

## **Allegations of Assault**

### ***What to do if it happens to you***

***by Professional Relations Services Staff***

Even if an allegation is unfounded, the stakes are very high. An improperly handled response to an allegation can have serious consequences for your career.

Increasingly, calls come into ETFO's Professional Relations Services from members who may be facing an allegation of assault. The Federation takes these kinds of allegations very seriously and advises proceeding with great caution even if the allegation seems totally unfounded.

The Federation's experience is that even the most minor matters of this type may escalate out of control up to and including a criminal investigation and criminal charge. A supportive principal and board cannot always guarantee that matters will resolve themselves. Parents have the right to take such allegations beyond school board personnel. The most likely agencies are the police and the Children's Aid Society (CAS). All three in fact may become involved before the issue is resolved.

### **Protect yourself against allegations**

Our advice is always to avoid situations that could lead to an allegation of assault. It is unwise to touch children, physically move them, or steer them in another direction. A simple touch can become the basis of an allegation of assault. Avoid situations where you are alone with a student. At times it will be necessary to use restraint procedures in a potentially harmful situation. Be certain that the procedures used by staff are agreed upon by your principal and communicated to parents.

### **What to do if an allegation is made**

Here are the steps to follow if an allegation of assault is made against you:

- ***Call Professional Relations Services immediately at 416-962-3836 or 1-888-838-3836.*** Each situation is unique and PRS will provide confidential information and assistance. The ETFO and, if necessary, its lawyers are there to protect you.
- **Make no statements to anyone, no matter how sympathetic or convincing they are, until you have spoken to your federation.** This includes board personnel and even your own family members because in criminal cases involving children anyone is a compellable witness. A statement is anything that you say or that you put in writing related to the alleged incident.

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Our advice in these matters is not meant to cut members off from support systems. Members may discuss the fact that there is an allegation with family members and spouses and may discuss their feelings and reactions. The only prohibition is upon discussion of the alleged incident, the member's version, and response to allegations.

- If you are asked for a statement, the following will suffice: *I would like to cooperate but I can not make any statement or discuss the matter further until I have had an opportunity to speak with the ETFO.*

### **Additional information to note**

Even if the police and CAS are not yet involved, there is a distinct possibility that they may be. When a parent contacts a principal about an assault allegation, the principal has the responsibility to investigate the allegation and may in turn contact CAS or police should she/he feel there may be any substance to the complaint. CAS in turn may contact the police. Procedures may vary somewhat from board to board. Members should be informed of board policies for investigations.

The police and the CAS can be very persuasive in attempting to get a statement. Two common approaches include to keep asking questions after the member declines to give a statement –people often feel obliged to respond – and the old *we just need to hear your side of the story to clear this matter up* line.

Members are often certain that they have done nothing wrong and have difficulty understanding why they should not make statements. *Even denials are statements and can be dangerous.* Part of the role of legal counsel is to ensure that appropriate denials are properly communicated but they must first obtain the information and discuss the matter with the member.

If time has passed since the incident or it involves complicated sequences of events, you may make personal notes to aid your memory and keep facts straight but only under the following circumstances: the notes are to be made in private and *no one* is to know they are being made; they are to be made alone – under *no circumstances* are other witnesses to be approached or consulted; the notes are to be kept in a safe place in the home; and, finally, and *without exception*, the notes are to be given to no one except legal counsel. This is the only way privilege can be guaranteed.

Do not contact the complainant, whether parent or child, for the purpose of discussing the matter. Similarly, witnesses should not be contacted. Essentially the matter should not be discussed with anyone until you have had a chance to discuss the issues with Federation and its legal counsel if necessary. As well, do not provide names and phone numbers of witnesses to the police or the CAS. Refer such agencies to the principal or your area superintendent.

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## Physical Assault and Criminal Courts

The Criminal Code of Canada defines physical assault in Section 265(1) as follows:

- (1) *A person commits an assault when*
  - (a) *without the consent of another person, the person applies force intentionally to that other person directly or indirectly;*
  - (b) *the person attempts or threatens, by an act or gesture, to apply force to another person, if the person has, or causes that other person to believe upon reasonable grounds that the person has, present ability to affect his/her purpose; or*
  - (c) *while openly wearing or carrying a weapon or an imitation thereof, the person accosts or impedes another person or begs.*

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**Members are particularly vulnerable to allegations and/or charges of physical assault given their degree of physical interaction with students.**

Members are particularly vulnerable to allegations and/or charges of physical assault given their degree of physical interaction with students. Such interaction is inherent in the profession which may require members to deal assertively with unruly and disruptive student behaviour. However, "changing community or societal standards" may have dramatically altered the perception of what may or may not be acceptable teacher conduct in dealing with student misbehaviour.

Members should be aware, however, that there is a certain degree of protection afforded to them when addressing student behaviour under the provisions of the Criminal Code of Canada. Section 43 states as follows:

43. *Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or a child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.*

The critical component of this defence turns on the phrase "if the force does not exceed what is reasonable under the circumstances."

