

Introduction of
internal responsibility
stipulates that
workers take



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Introduction” The right to refuse unsafe work and the ‘ internal responsibility system’ represent a fundamental shift in ideology over how workplace health and safety is governed. Using qualitative data, Gray provides a grounded critique of this shift and demonstrate that the right to refuse is continually evolving through its everyday applications: the local definition of what constitutes risk is constantly being negotiated. Even when workers do not formally use this right to deal with a hazard they still, nonetheless, engage in the local construction of how this safety right is conceptualized, defined and exercised.” (Gray, 2002) Everyone in the workplace, that includes workers and employers is responsible for their own safety and the safety of the co-workers. This is the foundation of Internal Responsibility System (Gray, 2002) that forms the underlying philosophy of the occupational health and safety legislation in all Canadian jurisdictions.

This system will essentially, create an employee-employer partnership in ensuring a safe and healthy workplace and entrusts the responsibility on everyone in the workplace. The legal right to refuse unsafe work is one element of the Internal Responsibility System. The right to refuse unsafe work appears to have the support of the power of law and seems to fully protect workers from having to carry out jobs that they believe are dangerous. But the system of internal responsibility stipulates that workers take responsibility for their own safety while at work. Thus the two represent a fundamental change in ideology over how workplace safety is managed.

The Internal Responsibility System that relies on responsible workers is affected by social interaction within a workplace and the overall social relations of production. Safety is just one of the many factors that determine

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whether an employee will exercise his/her legal right. Any formal safety refusal has an inherent confrontational nature about it. If the employee wants a good working relationship with the employer and does not want to get into a possible conflict, he/she will lean towards a less-confrontational method of refusing.

The three broad pathways for refusing dangerous work, that differentiate the various types of strategies that workers use to negotiate safety, are: Formal confrontational, Informal confrontational, and Informal non-confrontational. Even though workers possess the right to refuse unsafe work, they may not formally use their employee right, but they still greatly influence the way safety right is conceptualized, defined and exercised. The general types of legal awareness of workers who refuse unsafe jobs are 'before', 'with' and 'against' the law as mentioned by Garry C Gray in his research paper. The two main characteristics of the 'before the law' form of legality is that the law is characterised by its impartiality and individuals are more likely to use the law if they can justify to themselves that some kind of collective harm exists.

The individual nature of the right to refuse unsafe work might therefore be in practical conflict with how some individuals generally understand the appropriate use of the law. This explains why some people may avoid using their formal right to refuse unsafe work. In the 'with the law' form of legal consciousness, the law is described and played as a game.

The legal right of refusing unsafe work is mostly not exerted by an employee because of the historical conflict and present day confrontations that happens

after the refusal. This results in workers relying on informal ways of refusing. In the event of a confrontation, the matter is dealt with and resolved privately in the organization as required by the internal responsibility system, thus replacing the 'practice' of legal consciousness by encouraging workers and those with managerial authority to involve in the practice of "internal game playing". This could be both direct like, misusing the legal loopholes in the procedural aspects of workplace refusals and indirect such as, making subtle threats of potential job loss or transfer. Some workers can play with the law better than others and thus the informal non-confrontational way of refusing is the most predominant method used by workers. The 'against the law' form of legality is developed over time and through experience for many of the situations which the workers confront regularly at work. In this form, the workers will not formally use the law; instead they rely on actions such as privately refusing, avoidance and involving in others silent and hidden resistant practices.

This gradually becomes a routine because they are repeated so often thus losing the initial intent of refusal to work. Legislations across Canada Workers generally have four rights under the Occupational Health and Safety Act (OHSA): the right to know the potential hazards, the right to participate in identifying the health and safety hazards, the right to refuse unsafe work, and the right to stop dangerous work. The contentious one among the four is the Act that allows worker the right to refuse work that he or she believes is unsafe to himself or his co-worker.

