging management in order to uphold their members’ rights – indeed, it is their job to do so – malicious or dishonest statements about the employer’s conduct are not permissible.

The Education Act

The Education Act stipulates a limited number of provisions that touch upon the day-to-day working lives of the members in your bargaining unit.

Your Reputation as Steward

Establishing a rapport with everyone in the workplace including members of other bargaining units such as school secretaries and custodians, will make a steward’s work a lot easier. The best union stewards are those who develop reputations for honesty, approachability and attention to member concerns. Though they should be knowledgeable about the union’s activities in general and the collective agreement in particular, ETFO stewards are not expected to know the answer to every question. Skilled stewards know when to answer a query, when to get more information and get back to a member, and when to refer the member to the ETFO local or provincial office.

ETFO’s Strength

ETFO’s larger profile has an impact on the way a steward is perceived by members, administrators and the community at large. Taking advantage of appropriate opportunities to promote positive ETFO endeavours is key in building the union’s strength.
As the official ETFO presence in the workplace, you may be the only union representative members ever deal with on a regular basis. Some members will attend only a few union meetings or other union functions throughout their career. Some will not attend any at all. But all members will be in contact with the union in some form through their steward. Being an effective steward can be challenging as well as tremendously rewarding.

The following are specific tips for working with members:

• provide early support and information to those new to the profession – be aware of the challenges they may face, on top of the many government initiatives wrought upon the education system – part of your job is to make them aware that their union can help them cope;
• be accessible – introduce yourself to all new members in the school and explain your roles and responsibilities to them;
• be approachable – find the time to listen to a member’s concerns and/or conflict they may be having with the employer;
• provide information in-person if possible (e.g., refer to the bulletin board but don’t use it as a substitute for giving information personally);
• ensure that members have timely access to information on ETFO programs – many ETFO programs serve the needs of its diverse membership including members who experience marginalization in the workplace;
• know how to pronounce names – be attentive to how names are pronounced, if you are uncertain or concerned that others are pronouncing a name incorrectly, respectfully ask the member directly how their name is pronounced;
• use proper gender pronouns – be attentive to how others refer to a person – if you are still uncertain or concerned that the incorrect pronoun is being used, respectfully and privately ask the person the pronoun they use;
• be open and honest – members should not feel that their union is hiding things;
• listen attentively do not interrupt or argue, ask yourself, “Have I asked all key questions and met my objectives? What are next steps now that I have more information?” End on a courteous note and thank the member for their time;
• know your facts before you speak – if you do not know, take the time you need to fact-check and then get back to the member;
• build trust – your discretion will be relied upon – respect members’ rights to privacy, avoid gossip and do not take sides in conflicts between members;
• maintain confidentiality – you may be privy to information that is private and confidential; and
• be aware that there will be members who dislike unions in general or who think that “professionals have no place in unions.”
A steward’s role with respect to your school administrator(s) is two-fold. As an employee, your relationship with your administrator(s) is that of employee to supervisor and you must accept, within the rules, the work-related direction of your administrator(s). **In your role as an ETFO steward, however, you and your administrator(s) are equals.**

The moment you walk into your school administrator’s office to discuss union business as a steward, your position has changed. In the same way that the law recognizes a union and an employer as equals with respect to the collective bargaining relationship, so too, you and your school administrator, as representatives of these two bodies, are equals when sorting out workplace situations.

Each of you has a job to do. The administrator must manage the school and **as steward you must assist the local in ensuring that members’ rights are being upheld and the collective agreement is being enforced.** While on occasion this may put you and your administrator on opposite sides of an issue, your effectiveness as a steward depends on your ability to wear your “steward’s hat” when you need to.

**TIPS**

The following are tips for working with school administrators:
- you have a legal right to be doing what you are doing – your members are counting on you to assist them with their concerns;
- communicate clearly and as required – a simple communication mix-up in the workplace can create unnecessary grief;
- don’t let personal animosity get in the way – avoid rivalry and point-scoring;
- stay focused – don’t let yourself be sidetracked during a discussion on behalf of a member/members;
- try to understand the administrator’s point of view but don’t lose track of yours;
- keep your statements factual and be prepared to back them up with evidence; and
- keep in touch with your local office and seek its intervention as needed.

There is a wealth of case law involving incidents between stewards and supervisors, and on the right of union leaders to speak out on workplace issues. While all such cases turn on their individual merits, some general conclusions can be drawn. Arbitrators have generally held that stewards may be both forthright and forceful in the defense of their members’ workplace rights. They enjoy considerable leeway to challenge management – after all, it is their job to do so.
School Committees

School/Board Committees

In many cases a steward is automatically a member of the school staffing, supervision or other committee. The collective agreement may place the steward on the committee by virtue of the office held as steward. On rare occasions, stewards may serve as the official union representative on a board-wide committee. In either case, there are certain factors to bear in mind when serving on any official school or board committee.

As the steward on a committee, you will be held to a higher standard – fellow members may expect you to have an in-depth knowledge of their rights, the collective agreement and the various ways in which management’s actions can be challenged. For school administrators, the steward is the on-site representative of the union. The law also holds the steward to a certain standard due to the duty of fair representation.

Tips for working with Committees:

- as steward you are not just any member of a committee – you are an active advocate for ETFO members;
- establish a good working relationship with all members on the committee;
- be aware that clear ground rules on meeting procedures should be established early on and in a cooperative fashion (e.g., timing and length, chairing, quorum, decision-making, prompt production and distribution of materials such as the agenda, background documents and minutes);
- if, during a meeting, a statement has been made or an action taken (especially by an administrative representative) that is in conflict with the collective agreement or problematic in another way, you should raise a concern and follow-up with a local representative – silence can sometimes be taken as agreement;
- vet minutes (or other relevant documents) to ensure the accurate recording of deliberations and your interventions – disputes over accuracy should be noted in writing so that there is a record of the union’s objection – this can save time later on rather than trying to sort out mix-ups after the fact;
- do everything possible to work with fellow committee members to address problems that might arise – where a feasible and fair solution does not seem possible, advise the local office that there is a problem; and
- as many school committees are mandated by the collective agreement, stewards can assist the local collective bargaining committee in identifying how the collective agreement might be improved in the next round of bargaining (e.g., ways that the committee could give members more authority in the process).
In August of 2006, the ETFO Annual Meeting passed the following motion, currently under Section 1 – Rights and Privileges of Active Membership in the Constitution:

An active member who accepts a position as a temporary or acting principal/vice-principal may not also be the workplace steward for the duration of the appointment.

While these temporary administrative positions – teacher-in-charge and acting principal/vice-principal – are quite dissimilar, the practical issues for stewards are largely the same.

Thus, the advice to stewards within teacher bargaining units is **not to hold the positions of teacher-in-charge or acting principal/vice-principal during the term(s) of office as steward, given that the main role of the steward is to assist in monitoring and enforcing the rights of members at the school.**

**Rationale**

It is arguable that there are pitfalls for any ETFO member who chooses to hold teacher-in-charge or acting principal/vice-principal positions, let alone a steward. To expect a teacher, however, to simultaneously wear the hat of the steward and of teacher-in-charge or acting administrator, is to place that teacher in a potential conflict of interest situation.

Union members specifically charged with protecting the rights of their colleagues, quite simply, should not be “directing” another union member’s work, even on a temporary basis. This function, by definition, has the potential to bring the steward into conflict with the employer, i.e., the school administrator.

Conflict could occur in any number of ways. For example, in responding to an unusual situation in the school, a member who is in the role of teacher-in-charge or acting vice-principal could be placed in the position of having to interpret some aspect of the collective agreement – timetables, supervision duty, nutrition breaks, etc. – which that same member as steward, might see in an altogether different light.

This could lead not only to an erosion of trust among colleagues but trouble down the road should the matter result in grievances or other formal action. Stewards, as official ETFO representatives, are bound under the *Ontario Labour Relations Act* by the duty of fair representation, making the “dual hat” role even more untenable.
Collective Agreement Provisions

Many teacher collective agreements contain provisions which deal with short-term administrative replacements in cases where the principal and vice-principal are absent. Typically, the teacher-in-charge would receive a per diem allowance for the position, though in a few cases a lump sum yearly payment is stipulated. For the most part, strict limitations are placed on the number of consecutive instructional days during which an individual can so serve. The provision of release time for the teacher-in-charge or occasional teacher coverage, is sometimes addressed.

There is no implication that teachers-in-charge are somehow to be considered “management” or to carry out such traditional management functions as the evaluation or discipline of employees. That role is clearly reserved for principals and vice-principals. Teachers-in-charge remain full-fledged members of the bargaining unit, with the same rights and protections as other teachers.

In the case of acting principals and vice-principals, the problem is more obvious, and more potentially dangerous. Many collective agreements contain provisions which permit acting principals and vice-principals to be appointed. Typically, these positions are time limited (e.g., a full school year less one day); the member appointed remains within the teacher bargaining unit and retains the right to return to their previous bargaining unit assignment at the end of the appointment. Most agreements stipulate that the individual is not to be responsible for evaluating or disciplining staff.

Nevertheless, both the teacher-in-charge and the acting vice-principal are placed in the position, however temporarily, of broadly overseeing the day-to-day work of other teachers in order to ensure the smooth running of the school in the absence of regular administrators. Therein lies the potential conflict with the role of steward.
PART II – COLLECTIVE BARGAINING
Role of Stewards in Bargaining

As steward, leading up to, and during bargaining, you are the front-line person at the workplace in terms of fielding members’ questions. The support you provide will be extremely important in making headway towards improvements in the local and central collective agreements. You will be expected to assist with procedures related to both local and central bargaining. Therefore, you will be supported by the local and provincial offices with the resources you need to effectively undertake your responsibilities.

In preparation for and during negotiations, a steward is expected to:

- encourage members to complete and return local and central bargaining surveys;
- provide input to the collective bargaining committee on workplace issues that may be addressed in the preliminary submission and/or during negotiations;
- ensure bargaining information from the local and provincial offices reaches all members;
- stay on top of key developments in bargaining;
- ensure that information reaches members;
- engage members in discussions about the issues;
- take the time with members to alleviate concerns and fully answer all questions - feedback, questions and concerns that you gather can ultimately shape larger strategic questions;
- provide reassurance and support to members who are new to the process;
- ensure member questions are answered and member concerns or feedback are communicated to the local;
- inform the local office about any written or verbal communication from management about negotiations;
- get the word out about meetings and other events – encourage participation;
- ensure that the local has alternative numbers/addresses for each member;
- provide an up-to-date member list to the local office including information about leaves and special circumstances, and a list of long term occasional members – crucial for information dissemination, setting up votes, etc.;
- arrange school visits by local released officers, the local executive and bargaining team members;
- help convene and participate in meetings – meetings may be called to provide an update on the status of negotiations, distribute pertinent information, gather member feedback for the local executive and collective bargaining committee;
- participate as needed in a stewards’ network;
- encourage members to volunteer for bargaining support committees;
- attend all steward/picket captain training sessions or arrange for an alternate;
- assist in conducting and participate in strike and ratification votes; and
- should an impasse lead to a strike, fulfill the role of picket captain and assume other roles that may be required.
Preparations for Central Bargaining

The parties to central bargaining are ETFO and the Ontario Public School Boards’ Association (OPSBA). The Crown (provincial government) is required to participate in central table negotiations.