In a recent court case a member was charged with physical assault after breaking-up a fight between two students. The judge cited a Supreme Court of Canada ruling (*Ogg-Moss v. the Queen*) which established that s.43 authorizes the use of force by a teacher provided it is being used "by way of correction" and "for the benefit of his education"; however, "any punishment ... motivated by arbitrariness, caprice, anger or bad humour constitutes an offence punishable like ordinary offences".

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In circumstances involving assault allegations it is not uncommon for the teacher to be removed from the class and put on suspension with pay or re-assigned. The ETFO's position in response to such actions will depend upon the facts of each case. In all cases the Federation will want to ensure that it has had time to obtain as much information as possible before an assessment can be made. If a member is disciplined by the school board the safest approach is to contact the Federation and investigate the possibility of filing a grievance.

### **No need to worry**

Teachers and school administrators are concerned about the current litigious climate that allows such things to happen, but should not worry unduly. Being prepared and protecting yourself can go a long way towards peace of mind.

Teachers in Ontario are doing a commendable job with students. A few *horror stories* can make a teacher feel very vulnerable and shatter confidence. It is essential that every teacher protect her/his rights by exercising her/his right to representation if any allegation of assault is made. You will reduce the trauma to yourself and prevent any damage to your professional reputation if you react in the most professional way possible.

## ALLEGATION OF PHYSICAL ASSAULT

### POSSIBLE SEQUENCE

1. Student complains to parent/principal or another member.
2. In-school investigation.
3. Member made aware of allegation (hopefully).
4. Member contacts a Counsellor at the Federation.
5. Federation assigns legal counsel (stabilization).
6. Complaint to Children's Aid Society/Police or both.
7. Investigation by C.A.S./Police or both.
8. Member may be re-assigned to board office or home.
9. Persons involved interviewed.
10. Member interviewed by police in presence of counsel.
11. Crown attorney advised.
12. Charges laid or not laid.
13. If charges are laid, preliminary hearing where the Crown elects to proceed by way of indictment.
14. Trial by Judge or Judge and Jury depending upon whether summary or indictable offence and election of accused.
15. Verdict.
16. If member guilty, decision on possible appeal.
17. If member guilty, and no appeal:
  - a) termination of contract (possible)
  - b) suspension or cancellation of certificate (possible)
18. If member not guilty, return to former position.

## Strategies to Protect Oneself

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**“an ounce of prevention is worth a point of cure”**

**- Be continually aware of situations that may turn out not to be in your best interest.**

The best way to protect your rights as a member is to follow that old quote, "an ounce of prevention is worth a pound of cure". You must be continually aware of situations that may turn out not to be in your best interest. This is particularly true at certain times of the school year when members are more vulnerable due to stress, fatigue, the need to complete report cards, participate in parent interviews, attend meetings or other extra-curricular activities or prepare for the approaching holidays. At these times, the urge to lash out at a misbehaving student may lie just below the surface. Members must be particularly cautious not to lose their patience and thereby commit acts which may result in disastrous consequences.

It is also important that members not allow themselves to be found or placed in compromising positions which could lead to allegations of physical assault. Retaining a student in the classroom after school, talking with a student with the door closed, having only one student assist you in obtaining materials from the supply room, providing transportation for only one student, inviting a student or students to your home, or favouring a student are situations which could lead to allegations against you.

## Twenty Questions

Twenty questions to ask yourself which will hopefully keep you from being the subject of one of the case studies arising from this information booklet.

### As a member of the Federation, do I protect myself by:

- ▼ continuing to be alert and aware so as to avoid situations which may turn out not to be in my best interests?
- ▼ arriving on time and in the right place for duty?
- ▼ thinking about what I am going to say before speaking and refrain from making inappropriate "off the cuff" comments about colleagues and students?
- ▼ keeping detailed notes on conversations about my students?
- ▼ challenging through the grievance/arbitration process negative comments on my own evaluation reports?
- ▼ challenging through the grievance/arbitration process any disciplinary action taken against me?

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- ▼ recognizing that there are certain times of the school year when, because of increased fatigue or stress, I may be more vulnerable to circumstances which can give rise to allegations of inappropriate behaviour?
- ▼ teaching with my classroom door open?
- ▼ placing my desk in the line of sight of the doorway?
- ▼ keeping windows in my classroom or office door clear of information?
- ▼ providing help to a group of students instead of a single student?
- ▼ eliminating artificial walls and bookcases which may hide my actions?
- ▼ avoiding keeping a single student in my classroom after dismissal?
- ▼ avoiding having a single student in a room without an open door or a door with a window?
- ▼ arranging for parents to drive students to school activities and home from school activities?
- ▼ having a second adult present when I reprimand a student?
- ▼ having another adult present when first aid is given to a student?
- ▼ congratulating students who have done a great job by acting professionally such as shaking the student's hand or sending a congratulatory note to the student and parents rather than engaging in conduct such as "touching or hugging" which may be viewed as inappropriate by the student, parent or Board officials?
- ▼ being extra cautious to avoid inappropriate touching in such subjects as physical education, design and technology, music, and family studies?
- ▼ speaking and acting in a professional manner in all my dealings with students, colleagues and parents?