Every province has regulations governing the right to refuse unsafe work and they vary slightly from province to province. The legal right achieved by the <https://assignbuster.com/introduction-of-internal-responsibility-stipulates-that-workers-take/>

labour movement to provide a safe workplace by the employer and the right for a healthy and safe workplace for the workers has gained great importance throughout Canada. The legal rights and obligations of a worker to refuse unsafe work is in Part II of the Canada Labour Code (laws-lois. justice. gc. ca/eng/acts/L-2/page-22. html, 1985).

The definition of danger in the Labour Code reads as: "danger means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered" The legislation provides all workers the right to refuse work on reasonable grounds they believe that could compromise their safety, and/or the safety of others; however exercising the right to refuse is a serious issue and cannot be taken casually. This typically involves a sequence of steps to identify and resolve the unsafe or dangerous work. Sections of legislation which refer to the "right to refuse" work in each jurisdiction are listed below (cupe.

ca/orders/refusing-unsafe-work-fact-sheet, 2015): Alberta Occupational Health and Safety Act, Sections 35 and 36 British Columbia Workers' Compensation Act, Occupational Health and Safety Regulation - Section 3.12 and 3.13 Manitoba Workplace Safety and Health Act, Sections 42 and 43 New Brunswick Occupational Health and Safety Act, Sections 19 to 23 Newfoundland and Labrador Occupational Health and Safety Act, Sections 45 to 49 Nova Scotia Occupational Health and Safety Act, Sections 43 to 45 Ontario Occupational Health and Safety Act, Sections 43 to 50 Prince Edward Island Occupational Health and Safety Act, Sections 28 to 31 Quebec Act Respecting Occupational Health and Safety, Sections 12 to 31 <https://assignbuster.com/introduction-of-internal-responsibility-stipulates-that-workers-take/>

Saskatchewan Saskatchewan Employment Act, Section 3-31 Canada Canada Labour Code, Part II, Sections 128 to 131 Some of the similarities and difference in legislation among the provinces are summarized as below (cupe.ca/orders/refusing-unsafe-work-fact-sheet, 2015): According to Section 35 of the Occupational Health and Safety Act in Alberta, the worker can refuse unsafe work if he or she believes there is imminent danger to himself/herself and to others. The worker cannot be disciplined or dismissed according to Section 36 of the act for conforming with the legislation. In British Columbia, the Act (OHSR, Section 3. 12) states that the worker must not carry out unsafe work or any work process or operation of any tool or equipment that would lead to workplace hazard to self or others. According to the Workers' Compensation Act (Occupational Health and Safety Regulation, Section 3. 13), the worker cannot be disciplined for complying with the regulations. If the work is considered to be dangerous to the worker's health and to his/her co-workers, Section 43 of the Workplace Safety and Health Act allows the worker to refuse work in Manitoba. Section 42 of the act states that the worker cannot be threatened or discriminated against for conforming with the legislation. According to Section 19 of the Occupational Health and Safety Act, a worker in New Brunswick has the legal right to refuse work if there is a reason to believe that an act is likely to compromise the safety and health of himself and others. According to section 24 of the act, no worker can be discriminated against, threatened, or coerced for acting in accordance with the legislation. A worker in Newfoundland and Labrador has the legal right to refuse unsafe work according to Section 45 of OHSR, if there is reasonable ground to believe that the work, tool or equipment is dangerous to the health

and safety to the worker and others in the workplace. Section 49 of the Act states that the worker cannot be discriminated against through dismissal, discipline, or reduction of either wages or benefits for complying with the legislation. In Nova Scotia, according to Section 43 of the OHS Act, if there is sufficient ground to be certain that a work condition, equipment, material or any aspect of the work is dangerous to the safety and health of the worker, he or she has the legal right to refuse work.