Parties to central bargaining must meet within 15 days of notice to bargain to determine central table items, unless a later date is mutually agreed upon. Where the parties do not agree on central items any of the parties can apply to the Ontario Labour Relations Board (OLRB) to determine central table items.

Negotiations begin within 15 days of reaching agreement on central items (or on the decision of the OLRB).

The following are the main steps in ETFO’s central bargaining preparation process:

1. Conducting a membership survey to establish the central bargaining goals.

2. The central bargaining goals are approved by the Provincial Executive and Representative Council.

3. Presentation to local presidents and chief negotiators of a summary of central table items once established at the central bargaining table.

As steward, your responsibilities in the preparations for central bargaining are to:

- Encourage members of your bargaining unit to provide input to the central bargaining survey – note that the central survey process may gather input in a variety of ways (e.g., an online all-member survey, random sample telephone surveys and face-to-face focus groups).

Good Faith Bargaining

Similar to the local bargaining process, the parties to central negotiations must bargain in good faith and make every reasonable effort to agree on central terms.
Preparations for Local Bargaining

The parties to local bargaining are ETFO and the school board. The following are the main steps your local should follow in the local bargaining preparation process:

1. Conducting a local membership survey to determine desired changes to the local collective agreement.

2. Preparation of a preliminary submission by the local’s Collective Bargaining Committee that will be used during negotiations with the school board.

3. Ratification of the preliminary submission by the membership through a vote.

The preliminary submission, i.e., the initial document given to the school board outlining the union’s proposals for changes to the collective agreement, reflects input from many sources. As steward, your responsibilities are to:

- **Identify issues which have arisen in the course of monitoring and enforcing the collective agreement, i.e., clauses that are not working well or being regularly misinterpreted and provide this information to the local.**

- **Encourage members of your bargaining unit to complete and return their bargaining surveys - it is an important step in building the kind of grassroots involvement in the process that could be critical later on.**

Note that due to the central and local bargaining provisions as set out under the School Boards Collective Bargaining Act - local bargaining may only begin within 15 days of the determination of central items (refer to next section on Central Bargaining).
Good Faith Bargaining

The parties engaged in bargaining are required to bargain in good faith and make every reasonable effort to make a collective agreement. While bargaining in good faith is required both at the local and central levels, your responsibilities will be to monitor the school board’s communication behaviour at the local level. In this respect, the steward’s responsibilities are:

- Be aware that the employer must bargain only with the union and not with individual employees.
- Immediately let your local office know about any written or verbal communication from management about negotiations.

This does not mean there should be no communication from management to employees during bargaining at all. It means that the rules for what management can say, and how, are strict. For example, if the Director distributes a letter to staff outlining the board’s view of how things are going at the bargaining table, you should call your local office at once.

Bargaining in good faith also means:

- The parties must meet to bargain - while there are occasionally legitimate reasons for canceling a scheduled bargaining session, it is a contravention of the OLRA to simply find endless excuses not to meet.
- The parties must engage on a serious level over issues that have been tabled - just going through the motions of bargaining is called “surface bargaining” and is a contravention of the OLRA.
- The employer cannot refuse to disclose relevant information requested by the union during bargaining. Data on payroll and staffing levels, for example, are essential in understanding the overall cost of a settlement.

Allegations that either party has failed to bargain in good faith are taken before the Ontario Labour Relations Board, which has remedial powers ranging from a minor warning to an order which requires the guilty party to correct its behaviour.
Impasse, Strike Votes and Ratification

In the case of impasse, strike votes and ratification, your responsibilities as steward will be similar, whether or not these occur at the central or local bargaining tables.

Impasse

When the parties reach an impasse in negotiations, an application for conciliation can take place any time after the notice to bargain is given. Your responsibilities if there is an impasse during bargaining will be to provide information and convene any meetings as required by the local or provincial executive.

Strike Votes

In the case that the decision is made by the union to hold a strike vote, as steward, you will likely be expected to provide assistance with strike vote procedures. Unions have wide latitude in the way they conduct votes – by mail, at a mass meeting, online, etc. Certain basic rules of fairness apply:

• strike votes must be by secret ballot;
• all bargaining unit members are entitled to vote;
• if the vote is not taken by mail the time and place for voting must be reasonably convenient;
• voters must have ample opportunity to cast their ballots; and
• in order to authorize strike action, more than 50 per cent of those voting must vote in favour.

Ratification

Once a settlement has been reached, with or without a strike, a ratification vote of the membership is required by law. The same procedural rules which apply to strike votes also apply to ratification votes. As steward, you will be expected to communicate with members to attend any meetings related to ratification, as well as vote.
Negotiations, either centrally or locally are never easy, and settlements tend to go down to the wire, though statistically, only a small fraction of these negotiations end in a strike or lock-out. Settlements do happen and education sector strikes are still rare.

Any type of strike action is always a weapon of last resort and a decision to authorize a strike is made in a democratic and consultative manner. It is important to emphasize this to members when faced with the possibility of going on strike.

A strike can include a full withdrawal of services and/or a gradual withdrawal of services. Legal strikes can therefore take the form of a work-to-rule.

Note that strike action may be called for at the central and/or local level. Where strike is called for at the local or central level, members will be required to abide by the work-to-rule. As steward, you will be required to assist, likely as the picket captain, where required for both central and local work-to-rule actions.

Picket Captains

At a certain point prior to any strike action, the decision may be made to identify picket captains who will be responsible for strike action at various sites. This might be you. A work-to-rule strike action is especially difficult and time-consuming for stewards/picket captains. The rules can be very complex, and at times it may seem as though the number of work-to-rule anomalies within individual schools is overwhelming.

The provincial strike coordinator will work with the local office to help the steward sort each and every one of these out so that the strike action can be carried out in a consistent manner across the local. The provincial strike coordinator will be assigned to your local to help the provincial collective bargaining staff liaison during a bargaining period.

Depending upon the type of strike action, the steward/picket captain may be responsible for:

- attending meetings with other stewards;
- monitoring any work-to-rule strike actions at individual work sites;
- attending training on picket line protocols, strike pay reporting, safety and security during job action, etc.;
- relaying suggestions, comments and concerns of staff members;
- assisting with the setting up of a picket schedule for members;
- ensuring that alternate picket captains are assigned at the school if there is more than one shift at the school for picket duty;
- ensuring that members who are unable to picket request an exemption;
• assisting with the approval/denial of all picketing exemptions;
• assisting with the development of alternative duties for those members who are exempt from regular picket duties;
• picking up and distributing picket signs;
• distributing materials to picketers on the lines such as the daily newsletter, bargaining updates, notices of special events, etc.;
• providing feedback to strike headquarters;
• monitoring morale on the picket lines;
• informing strike headquarters of the names of all non-supporters in the strike – this includes providing detailed documentation, which may later be used as evidence during any subsequent disciplinary proceedings;
• distributing, verifying and submitting the duty record cards of staff members for the payment of strike pay; and
• distributing strike pay to staff members.

Background

The Ontario Labour Relations Act (OLRA) prohibits strikes and lockouts during the term of the collective agreement and requires that a “no strike” and lockout clause be included in the collective agreement.

Conciliation is a process under the OLRA in which either side, during collective bargaining, may initiate in order to break an impasse (refer to “Impasse, Strikes Votes and Ratification” section above). A provincially-appointed conciliator is brought in to meet with the parties in an effort to resolve the dispute. Failing resolution during conciliation, either party can apply for a “no board report” with the Minister of Labour. It is legal to strike or lock-out beginning on the 17th day after the Minister mails the “no board” notice. The term “no-board” refers to the decision by the Minister not to appoint a conciliation board to deal with the dispute.

In order to go on strike legally, three conditions defined in the OLRA must be met:

1. The collective agreement must no longer be in force;
2. 16 days have passed since the Minister of Labour has mailed a “no board” notice; and
3. A strike vote must have been taken and passed.

A strike vote may be taken either:
   a) within 30 days before the expiry of the agreement; or
   b) any time after expiry.
Under the School Boards Collective Bargaining Act (SBCBA), five days’ written notice to the other party is required in respect of a local or central strike/lockout. Five days’ notice is also required to the other party if there is a change to the nature or scope of a local or central strike/lockout that will result in the complete withdrawal of instruction or services/closure of one or more schools of a board, respectively.

For teachers and occasional teachers, a strike is now defined in the SBCBA under Section 35(2). A strike is defined as follows:

“any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed or may reasonably be expected to have the effect of curtailing, restricting, limiting or interfering with,

(a) the normal activities of a school board or its employees,
(b) the operation or functioning of one or more of a school board’s schools or of one or more of the programs in one or more schools of a school board, or
(c) the performance of the duties of teachers set out in the Education Act or the regulations under it, including any withdrawal of services or work to rule by teachers acting in combination or in concert or with a common understanding.”
PART III – GRIEVANCES
Grievance Procedures

Steward’s Responsibilities

A grievance is generally defined as a complaint about the interpretation, application, administration or alleged violation of the collective agreement. Grievances are the linchpin of collective agreement enforcement. While most workplace disputes involving the collective agreement are resolved without having to use this formal route, at the end of the day the grievance procedure is any employee’s best defense against arbitrary treatment.

The investigating and filing of grievances is the responsibility of the ETFO local executive. Stewards, however, play a vital role in making sure that the grievance procedure is being used to the best advantage. A steward’s role in handling grievances is generally as follows, though each local will have its own procedures:

• know your collective agreement;
• be knowledgeable about grievances in general and about your own grievance procedure in particular – timelines are important;
• educate members, especially new members, about the grievance procedure – emphasize that it exists to assist them and is an orderly and well-tested way of resolving disputes;
• work with the local office to ensure that the proper local official (often the president) is informed immediately about actual or potential violations of the agreement – an alert steward can often ensure that small disputes or misunderstandings do not escalate;
• be receptive to member concerns about all workplace issues;
• be proactive in your monitoring of how the collective agreement is being implemented at your workplace – failure to challenge violations of the collective agreement can have serious consequences (refer to the sub-section Past Practice and Estoppel in the section on Enforcing the Collective Agreement);
• be supportive of grievors and potential grievors – having an empathetic steward on-site can mean a lot to a member who is in conflict with the employer;
• some members are reluctant to consider grievances as a way of resolving an issue – do your best to explain that the grievance procedure is an orderly way of handling disputes and is a normal part of labour relations;
• keep a steward’s log on the day-to-day practices at your workplace as they relate to the application of the collective agreement – your ETFO local executive, ETFO Collective Bargaining Liaison or legal counsel may need such information in formulating arguments to support a grievance.
Background

Both local and central agreements form part of the collective agreement. Grievances may be filed locally for violations of the local agreement and centrally for violations of the central agreement.

The Legal Basis of the Local Grievance Procedure

Your local grievance procedure was not unilaterally imposed by either the union or the employer – it was negotiated locally. By law, collective agreements must have a mechanism for the resolution of disputes which results in final, binding decisions. Under the Ontario Labour Relations Act, arbitrators who adjudicate grievances have the authority to interpret and apply human rights legislation and other employment-related statutes.

Some grievances involve more than just a violation of the agreement. For example, a grievance about termination or denial of a leave or an inappropriate work assignment might also involve an allegation of discrimination based on one of the prohibited grounds in the Human Rights Code (refer to the section of this Manual on Human Rights under Part IV: Professional Issues). An arbitrator handling the case would have the right to decide whether discrimination had indeed occurred. Similarly, an arbitrator would have the authority to decide, for example, whether a board’s actions with respect to a member’s parental leave rights was in violation of the Employment Standards Act.

Types of Grievances

The most commonly used grievance is the individual grievance. For example, an individual grievance might be filed when a member is improperly disciplined or terminated, is not given the right amount of preparation time, is improperly denied a leave, is not given full credit for previous experience, etc.

Many agreements also contain separate processes for a group grievance, e.g., when a number of members are not given the proper preparation time or a payroll problem results in multiple errors in pay cheques.

There will also be a mechanism in the collective agreement for resolving a policy grievance (sometimes called a union grievance), which involves issues which affect the union as a whole such as the deduction of dues, a board policy or general practice, etc.

Grievance Steps and Arbitration

The theory behind the steps in the grievance procedure as outlined in your collective agreement is to bring the two sides together (board and union) in order to discuss and hopefully, resolve the issue. The steps proceed from discussions at a lesser level of authority within the board’s hierarchy to a higher level, e.g., a meeting with the school administrator(s), then with a superintendent, etc. There will be stipulated time limits for each of these steps and failure to observe these time limits can have serious consequences such as losing the ability to pursue the grievance any further.
If no resolution is achieved, the matter can be referred to a single arbitrator or, should the agreement permit this, a three-person arbitration board with a nominee from each party. This process can often be quite lengthy, since good arbitrators tend to be booked well in advance. Members may rely on their stewards to provide moral support at this point, as the glacial pace at which the grievance is proceeding can be quite frustrating.

It is also possible to make use of the expedited arbitration process available under the OLRA. This would enable a hearing to be scheduled within three weeks of referral to arbitration but is not suitable for all cases as there is no control over the choice of arbitrators.

**ETFO and Grievances**

ETFO has a good record of satisfactorily settling member complaints before they reach the formal grievance stage and of winning cases that do make it to arbitration. While grievances should never be filed for frivolous reasons, a union that never files grievances is probably not doing its job. The collective agreement is only as good as the union’s willingness to enforce it.

**Common Member Questions about Grievances**

**Who “owns” a grievance – the union or the grievor?**

The collective agreement is a contract between the designated bargaining agent for employees (i.e., the union) and the employer (i.e., the board). The union owns the grievance, not the individual employee.
My principal has told me to do something that I know is a violation of the collective agreement. What do I do?

Except in very limited circumstances, the rule is “obey now, grieve later.” The principle behind this rule is that work can’t stop while the grievance procedure is being pursued and an employer needs to have the authority to direct the work until the grievance is determined. An employee can be disciplined for insubordination when failing to comply with a direct order – even if the employer turns out to have been wrong in instructing the employee to do the work. In such cases, the usual course of action is to:

- inform your principal why you object to the direction received;
- advise your principal that their direction may be in violation of the collective agreement;
- comply with the direction; and
- immediately contact your local office to report the violation.

There are exceptions. You can refuse work where:

- compliance with the instruction would be illegal;
- there are reasonable grounds for believing the work will endanger you or someone else - in such a scenario, you can exercise your right to refuse under the Occupational Health and Safety Act. Note that the right to refuse unsafe work does not apply to a teacher if the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy (refer to the Occupational Health and Safety section of this Manual, under Part IV for further information).

If you believe one or both of these exceptions apply, you should immediately contact your local office for advice on next steps.

Can the employer retaliate against me if I complain or grieve?

No. Your right to grieve is protected by the OLRA and the collective agreement.
Steward’s Responsibilities

Enforcement of the collective agreement ultimately rests with the local president and/or locally designated representative. It is the local president and/or representative – in consultation with the assigned provincial collective bargaining liaison – who typically launch grievances or other formal actions needed to keep the board accountable. This cannot take place, however, without the assistance of stewards.

The steward’s role in upholding the agreement has both a passive and an active component. Stewards must wait to hear from members who believe their rights are being violated and must then take appropriate action. Equally important, however, is actively seeking out violations, whenever and wherever they may be.

In this role, stewards should actively:

- **Get to know the process your local has in place for steps the steward should take if the steward believes the collective agreement has been breached** (e.g., calling the local president, grievance officer or other locally designated representative, filling out a report sheet, etc.).
- **Monitor the implementation of the agreement, both through responding to members’ concerns and actively seeking out whether its provisions are being observed.**
- **Promptly communicate to the local and keep track of any problem areas so that they can be addressed immediately and also noted for inclusion in the next bargaining round.**
- **Work with the local to identify those areas of the collective agreement where the application may need extra scrutiny.**
- **Respond to the request from your local and/or the provincial office to gather school-specific information on particular issues surrounding implementation of the collective agreement.**

Monitoring Specific Issues

While each collective agreement is different, here are just a few of the areas which stewards may be able to help monitor:
PART III – GRIEVANCES / Upholding the Collective Agreement

Working Conditions
- Are the staffing provisions being properly applied?
- Are class sizes within negotiated levels?
- Is the staffing committee functioning properly?
- Is everyone, including itinerants, getting the proper preparation and lunch times?
- Are there anomalies or inequities in supervision duties?
- Are instructional time and length of school day provisions being properly and consistently applied?
- Are provisions relating to the scheduling of staff meetings being observed?
- Are extra-curricular activities genuinely voluntary?
- Are members being pressured to perform medical procedures they have a right to refuse?
- Is the working environment safe, healthy, and free of discrimination and harassment?

Leaves
- Are leaves which require the school administrator’s or board’s approval being properly, consistently and equitably handled?

Pay
- Are there glitches in the payroll system?
- Are members receiving the proper amounts? On time?
- Are experience and qualifications, as appropriate, being properly calculated?

Rights and Entitlements
- Is the steward being given the stipulated resources in order to carry out their duties?
- Is all the relevant information being shared with the steward?
- Are school-level surplus and transfer processes as set out in the agreement being implemented properly?
- Are in-school professional development funds being properly allocated in accordance with the agreement?
- Are evaluations being carried out in accordance with the agreement?

Background

Past Practice and Estoppel

For a number of reasons, no violation of the agreement, even if it seems innocuous, should be allowed to pass unchallenged.

- First, rights are rights, freely negotiated between the two parties to the collective agreement, the union and the employer.
- Second, permitting the agreement to be breached sends the wrong message and encourages such behaviour.
- Third, failing to enforce one’s rights under a collective agreement can have potentially damaging consequences, in that it can make enforcement of those rights more difficult in future. This is so because of the role which “past practice” plays in labour relations decisions.
The past practices which are developed under an agreement can affect your rights in two ways.

The first is when a provision in the collective agreement is ambiguous. When this happens, an arbitrator may look at the way the provision has been interpreted and applied by the parties in the past – their past practice – in order to arrive at a ruling on its meaning. Should that ruling go against the union the only recourse is to bargain a change in the wording the next time the agreement is negotiated so that it reflects the intended meaning.

Even where a provision is clear; however, the past practice of the parties may have an impact. This occurs in the context of the legal doctrine of “estoppel.” Estoppel can happen when one of the parties, through its words, deeds or lack thereof, indicates that it will not be insisting on its strict legal rights with respect to some aspect of the agreement. The other side, for its part, relies on that representation to its own prejudice. In such a case, an arbitrator might rule that the party which did not insist on its rights is now prevented or estopped from doing so, at least temporarily.

For example, a collective agreement stipulates that teachers are to be given 240 minutes of preparation time per week. A school administrator with a scheduling problem approaches the local president and suggests that 230 minutes is the best she can do, and that the teachers are in agreement. The local agrees to the arrangement. By doing so, the local may have created a situation in which an arbitrator may rule that the union has forfeited its right to insist on the original provision.
PART IV – PROFESSIONAL ISSUES
Outline of Steward Responsibilities on Professional Issues

For the following issues, it is the steward’s responsibility to ensure that the member contacts the appropriate ETFO representative who can assist them. In most cases, stewards should advise members to contact their local office and/or the provincial office’s Professional Relations Services (PRS). PRS offers an on-call service during business hours, and can be contacted at the following numbers: 416-962-3836 or 1-888-838-3836.

Outline of Steward Responsibilities on Professional Issues

Education Law
- Become generally familiar with relevant parts of pertinent legislation.
- Do not hesitate to refer a question to the local or provincial office.
- Develop a feel for the kinds of questions most frequently asked.

The Ontario College of Teachers (OCT)
- Stress to all teachers – particularly new teachers – that full-blown investigations by the OCT are not an everyday occurrence.
- Provide assurance that, in general, members may contact ETFO for support in college proceedings which might put the member at risk of limitations, restrictions, suspension or loss of their certificate.
- Let the member know that the provincial office can provide details on legal support for members being investigated by the OCT.
- Advise the member that they cannot ignore a complaint and that it is in their best interest to contact PRS as soon as possible.
- Where possible, follow-up with the member to see how they are doing and to ensure that they have contacted PRS.

Human Rights
- Contact the local office or PRS as early as possible about situations in which the union may need to intervene.
- If you are approached by a member who believes they have been subjected to discrimination or harassment, tell them to contact the local office or PRS as soon as possible so they can understand their options for having the issue reviewed and addressed.
- Familiarize yourself with the ways that discrimination and harassment are addressed at your workplace.
- Workplace accommodation may result in stigma and resentment directed at the member requiring such accommodation – in such cases, remind everyone of members’ legal rights, the union’s duty to ensure those rights are upheld and the employers’ obligations.
**Outline of Steward Responsibilities on Professional Issues**

### Occupational Health and Safety
- Become generally familiar with reporting requirements for health and safety concerns and incidents as well as injury, illness and accidents. In particular, have an understanding of the reporting requirements for workplace violence and harassment, and serious student incidents.
- Keep an open line of communication with the local office about health and safety concerns and incidents.
- Advise members to contact the local office or PRS for advice and support as soon as possible.
- If a member is approaching a potential work refusal situation, tell them to contact the local office for support – the member will need to report their concerns to the school administrator(s) right away and request immediate assistance.

### Parent-Teacher Relationships
- Encourage members to discuss their concerns with either the local president or PRS staff.
- Provide moral support to members in these situations, particularly where the principal does not appear to be providing adequate support and protection.

### Teacher Performance Appraisal (TPA)
- Remain alert for any and all communications coming from either the local or provincial office with respect to the TPA and distribute to members as needed.
- In speaking with members, stewards need to stress the need to move quickly in keeping the local office or PRS informed about any concerns with individual evaluations.
- Monitor the board’s implementation of the TPA – inappropriate evaluations or those which fail to follow due process, can be grieved – in concert with the local office, your role is key to ensuring that the process is as fair to teachers as possible.
- Where a member tells you that they have received an unsatisfactory rating, ensure that the member seeks support and advice as soon as possible from the local or PRS.
A steward should do four things if contacted by a member facing an allegation:

1) Advise the member to make the following statement:
   “I am willing to co-operate but I’m not able to meet with you now or to give a statement until I have a chance to consult with my Federation. Please give me your name and phone number so that my representative or I can get back to you.”

2) Advise the member to contact PRS and the local immediately and state that the call is urgent.

3) Provide moral support to the member even though the member will not be able to discuss the case with anyone until the provincial office has been contacted.

4) Advise members not to discuss any details of the allegation with you, other staff, parents, students, community members, etc.

Other responsibilities for stewards include:

• If you are contacted by anyone as a potential witness to the alleged conduct, contact PRS for advice.

• When a member is accused of assault, abuse or other serious charges and is removed from the school, you or local ETFO officers may be called upon to reassure the member’s colleagues that due process is being observed and that the union is assisting the member.

• Be mindful that the member will be under tremendous stress and may need moral support (e.g., someone to accompany them home after being advised of the allegation).

• Remind other members that a member facing an allegation is presumed innocent until proven guilty.

• Do not ask the member any questions about the case or otherwise encourage a discussion about it – the member will have been advised not to make any statements about the allegations or the circumstances surrounding their case.
Steward’s Responsibilities

- *Become generally familiar with the relevant parts of the pertinent legislation.*
- *Do not hesitate to refer a question to the local or provincial office.*
- *Develop a feel for the kinds of questions most frequently asked.*

Education law is a big topic but the specific provisions that touch upon the day-to-day working lives of school board employees are actually fairly limited in number.

Background

The principal statute governing education at the primary and secondary levels is the *Education Act*. It is here that the basic structure is outlined – governance, powers and responsibilities, lines of authority, and funding. Numerous regulations to the *Education Act* exist, many of them dealing with the minutiae of funding and taxation but some of which also deal with teachers’ duties, qualifications, length of the school year, etc.

The easiest way to access any current provincial act or regulation is online, through the provincial government’s website: [www.gov.on.ca](http://www.gov.on.ca). Click on “Law and Safety”; this will take you to a section where you will find a link to e-Laws, a source of official copies of Ontario statutes and regulations.

The following is a limited list of acts and regulations which may be applicable to the bargaining unit members at your workplace. The intention is not to overwhelm you with information that you may or may not require in the course of your role as steward. The intention is simply to provide you with a sense of some of the statutes that you may at some point want to reference in your role as steward:

- *Education Act*
  - Regulation 298: Operation of Schools
  - Regulation 274: Hiring Practices
  - Regulation 304: School Year Calendar and Professional Activity Days
  - Regulation 99/02: Teacher Performance Appraisals
- *Teaching Profession Act*
- *Ontario College of Teachers Act*
- *Sabrina’s Law* (an Act to Protect Anaphylactic Pupils)
- *Ryan’s Law* (Ensuring Asthma Friendly Schools)
Other Resources

ETFO’s Professional Relations Services (PRS) has developed numerous bulletins – *PRS Matters Bulletins* – some of which cover issues related to these statutes. *PRS Matters Bulletins* are available on the ETFO website: [www.etfo.ca](http://www.etfo.ca). These documents are intended to provide members with important information on professional relations issues. You can refer members to this resource as well as refer to them yourself. The following is a list of some examples, which relate to education law:

- #40 *Revised Teacher Performance Appraisal*
- #29 *Epipen Fact Sheet – Sabrina’s Law*
Steward’s Responsibilities

While the mandate of the Ontario College of Teachers (OCT) is clearly a broad one (and one which has been steadily expanding), questions from members to stewards will likely be confined to just a few areas. Chief among these is the issue of complaints against teachers. **Stewards should stress to all teachers – and particularly to new teachers – that full-blown investigations by the OCT are not an everyday occurrence.**

An investigation by the OCT is a serious matter. Any member who does become the subject of an investigation should be advised to contact the ETFO provincial office immediately and speak to Professional Relations Services (PRS) staff on-call for advice prior to providing any response to the OCT. The number to call is: 416-962-3836 or 1-888-838-3836.

If you are approached by a member who has been notified of a complaint against them at the OCT you should:

- **Provide assurance that, in general, members may contact ETFO for support in college proceedings which might put the member at risk of limitations, restrictions, suspension or loss of their certificate.**

- **Let the member know that the provincial office can provide details on legal support for members being investigated by the OCT.**

- **Advise the member that they cannot ignore the complaint and that it is in their best interest to contact PRS as soon as possible since there are important timelines imposed by the OCT for their response.**

- **Where possible, follow-up with the member to see how they are doing and to ensure that they have contacted PRS.**

Be aware that a member who becomes the subject of an investigation should:

- be mindful of the deadline that the OCT has provided for responding as extensions are only granted in exceptional circumstances;
- not make contact with the person who filed the complaint; and
- not make a statement regarding the complaint.
Background

Complaints against Teachers

The OCT has the authority to investigate and act upon complaints in three areas: professional misconduct, incompetence and incapacity.

**Professional Misconduct**
The criteria for what constitutes professional misconduct are set out in Regulation 437/97: Professional Misconduct, under the *Ontario College of Teachers Act*. There are 27 criteria and they range from abuse of a student to failing to keep records as required under a teacher’s professional duties. A panel of the OCT’s Discipline Committee (or individuals drawn from a roster of trained panelists) determines if the teacher is guilty of professional misconduct or is incompetent and, if so, determines and imposes the appropriate order. Orders may include:
- revoking a member’s Certificate of Qualification and Registration;
- suspending a certificate for up to 24 months;
- imposing specific terms, limitations or conditions on a certificate;
- reprimanding, admonishing or counseling the teacher;
- fining the member up to $5,000;
- publishing the findings in a manner considered appropriate;
- fixing costs to be paid by the member; and
- fixing a period during which the member is ineligible for reinstatement or variation of the committee’s order.

**Incompetence**
A panel of the Discipline Committee (or individuals drawn from a roster of trained panelists) decides, after a hearing, whether a member displayed in their professional responsibilities, a lack of knowledge, skill or judgement or disregard for the welfare of a student of a nature or extent that demonstrates that the member is unfit to continue to carry out the member’s professional responsibilities or that the member’s certificate should be made subject to terms, conditions or limitations.

**Incapacity**
A panel of the Fitness to Practise Committee (or individuals drawn from a roster of trained panelists) decides, after a hearing, whether a member is suffering from a physical or mental condition or disorder such that the member is unfit to continue to carry out their professional responsibilities or that the member’s certificate should be made subject to terms, conditions or limitations.
Steward’s Responsibilities

Unions have a role in assisting their members with accommodations, raising concerns of discrimination and harassment and duty not to contribute to discrimination in the workplace, for example, by not bargaining discriminatory provisions into their collective agreements and by putting up barriers to accommodation plans.

As steward, you may be the first contact concerning complex issues of discrimination and/or harassment (e.g., of complaints about other members’ accommodations or member-to-member harassment). Your vigilance will be of extreme importance.

- **Contact the local office or Professional Relations Services (PRS) as early as possible about situations in which the union may need to intervene – this will enable ETFO to act appropriately and in accordance with the law.**

- **If you are approached by a member who believes they have been subjected to discrimination or harassment, tell them to contact the local office or PRS as soon as possible so they can understand their options for having the issue reviewed and addressed.**

- **Familiarize yourself with the ways that discrimination and harassment are addressed at your workplace – human rights issues affect members in a wide variety of ways and it is important to be alert to the possible issues.**

- **Workplace accommodation may result in stigma and resentment directed at the member requiring such accommodation – whether by the board, administrators and/or colleagues – in such cases it is important to remind everyone of members’ legal rights, the union’s duty to ensure those rights are upheld and the employers’ obligations.**

Background

Ontario’s *Human Rights Code* prohibits discrimination and harassment in the province’s workplaces (as well as in other areas such as services, goods and facilities and housing accommodation). The *Code* is a “quasi-constitutional document” that applies in workplaces, institutions of education and vocational associations (such as unions and associations like ETFO) and self-governing professions (such as the Ontario College of Teachers).
“Prohibited Grounds” of Discrimination

Section 1 of the Code states that every person has the right to equal treatment with respect to employment without discrimination because of:

“race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offenses, marital status, family status or disability.”

The list – referred to as the “prohibited grounds” for discrimination – is at times expanded by amendments (e.g., “gender identity” and “gender expression” were added in 2012).

Discrimination can involve more than one prohibited ground at once. For example, issues of race discrimination may be covered by the prohibited grounds of race, ancestry, place of origin, colour, ethnic origin or citizenship, depending on the facts. Discrimination that involves the intersection of grounds may entail a different analysis than would be applied for the grounds separately. For example, discrimination and/or harassment experienced by a racialized woman might involve issues from the intersection of race and gender that are not necessarily the same as race discrimination or gender discrimination separately compartmentalized.

Harassment

“Harassment” is defined in the Code as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” Generally, this has been interpreted as meaning that there must be more than a single incident of the behaviour which gives rise to the complaint. However, there are also cases in which a single, egregious, incident has been found to be harassment.

Harassment on any of the prohibited grounds in the Code is a violation of the law. This includes conduct such as sexist or racist jokes, gender or race based taunts, inappropriate comments about appearances based on grounds like sexual orientation or religion, place of origin or conduct such as creating or simply forwarding emails that contain jokes, cartoons or information that ought to reasonably be known to offend on one of the prohibited grounds. The types of harassment are not limited. In the age of cyber-bulling especially, new ways of harassment are constantly arising.

The Occupational Health and Safety Act includes provisions for workplace violence and workplace harassment. The provisions for workplace harassment include workplace sexual harassment. Refer to the section on Occupational Health and Safety below for further information.
The Duty to Accommodate

Employers are subject to a “duty to reasonably accommodate to the point of undue hardship” with respect to the prohibited grounds under the Code. An employer must take steps to eliminate the consequences of any general practices or rules in the workplace that have the effect of being discriminatory.

A board must fulfill its duty to reasonably accommodate individual employees under the Code. This means that it must look at each case on an individual basis. Every employee is unique and it is not always equal or equitable under human rights principles to treat all employees the same.

The duty to accommodate arises often in matters of disability. This may take on various forms because disability is a ground that is constantly evolving. In addition to the Code, the Accessibility for Ontarians with Disabilities Act also addresses accommodation of disability in workplaces.

The duty to accommodate is also addressed based on other grounds. For example, Ontario Human Rights Commission policy directs employers to offer options for time off without loss of pay or using vacation time for religious holidays (i.e., religious accommodation) as well as develop and/or change rules, practices and facilities in order to accommodate inclusivity and trans people. Any exceptions must be legitimate in the circumstances.

What amounts to undue hardship is also determined on a case-by-case basis. In assessing what constitutes undue hardship, this refers to “cost, outside sources of funding, if any, and health and safety requirements, if any.” A large employer with a sizable budget (such as school boards) will have difficulty claiming undue hardship for most reasonable accommodations. Undue hardship must be provable, not speculative. Members and their unions also have a responsibility to work with the employer and ensure that sufficient information is shared and to co-operate in identifying appropriate elements of an accommodation plan.

Addressing Discrimination

Grievance Procedures

There are different ways to address discrimination and harassment issues. Where the collective agreement includes anti-discrimination procedures, a grievance may be filed by ETFO on behalf of the member. An arbitrator has jurisdiction to interpret and apply human rights legislation. The member can also file an application to have the matter heard at the Human Rights Tribunal (formerly called a “complaint” to the Human Rights Commission).

Each case will have different considerations as to choice of forum to address the problem – including timelines, issues of who will have carriage of the complaint (in a grievance it is ETFO) and issues of remedies.
Ontario Human Rights Tribunal
Under the Code an individual has the right to make an application for a complaint to be heard directly by the Tribunal, whether or not the collective agreement includes anti-discrimination procedures. If a grievance is filed as well, the Tribunal will likely put the Tribunal application in abeyance to avoid duplicating litigation. Grievances can be filed alleging a breach of the Code, whether or not the collective agreement expressly says so, and arbitrators have the power under the Ontario Labour Relations Act to apply and interpret the Code and to order human rights remedies.

Other Resources
For further information, please refer to PRS Matters Bulletins:
- #74 – The Ontario Human Rights Code – Right or Requirement; and
- #30 – Workplace Accommodations
Steward’s Responsibilities

The sooner a health and safety issue can be identified, reported and dealt with, the sooner everybody in the school community can be better protected. The support of a steward can assist in the timely reporting and resolution of concerns and incidents.

- **Become generally familiar with reporting requirements for health and safety concerns and incidents as well as injury, illness and accidents. In particular, have an understanding of the reporting requirements for workplace violence and harassment, and serious student incidents.**

- **Keep an open line of communication with the local office about health and safety concerns and incidents – the local can provide advice and support as well as call the provincial office for further assistance if required.**

- **Advise members to contact the local office or Professional Relations Services for advice and support as soon as possible – unresolved health and safety concerns can become normalized or may just get worse.**

- **If a member is approaching a potential work refusal situation, tell them to contact the local office for support – the member will need to report their concerns to the school administrator(s) right away and request immediate assistance.**

Background

The legislation for health and safety is not limited to the *Occupational Health and Safety Act* (OHSA). It also includes, for example, the *Education Act*, the *Human Rights Code* and the *Workplace Safety and Insurance Act*. ETFO provides a common sense health and safety website at etfohealthandsafety.ca where you can find basic information and additional resources.

There are numerous health and safety hazards in the school setting that could cause injury or illness. Leading hazards include: workplace violence and harassment and related mental stress; the causes of slips, trips and falls; and sources of infection. Head injuries resulting in concussion are an increasing concern. Other health and safety issues include: mould or water damage; electrical, construction dust and fumes; designated substances such as asbestos or lead; extreme weather such as snowstorms and heat waves; and repetitive strain and awkward postures leading to musculoskeletal injuries.
Emergency procedures for fire, lockdown, bomb threats and medical should be well understood by the school administrators and staff, with drills and risk assessments as required. Members need to have ready access to classroom keys and the required training, so they can participate effectively in an actual lockdown.

Measures and procedures for staff to report health and safety concerns and incidents should be clearly established and supported by the school administrator(s). Any health and safety concern, incident or near miss should be reported as soon as possible to the school administrator(s). It is the school administrators’ responsibility to investigate and deal with health and safety concerns.

It is important that a member who is injured on the job or who has a work-related illness completes and submits the required accident, injury or illness reports. This includes reporting injuries for which first aid is provided. Timely reporting can assist with member’s getting supports such as medical consultation, sick leave, a Workplace Safety Insurance Board claim, and accommodations for return to work (refer to the Workplace Safety and Insurance Board section under Part V – Other Employment Issues). Timely reporting also helps to make sure that hazards are investigated and dealt with as soon as possible to prevent future harm.

The potential seriousness of a work-related injury or illness can be masked by a member’s embarrassment or concerns about getting back to work. First aid support should be available. Medical attention, including emergency response, may be required. If the member needs medical attention, the school administrator(s) must arrange and pay for transportation.

Under the OHSA, an employee has the legal right to refuse work where health or safety is in danger. There are, however, limitations on a teacher’s right to refuse. Ontario Regulation 857: Teachers, under the OHSA, stipulates that the right to refuse unsafe work does not apply to a teacher if the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.
Parent – Teacher Relationships

Steward’s Responsibilities

Members may approach you to seek advice and support in managing troublesome situations with parents. If this is the case, in addition to your own skills, experience and common sense in these matters you should:

- Encourage members to discuss their concerns with either the local president or Professional Relations Services (PRS) staff who can assist in resolving concerns by ensuring that board authorities are involved in supporting employees in such situations.

- Provide moral support to members in these situations, particularly where the principal does not appear to be providing adequate support and protection to the member.

Background

“Parent harassment” is not a technical term recognized in law. However, in 1999 lawyer Daniel Carroll characterized it as follows:

“the use by parents of confrontational tactics which attack a teacher or which have the consequence of reducing a teacher’s ability to conduct himself effectively within the school and which harm the teacher’s well-being or professional reputation.”

“Criminal harassment” as defined in the Canadian Criminal Code Section 264(1)(2) includes:

a) repeatedly following the person from place to place;

b) repeatedly communicating with the person either directly or indirectly;

c) besetting or watching the person’s residence or workplace; and

d) engaging in threatening conduct directed at the person or any member of the person’s family.

ETFO takes the position that the board is responsible for protecting employees from unfair treatment by parents while ETFO is responsible for protecting members from unfair treatment by employers.

Professional Boundaries

A caring professional relationship always helps a student to learn. But relationships with students and their families have boundaries of time, place, purpose and activity. As part of maintaining a professional demeanor in all interactions with students and their families, members are advised to always maintain professional boundaries and avoid communications that could be interpreted as personal.
Members should be aware that any form of electronic communication can be used as evidence of conduct. Messages may be forwarded to a much wider audience – deliberately or unintentionally. It is prudent to avoid lengthy e-mail exchanges that consume a lot of time. In addition to increasing member workload, protracted exchanges may be prone to misinterpretation. It may be inadvisable to use a member’s personal computer for contact with parents or students. Members should always respect confidentiality and obtain permission to use/forward e-mail and other communications.

**A Member’s Responsibility**

Members must maintain appropriate boundaries while using social media and electronic communication. It is the member’s responsibility to:

- Avoid accepting friend requests from students;
- Avoid using endearments or nicknames;
- Avoid communicating late at night; and
- Avoid sharing personal photos, text or information.

Electronic communication or social media should not be used in an attempt to establish a more personal connection or to bypass more public and formal modes of communication.

**Other Resources**

*Parent-Teacher Relationships: Putting the Pieces Together* is a resource document that has been prepared by ETFO staff in response to calls from our members seeking help in dealing with unreasonable and often potentially damaging parent situations. It provides information on a variety of topics related to teachers’ interaction with parents, from how to establish positive relationships and manage conflict effectively, to responding in times of difficulty such as when a complaint is made to a school board or the Ontario College of Teachers. There are also suggestions for addressing extreme situations such as parent harassment, allegations of assault and suspected child abuse. It has been compiled from the experiences of ETFO staff and legal counsel in their work with teachers to plan and implement effective communications with parents and in defending teachers whose actions are challenged by parents.

*PRS Matters Bulletins* related to the issue of Parent-Teacher relationships include:

- #82 Professionalism - Advice to Members
- #76 Videotaping in the Classroom
- #73 Overnight School Trips - Advice to Members
- #64 Documentation and Personal Information Concerning Students
- #63 Practicing Caution - Guidelines for Electronic Communications
- #60 Assertive vs Aggressive Behaviour
- #59 Electronic Communication and Social Media
- #58 Individual Education Plan - Advice to Members
- #53 Bill 168 Protects Educational Personnel from Violence and Harassment in the Workplace
- #52 A Member’s Duty to Report Under the Child and Family Services Act
- #48 The Hidden Dangers of Electronic Communications
- #47 Use of Restraint - Advice to Members
- #46 Defamatory Websites and Social Networking Pages
- #44 Student Parent Custody Issues
- #41 Professionalism and Ethics
Steward’s Responsibilities

- Remain alert for any and all communications coming from either the local or provincial office with respect to the teacher performance appraisal (TPA) and distribute to members as needed.

- In speaking with members, stress the need to move quickly in keeping the local or Professional Relations Services (PRS) informed about any concerns with individual evaluations.

- Monitor the board’s implementation of the TPA – inappropriate evaluations or those which fail to follow due process, can be grieved – in concert with the local office, your role is key to ensuring that the process is as fair to teachers as possible.

- Where a member tells you that they have received an unsatisfactory rating, ensure that the member seeks support and advice as soon as possible from the local or PRS.

Background

ETFO supports accountability in the workplace and has never objected to the concept of performance appraisals per se. There are two TPA systems now in place. The TPA process for teachers who are new to the profession is a streamlined version of the TPA process for experienced teachers. It is a key component of the New Teacher Induction Program. Part X.2 of the Education Act, on the Teacher Performance Appraisal and Regulations 99/02 and 98/02 set out the legislated requirements.

Evaluation Cycles

Experienced teachers are subject to a five-year cycle for evaluation purposes. One of those five years will be designated an “evaluation year,” while the other four are not (though the school board is not precluded from conducting additional evaluations). In each evaluation year, the principal must conduct one evaluation. Teachers who are new to the profession are required to complete two satisfactory performance appraisals within the first twenty-four months of hire in order to successfully complete the New Teacher Induction Program.

There are provisions in the regulations for dealing with teachers who are on leave, seconded or teaching for only part of school year.
Other Resources

For further information, please refer to the following PRS Matters Bulletins:

- #40 Revised Teacher Performance Appraisal
- #45 Teacher Performance Appraisal for Experienced Teachers - Overview of the Process
- #49 Teacher Performance Appraisal For Experienced Teachers - Advice to Members
New Teacher Induction Program

Steward’s Responsibilities

- Let members know that they can contact the local or Professional Relations Services (PRS) at any time during the New Teacher Induction Program (NTIP) process.

- Where a member tells you that they have received an unsatisfactory or “development needed” rating, tell the member that they should seek support and advice as soon as possible from the local or PRS.

- If a member requires assistance with developing a response to address any inaccuracies, omissions or concerns about the evaluation in their report, tell them to contact the local or PRS for assistance with the response.

Background

Every board must provide the NTIP for certified new teachers (including teachers trained out-of-province) who have been hired into permanent positions (full-time or part-time). The NTIP must include the following components:

- orientation for new teachers by the school and school board;
- professional development and training in specified areas;
- mentoring programs established by the school board and principals; and
- two performance appraisals for each new teacher in the first year of teaching.

Successful completion of the NTIP is noted on the new teacher’s Ontario College of Teachers’ certificates and the public register. If a new teacher moves to a different board before completing the NTIP, the process will carry on with the new board. Information collected by the first board in the context of the NTIP and appraisal process will be forwarded to the new board.

Boards may use their NTIP funding to support second-year teachers in the NTIP. This will assist those teachers who need or would like more than one year of support to gain proficiency in the role. It is important to note that not all second-year teachers may wish or need to take part in another year of supports. Participating in an additional year of NTIP supports is optional and not related to the requirements of the TPA.
Other Resources

The Ministry of Education has produced two manuals regarding the NTIP:
  • Induction Elements Manual 2010, and

There are other helpful resources available on the Ministry of Education NTIP website:
  • Resource Handbooks for New Teachers, Mentors and Principals
  • Resources to Support New Teachers Professional Development
  • Individual NTIP Strategy Form and Board Plan
  • Teacher Performance Appraisal System
  • Frequently Asked Questions

These resources are all available at: http://www.edu.gov.on.ca/eng/teacher/induction.html

Also refer to ETFO’s PRS Matters Bulletin #34 – New Teacher Induction Program.
Steward’s Responsibilities

A steward may, on occasion, be the first person a member contacts when an allegation of abuse or of a criminal matter such as assault or sexual assault has been made. The steward’s role is two-fold – information and support. When a member is facing allegations and is contacted by police or Children’s Aid Society (CAS), the matter should be treated as URGENT due to the risk of criminal charges.

A steward should do four things if contacted by a member facing an allegation:

1. Advise the member to make the following statement:
   
   “I am willing to co-operate but I’m not able to meet with you now or to give a statement until I have a chance to consult with my Federation. Please give me your name and phone number so that my representative or I can get back to you.”

2. Advise the member to contact the Professional Relations Services (PRS) staff on duty at the provincial office and the local immediately and state that the call is urgent - there is an on-call system in place at the provincial office, which means that during business hours, a trained PRS staff person is always available to handle such calls.

3. Provide moral support to the member even though the member will not be able to discuss the case with anyone until the provincial office has been contacted.

4. Advise members not to discuss any details of the allegation with you, other staff, parents, students, community members, etc.

Other responsibilities for stewards include:

• If you are contacted by anyone as a potential witness to the alleged conduct, contact PRS for advice.

• When a member is accused of assault, abuse or other serious charges and is removed from the school, you or local ETFO officers, may be called upon to reassure the member’s colleagues that due process is being observed and that the union is assisting the member.

• Be mindful that the member will be under tremendous stress and may need moral support (e.g., someone to accompany them home after being advised of the allegation).

• Remind other members that a member facing an allegation is presumed innocent until proven guilty.
• **Do not ask the member any questions about the case or otherwise encourage a discussion about it – the member will have been advised not to make any statements about the allegations or the circumstances surrounding their case.**

## Background

### Emergency Legal Assistance

If a member requires “emergency” legal assistance outside of ETFO office hours, a voice message will provide the necessary instructions to reach an operator. The operator will ask a few questions and will contact a criminal lawyer, if appropriate.

What is an emergency?
- police are on the scene or on the way;
- the member is at risk of being arrested/incarcerated; and/or
- the member is facing criminal charges for an alleged criminal offence that arises directly from their employment responsibilities.

### Legal Support

Typically, a member is entitled to provincial legal support according to ETFO guidelines when an allegation arises directly from the performance of the member’s teaching duties and police or CAS are involved. When necessary, legal counsel will be appointed by the provincial office. Where appropriate, costs will be paid by the provincial office. Please note that if a member wishes to hire a lawyer other than the one appointed by the provincial office, the member will be responsible for all expenses for that lawyer.

Information regarding ETFO’s Criminal and Civil Legal Support Policy can be found in the ETFO Reference Book.

### Allegations of Physical and Sexual Assault

While there are a number of different criminal charges which are on occasion leveled against teachers, given their degree of interaction with students, members are particularly vulnerable to allegations and/or charges of physical assault.

Section 43 of the *Criminal Code* of Canada does provide a degree of protection to teachers:

“Correction of child by force

43 Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.”
Regardless, ETFO advises that members maintain appropriate professional boundaries at all times.

Typically, when a member is accused of any form of inappropriate behaviour of a sexual nature by a student, the board will suspend the member with pay until the matter is resolved. In the majority of cases the police or CAS are contacted by board officials to conduct the investigation. There are a number of sexual offences that fall under the categories of sexual interference, invitation to sexual touching and sexual exploitation, which are defined in the *Criminal Code*.

**Other Resources**

For further information, please refer to *PRS Matters Bulletins*:
- #88 – Allegations Involving CAS and/or Police: What to do if it happens to you;
- Special Edition – Allegations of Sexual Misconduct.
Outline of Steward Responsibilities on Other Employment Issues

Similar to professional issues, for the following issues, it is the steward’s responsibility to ensure that the member contacts the appropriate ETFO representative who can assist them. In most cases, stewards should advise members to contact their local office and/or the provincial office’s Professional Relations Services (PRS). PRS offers an on-call service during business hours and can be contacted at the following numbers: 416-962-3836 or 1-888-838-3836.

### Outline of Steward Responsibilities on Other Employment Issues

<table>
<thead>
<tr>
<th>Employment Insurance (EI)</th>
<th>If a member contacts you as a result of being denied EI benefits, refer them to the local office or PRS for further assistance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Life and Health Trust (ELHT)</td>
<td>Direct any member questions related to coverage, claims and general administrative inquiries on insured benefits under the ELHT to the Ontario Teachers’ Insurance Plan (OTIP) at 1-866-783-6847.</td>
</tr>
<tr>
<td>Ontario Teachers’ Pension Plan (OTPP)</td>
<td>Encourage members to contact OTPP at (416) 226-2700 or 1-800-668-0105 directly to receive information about personal pension planning.</td>
</tr>
</tbody>
</table>
| Workplace Safety and Insurance Board (WSIB) | • If a member contacts you with WSIB questions refer them to PRS – members will be directed to the WSIB on-call staff person, who is available during regular business hours.  
• Encourage the member to contact PRS promptly as the claims process is negatively impacted when a claim is not filed immediately, even though applicable legislation stipulates a six-month timeframe. |
| Long Term Disability (LTD) | • Refer members to the local as it is the primary resource for members with specific LTD questions including for information on applying for LTD - encourage members to contact the local as soon as possible as there are timelines for applying for LTD.  
• You may also direct members to:  
  - PRS – members should ask for the LTD counselor on-call in PRS; and/or  
  - OTIP’s Long Term Disability Claims Service department at 1-800-267-6847.  
• If a member contacts you about the denial of a claim, refer them to the local first (note that OTIP can also provide valuable assistance). Where an appeal is unsuccessful and benefits are denied, the member should contact PRS and ask for the LTD counselor on-call to request a review of their LTD claim to determine the merits of advancing their claim to arbitration or litigation. |
Steward’s Responsibilities

*If a member contacts you as a result of being denied pregnancy, family medical or critically ill child care leave benefits or other employment insurance related benefits, refer them to the local office or Professional Relations Services for further assistance.*

Background

**Employment Insurance (EI) and the Collective Agreement**

The 2014-17 Central Agreement contains provisions for a supplemental employment benefit (SEB), i.e., an EI top-up, for pregnancy, family medical and critically ill childcare leaves.

For pregnancy leave, all teachers, whether full-time or part-time, are eligible for up to eight weeks of full pay at their salary, during the pregnancy period. Teachers qualify for this benefit regardless of whether they qualify for EI and regardless of whether the days on leave fall during regular teaching days. For those who qualify for EI, the benefit provided by the board is a top-up to EI pregnancy benefits. Some local collective agreements include provisions for top-ups for adoption leave and/or parental leave.

For family medical leave or critically ill child care leave, all teachers are eligible for SEB to 100 per cent of salary for up to eight weeks, provided that the period falls within the school year and during a period for which the member would normally be paid.

**Eligibility**

EI is a federally-run program which provides benefits to workers who lose income due to:

a) job loss (regular benefits); or

b) sickness, pregnancy leave, parental leave, compassionate care leave and parents of critically ill children (special benefits).

Teachers whose employment continues from year to year are not eligible for benefits during non-teaching period (i.e., beyond the 194 days of the school year). Eligibility is based on working a minimum number of hours per year. Although all hours of employment, including part-time and casual employment, are captured for the purposes of determining eligibility, the minimum thresholds set have meant that some teachers with less than a full-time position sometimes have a difficult time qualifying for benefits.
Regular Benefits

In order to qualify for benefits, employees must have worked a certain number of hours during a specified qualifying period. The normal qualifying period is the last 52 weeks or the length of time since the employee’s last claim, whichever is shorter. The number of hours that an employee is required to have worked in this period ranges from 427 to 700 insurable hours, depending on the unemployment rate in the region. Additional hours are required for those who are deemed to be “new entrants” or “re-entrants” to the labour force.

Benefits are not paid to workers who are:
   a) not available for work; or
   b) on strike or locked out. Benefits are also not paid to workers who are fired for misconduct or who quit without just cause.

There is currently a one-week waiting period for benefits. The basic benefit rate, which is taxable income, is 55 per cent of the claimant’s average insured earnings up to a yearly maximum.

There are limited instances where members may earn income during the period they are receiving benefits; however, benefits are typically clawed back if this occurs. Members will need to be careful if they have an open claim for regular benefits and then pursue a claim for special benefits.

Special Benefits

For EI special benefits, 600 hours of insurable earnings are required in order to qualify.

Sickness Benefits
Sickness benefits of up to 15 weeks may be payable to members who are unable to work due to illness, injury or quarantine and are not entitled to paid sick leave.

Pregnancy and Parental Benefits
The EI program provides 15 weeks of pregnancy benefits and 35 weeks of parental benefits. It is also possible to combine these with other special benefits. Parental benefits are available to both birth and adoptive parents, assuming they qualify, and the 35 weeks can be taken by either parent or split between them. Should both parents choose to access benefits, only one would have to serve the one-week waiting period.

Compassionate Care Benefits
These benefits may be paid to a maximum of 26 weeks to a claimant who is absent from work in order to provide care or support to an ill family member who is at risk of dying within 26 weeks. To be eligible, a claimant must demonstrate that their regular weekly earnings have decreased by more than 40 per cent, and that they have accumulated at least 600 insurable hours in the last year or since the last claim.
Parents of Critically Ill Children
Eligible parents who take leave from work to provide care or support to their critically ill or injured child can receive benefits for up to 35 weeks.

Applying for Benefits
EI application forms are available at Service Canada Centres, or you can apply online at www.servicecanada.gc.ca. Members will need a Record of Employment (ROE) from the board. By law, employers must issue a ROE within five working days of learning that an interruption of earnings has occurred. However, even if the ROE has not yet been received, a potential claimant should file an application anyway so that there is no delay in the receipt of benefits and no prejudice regarding the calculation of the claimant’s insurable hours.

Further Information
ETFO has produced a booklet entitled Pregnancy and Parental Leave: A Guide to Rights and Responsibilities. A podcast of this booklet can be found at www.etfo.ca. As well, A Member’s Guide to Employment Insurance can also be found at www.etfo.ca.
Steward’s Responsibilities

Direct any member questions related to coverage, claims and general administrative inquiries on insured benefits under the ETFO Employee Life and Health Trust (ELHT) to the Ontario Teachers’ Insurance Plan (OTIP) at 1-866-783-6847.

Background

The ETFO ELHT Benefits Plan was negotiated in the 2014 round of central bargaining. Manulife is the insurance carrier. OTIP is the third party administrator and is responsible for answering members’ questions on a daily basis related to coverage, claims and general administrative inquiries related to benefits.

The ETFO ELHT Benefits Plan is mandatory for active, permanent full-time teachers, designated early childhood educators, professional support personnel and educational support personnel, as well as eligible full-time long term occasional teachers working in a full-time equivalent position (assignment of 90 consecutive days or longer). Permanent members in an assignment of less than full-time may opt into health and/or dental benefits and will be required to pay on a prorated basis for the benefits in which they elect to participate. All locals will have been transitioned into the plan as of August 31, 2017.

Mandatory coverage includes health and dental, basic life, and accidental death and dismemberment for full-time members while they are actively at work. Members on leave, or who are less than full-time, may waive health and dental coverage.

Coverage is fully paid by the ETFO ELHT plan for 1.0 FTE active, eligible members. Eligible members on a non-statutory approved leave may elect to continue to participate in the benefits on a 100 per cent member paid basis (i.e., member pays 100 per cent of the premium cost).
Steward’s Responsibilities

Encourage members to contact the Ontario Teachers’ Pension Plan (OTPP) at (416) 226-2700 or 1-800-668-0105 directly to receive information about personal pension planning – personal circumstances and employment history vary from member to member and what may be the best course of action for one member may not be the best course of action for another.

Background

The OTPP is Canada’s largest single profession pension plan and currently covers qualified teachers employed by a board or a designated organization, under a teacher exchange program, by the Ministry of Education or as a teacher by a ministry of the Ontario Government and pensioners and inactive members (former teachers who have retained pension benefits with OTPP).

The plan is jointly governed by the Province of Ontario and the Ontario Teachers’ Federation through a “pension partnership” set forth by law.

Please refer to the ETFO Reference Book for information on pension issues. Topics addressed include:

- Membership in OTPP;
- OTPP Contributions;
- Ontario Teachers’ Online Account;
- OTPP Inflation Protection (Indexed Pensions);
- OTPP Service;
- OTPP Direct Payments (Leaves);
- OTPP Reciprocal/Transfer Agreements;
- OTPP Survivor Pensions;
- OTPP Benefits; and
- Canada Pension Plan (CPP)
Steward’s Responsibilities

The Workplace Safety and Insurance Board (WSIB) provides compensation benefits for injuries or illnesses which arise out of, or are incurred in the course of employment.

- **If a member contacts you with WSIB questions refer them to Professional Relations Services (PRS) – members will be directed to the WSIB on-call staff person in PRS, who is available during regular business hours.**

- **Encourage the member to contact PRS promptly as the claims process is negatively impacted when a claim is not filed immediately, even though applicable legislation stipulates a six-month timeframe.**

Background

**WSIB Benefits**

There are several types of WSIB benefits payable, depending on the circumstances:

- **Loss of earnings (LOE) benefit** – paid at a rate of 85 per cent of net average earnings (i.e., 85 per cent of take home pay) to an annual maximum wage limit ($88,500 for 2017). Under the 2014-17 Central Agreement, a top-up to 100 per cent salary is possible if it was allowed in the 2008-2012 collective agreement. Top-up is not deducted from sick leave. Maximum top-up is for four years and six months at the August 31, 2012 salary.

- **Non-economic loss (NEL) benefit** – due to a permanent impairment from a work-related injury or illness, may be payable to compensate for the physical, functional or psychological loss the impairment causes. The benefit is determined when the condition has reached a point of maximum medical recovery. The amount paid is based on the degree of permanent impairment (as determined by the WSIB) multiplied by an amount determined according to the member’s age.

- **Health care benefits** (e.g., physiotherapy, prescription drugs and other health care costs associated with the work-related injury or illness) – WSIB may cover such expenses.

- **Survivor benefits** may be payable for spouses or dependents of members who die as a result of a workplace injury or illness.
Injury or Illness

Should a member be injured or become ill as a result of work, the member’s first priority is to seek proper medical attention without delay. The board or school administrator must also be informed promptly about the injury or illness in order to provide assistance, to fulfill their own obligations under the Workplace Safety and Insurance Act and to take measures to prevent further incidents. The member should be the person who completes the incident report. It is not sufficient for the employer to complete the report on the employee’s behalf as accurate and complete reporting of the incident is key.

Filing a Claim

Claims should be filed as soon as possible after being injured or becoming ill. There are time limits associated with filing a WSIB claim. The Workplace Safety and Insurance Act states that a claim must be filed within six months of the date of the accident or date the employee becomes aware they are suffering from the illness. However, it should be noted that the WSIB claim process is negatively impacted when a claim is not filed immediately. Filing immediately is also preferable to ensure the prompt application of benefits the member may be entitled to receive.

A claim is initiated when the WSIB receives the following forms:

- **Form 6** Worker’s Report of Injury/Disease
- **Form 7** Employer’s Report of Injury/Disease
- **Form 8** Health Professional’s Report

Return to Work

One of the stated aims of the current WSIB legislation is the early and safe return-to-work mandate. It has also been argued that one of the unstated aims is to limit the number of employees receiving benefits.

When a workplace injury or illness occurs, the employer and the employee are required to work together to achieve the employee’s early and safe return to appropriate employment. The union is also a crucial party to this tripartite process. Appropriate work is employment that the employee has the skills for, is within the employee’s physical abilities and which restores the employee’s pre-injury earnings where possible.
The injured employee is required to give consent for the release of functional abilities information to the employer. The employee's health professional, preferably a medical doctor, should complete the WSIB Functional Abilities Form and submit it to the employer. The section on restrictions and limitations should not be completed until the employee is able to perform modified duties in the workplace.

Communication between the member and the board is essential to the success of this process. An ETFO local representative should also be involved in any return-to-work discussion.

Depending on the nature of injury and employment, an injured member may be able to return to work on the day of the injury or soon after. Full recovery is not necessary if the work being returned to is safe and within the member’s functional abilities. On the other hand, the board is responsible for identifying and arranging appropriate employment for the member as soon as possible following a workplace injury or disease.

Injured members who refuse to participate in this process, or refuse to accept the board’s offer of an accommodated return-to-work placement may have WSIB benefits terminated.

**WSIB and Long Term Disability (LTD)**

In the event of a workplace accident a member may file a WSIB claim. If it is anticipated that the member is going to be away from work for a lengthy period of time because of the work-related injury, an application for LTD should also be made as soon as the need for a lengthy absence is medically determined. WSIB and LTD claims can run concurrently. WSIB will be the first payer. If the WSIB claim is denied and the LTD claim has been approved, LTD can be activated so the member is not without some income. For further information, please refer the following section on Long Term Disability.

**Other Resources**

For further information, please refer to *PRS Matters Bulletin #6 – Workplace Safety and Insurance Board.*
Long Term Disability

Steward’s Responsibilities

• Refer members to the local as it is the primary resource for members with specific long term disability (LTD) questions including for information on applying for LTD - encourage members to contact the local as soon as possible as there are timelines for applying for LTD.

• You may also direct members to:
  ✔ Professional Relations Services (PRS) – members should ask for the LTD counselor on-call in PRS; and/or
  ✔ the Ontario Teachers’ Insurance Plan (OTIP) Long Term Disability Claims Service department at 1-800-267-6847.

• If a member contacts you about the denial of a claim, refer them to the local first (note that OTIP can also provide valuable assistance). Where an appeal is unsuccessful and benefits are denied, the member should contact PRS and ask for the LTD counselor on-call to request a review of their LTD claim to determine the merits of advancing their claim to arbitration or litigation.

Background

LTD insurance provides income protection to those who suffer an illness or injury whose consequences go beyond the usual available sick leave provisions. ETFO is the policy holder of a provincial LTD plan. OTIP acts as the plan’s third party administrator.

ETFO negotiated a Memorandum of Understanding (MOU) with the government in June 2013. The MOU mandates that all ETFO permanent teachers be enrolled in the provincial LTD plan. Effective November 1, 2013, all ETFO permanent teachers were enrolled in the provincial LTD plan. Participation in the provincial LTD plan is a condition of employment.

Individuals who were receiving benefits under a previous LTD policy (e.g., Sunlife) as of November 2013, are not eligible to be covered under the current provincial plan until benefits have terminated and they have returned to active classroom duties. However, those members receiving benefits under a previous plan would continue to receive benefits, subject to the terms and conditions of the previous plan.

For illness or injuries related to employment, please refer to the previous Workplace Safety and Insurance Board section.
The plan details are as follows:

<table>
<thead>
<tr>
<th>Plan Design</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan Sponsor</td>
<td>ETFO</td>
</tr>
<tr>
<td>Policy Effective Date</td>
<td>November 1, 2013</td>
</tr>
<tr>
<td>Eligible Class</td>
<td>Elementary teachers</td>
</tr>
<tr>
<td>Participation</td>
<td>Mandatory for all active full or part-time teacher members</td>
</tr>
<tr>
<td>Participation During Leave of Absence</td>
<td>Mandatory (for a maximum of 24 consecutive months or the leave period defined in the collective agreement)</td>
</tr>
<tr>
<td>Benefit</td>
<td>55% of monthly earnings</td>
</tr>
<tr>
<td>Maximum Monthly Benefit</td>
<td>A benefit based on a maximum annual salary of $150,000</td>
</tr>
<tr>
<td>Benefit Tax Status</td>
<td>Non-taxable</td>
</tr>
<tr>
<td>Elimination (waiting) Period</td>
<td>The later of 110 working days or expiration of sick leave and in no event more than 24 months.</td>
</tr>
<tr>
<td>Initial Assessment Period</td>
<td>24 months</td>
</tr>
<tr>
<td>Cost of Living Adjustment</td>
<td>The lesser of 2% or the actual increase in the all Canada Consumer Price Index</td>
</tr>
</tbody>
</table>
| Termination of Benefits (and coverage) | For disabilities commencing prior to age 63, the member is the earliest of:  
  • Age 65  
  • First entitled to at least a 62% unreduced service pension  

 For disabilities commencing age 63 or later, the member is the earliest of:  
  • Age 70  
  • First entitled to at least a 62% unreduced service pension |
| All Source Maximum          | 100% of the member’s indexed pre-disability take-home pay from all sources                                                                    |
| Mandatory Early Intervention | OTIP must be informed of any prolonged absence of 15 consecutive working days or more. An OTIP Early Intervention Rehabilitation Counsellor will then contact the member. The type of assistance that may be provided through the Early Intervention program is dependent on the unique circumstances of each case. The goal is to provide members with assistance that will help them return to their regular work and possibly prevent or shorten the duration of an LTD claim. |
PART VI –
FOR YOUR INFORMATION
Glossary

Arbitration – (or grievance arbitration) – A mechanism for providing final and binding resolution to a dispute under a collective agreement. A neutral third party, the arbitrator, is brought in to hear the case and, either alone or as part of an arbitration panel, to render a decision.

Expedited arbitration, available under the Ontario Labour Relations Act (OLRA), is a speedier version of this process.

Interest arbitration refers to the use of a third party to resolve the terms of the collective agreement itself.

Conciliation – A process under the OLRA which either side, during collective bargaining, may initiate in order to break an impasse. A provincially-appointed conciliator is brought in to meet with the parties in an effort to resolve the dispute. Refer to no-board report.

Duty to accommodate – An employer’s obligation under the Human Rights Code to make every effort, short of undue hardship, to ensure a non-discriminatory workplace. Unions also have obligations under the Code.

Duty of fair representation – The union’s obligation to represent its members in a manner which is not arbitrary, discriminatory or in bad faith.

Estoppel – A legal doctrine according to which a party to a collective agreement, through a failure to insist on its strict legal rights under that agreement, can potentially jeopardize its ability to enforce those rights in the future.

Grievance – A dispute over the interpretation, application, administration or alleged violation of the collective agreement. Refer to arbitration.

Just cause – A standard of proof which an employer must meet in order to terminate an employee, provided there is a “just cause” clause in the collective agreement.

No-board report – A part of the conciliation process which starts the clock ticking to a strike or lockout. Sixteen days after the release of the no-board report by the Minister of Labour, the parties are in a legal strike or lockout position (subject to other conditions having been met). The term “no-board” refers to the decision by the Minister not to appoint a conciliation board to deal with the dispute.

Preliminary submission – The union’s initial set of bargaining proposals tabled with management during a round of collective bargaining.
Ratification – The process whereby a tentative settlement in negotiations is submitted to the membership for a vote.

School administrator – A school’s principal, vice-principal and/or worksite supervisor.

Strike – A full withdrawal of services and/or gradual withdrawal of services (i.e., work-to-rule) following the taking of a strike vote whereby more than 50 per cent of those voting, vote in favour of strike action. For teachers, the definition of a legal strike is provided for under Section 35(2) of the School Boards Collective Bargaining Act.

Strike vote – The secret ballot vote which must be held in order for a legal strike to occur. For the vote to pass, more than 50 per cent of those voting must vote in favour of strike action.

Supplemental Employment Benefit (SEB) – A benefit usually provided for in the collective agreement that redresses income loss incurred as a result of a pregnancy, parental or compassionate care leave.
Relevant Statutes

• Child and Family Services Act
• Criminal Code*
• Criminal Records Act*

• Education Act
  - Regulation 98/02: Teacher Learning Plans
  - Regulation 99/02: Teacher Performance Appraisal
  - Regulation 142/08: Letters of Permission
  - Regulation 266/06: New Teacher Induction Program
  - Regulation 274/12: Hiring Practices
  - Regulation 298: Operation of Schools – General
  - Regulation 304: School Year Calendar, Professional Activity Days
  - Regulation 132/12: Class Size
  - Regulation 181/98: Identification and Placement of Exceptional Pupils
  - Regulation 521/01: Collection of Personal Information
  - Regulation 612/00: School Councils

• Education Quality and Accountability Office Act

• Employment Insurance Act*

• Employment Standards Act
• Human Rights Code
• Ontario Labour Relations Act

• Municipal Freedom of Information and Protection of Privacy Act
• Occupational Health and Safety Act

• Ontario College of Teachers Act
  - Regulation 176/10: Teachers’ Qualification
  - Regulation 437/97: Professional Misconduct

• Pay Equity Act

• School Boards Collective Bargaining Act
• Teachers’ Pension Act
• Teaching Profession Act
• Workplace Safety and Insurance Act

*Indicates a federal statute
List of Acronyms

**AEFO**  l’Association des enseignantes et des enseignants franco-ontariens
**ALP**  Annual Learning Plan
**AQ**  Additional Qualification
**CAS**  Children’s Aid Society
**CBC**  Collective Bargaining Committee
**CLC**  Canadian Labour Congress
**COQ**  Certificate of Qualification
**CPP**  Canada Pension Plan
**CTF**  Canadian Teachers’ Federation
**CUPE**  Canadian Union of Public Employees
**DECE**  Designated Early Childhood Educator
**EA**  Educational Assistant
**EAP**  Employee Assistance Program
**EI**  Employment Insurance
**EQAO**  Education Quality and Accountability Office
**ELL**  English Language Learner (formerly ESL or ESD)
**ESP**  Educational Support Personnel
**ETFO**  Elementary Teachers’ Federation of Ontario
**ETFO ELHT**  ETFO Employee Life and Health Trust
**FI**  French Immersion
**FSL**  French as a Second Language
**FTE**  Full-time Equivalent
**IEP**  Individual Education Plan
**IPs**  Individual Plans (for students with anaphylactic allergies)
**IPRC**  Identification, Placement and Review Committee
**LEAF**  Legal Education and Action Fund
**LNS**  Literacy and Numeracy Secretariat
**LTD**  Long Term Disability
**LTO**  Long Term Occasional
**MOE**  Ministry of Education
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>NEA</td>
<td>National Education Association</td>
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<tr>
<td>NTIP</td>
<td>New Teacher Induction Program</td>
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<tr>
<td>OCBCC</td>
<td>Ontario Coalition for Better Child Care</td>
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<tr>
<td>OCT</td>
<td>Ontario College of Teachers</td>
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<tr>
<td>OECTA</td>
<td>Ontario English Catholic Teachers’ Association</td>
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<tr>
<td>OFHSA</td>
<td>Ontario Federation of Home and School Associations</td>
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<tr>
<td>OFL</td>
<td>Ontario Federation of Labour</td>
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<tr>
<td>OHRC</td>
<td>Ontario Human Rights Commission</td>
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<tr>
<td>OPC</td>
<td>Ontario Principals' Council</td>
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<tr>
<td>OPSBA</td>
<td>Ontario Public School Boards’ Association</td>
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<tr>
<td>OPSEU</td>
<td>Ontario Public Service Employees’ Union</td>
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<tr>
<td>OSR</td>
<td>Ontario Student Record</td>
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<tr>
<td>OSSTF</td>
<td>Ontario Secondary School Teachers’ Federation</td>
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<tr>
<td>OT</td>
<td>Occasional Teacher</td>
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<tr>
<td>OTF</td>
<td>Ontario Teachers’ Federation</td>
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<tr>
<td>OTIP</td>
<td>Ontario Teachers’ Insurance Plan</td>
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<tr>
<td>OTPP</td>
<td>Ontario Teachers’ Pension Plan</td>
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<tr>
<td>PLC</td>
<td>Professional Learning Community</td>
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<tr>
<td>PRS</td>
<td>Professional Relations Services</td>
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<td>PSP</td>
<td>Professional Support Personnel</td>
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<td>PTR</td>
<td>Pupil Teacher Ratio</td>
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<tr>
<td>QECO</td>
<td>Qualifications Evaluation Council of Ontario</td>
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<tr>
<td>ROE</td>
<td>Record of Employment</td>
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<tr>
<td>RTO</td>
<td>Retired Teachers of Ontario</td>
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<tr>
<td>SEB</td>
<td>Supplementary Employment Benefits</td>
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<tr>
<td>SO</td>
<td>Supervisory Officer</td>
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<tr>
<td>SOE</td>
<td>Superintendent of Education</td>
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<tr>
<td>TPA</td>
<td>Teacher Performance Appraisal</td>
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<tr>
<td>WHMIS</td>
<td>Workplace Hazardous Materials Information System</td>
</tr>
<tr>
<td>WSIB</td>
<td>Workplace Safety and Insurance Board</td>
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</tbody>
</table>