The worker according to section 45 of the act cannot be threatened or victimised through dismissal, reprimand or reduction of either wages or benefits for complying with the legislation. Ontario's OHS Act Section 43(3) states that any equipment or workplace condition that is likely to endanger the health and safety, the worker has the right to refuse work. Few workers and certain circumstances are excluded from this regulation which are listed in Section 43(1) and (2) of the OHS Act. According to Section 50 of the OHS Act, the worker cannot be threatened, discharged, disciplined, intimidated or forced for complying with the legislation. If there is a defensible reason to be certain that the work will cause harm to the health and safety of the worker and others, Section 28 of the Occupational Health and Safety Act in Prince Edward Island allows the worker to refuse work. Section 29 of the act states that the worker cannot be threatened or discriminated against, intimidated or coerced for complying with the legislation. For a worker in Quebec, Respecting Occupational Health and Safety (ROHSA), Section 12 of the Act states that on reasonable grounds if the work appears to compromise the health and safety or physical well-being of the worker and others, he/she has the legal right to refuse work. Section 30 highlights that in such

circumstances the worker cannot be dismissed, suspended, transferred, or penalized for complying with the legislation.

Also, the worker has the right to protective reassignment under certain situations. Saskatchewan also has similar regulation like other provinces. Section 3-31 of the Saskatchewan Employment Act allows the legal right of refusal to work under reasonable grounds if a worker deems that the act or a series of acts is dangerous to the health and safety at workplace. In Section 3-35 of the act, the worker cannot be discriminated against for complying with the legislation.

Workers in the Federal Sector have the right to refuse work, according to Section 128 in Part II of the Canada Labour Code, if there is reasonable grounds to believe that the work performed will put the safety and health of worker and others in danger. Certain categories like workers on ships and aircraft operations are exempted from this Act according to Section 128 (3-5). According to the Section 147 of the code, no worker can be dismissed, suspended, or penalized for complying with the legislation. The essence of the legislation to refuse and report unsafe work in every province and federal sector in Canada is very close in their interpretation and application. On the contentious issue of the right to refuse unsafe work, most employers have the concerns of this right being misused to settle non-health and safety issues.

Employers also question the subjective assessment mentioned in the Act, under which the worker must only have "reason to believe" that work is unsafe to qualify for initial investigation. Employers normally oppose the "

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susceptible worker" policy, in which workplace situations can be considered unsafe for a particular worker with a special susceptibility, rather than the normal worker. Trips and fall at workplace can be attributed to both the employers having an unsafe workplace and the employee not being careful.

There is often disagreement between the employer and workers about the workplace hazards. As mentioned in the article "Right to Refuse Dangerous Work" (Peter Bowal & Aleksandar Gvozdenovic, 2015), there has to be a dialogue between both parties, assess workplace hazards and understand the implications of not following the legislations. Recognizing and declaring dangerous work Health and safety hazards exist everywhere. An unsafe work, confined work space, work involving equipment, all work that has danger to the health or safety of the personnel need to be identified and proper measure to protect the worker needs to be put in place by the employer. The five major workplace hazards are: Physical, Ergonomic, Biologic, Chemical & Psychological Hazards. Some of these hazards are visible and easy to identify whether it is unsafe to execute. Some hazards occur over a period of time due to some routine body postures.

Other hazards occur due to improper contact of chemical or infectious objects. Employers, in such cases should have mandatory assessments to review and identify unsafe working conditions to avoid legal liabilities. The hazard assessment should be carried out to identify existing and potential hazards for every job and every task at a work site. Once the hazards are identified and risk level is assigned, appropriate precaution and control measures need to be put in place. The procedure and situations to refuse work differs from province to province. The process by which the worker can <https://assignbuster.com/introduction-of-internal-responsibility-stipulates-that-workers-take/>

exercising the right to refuse work involves certain steps which is more or less the same in every province. The general procedure followed are (Alberta,

ca » Labour » Occupational Health & Safety > Section 35 Existence of imminent danger, 2013): The first step the worker has to take is report to the immediate supervisor about his or her intention to refuse work as he/she believes it is unsafe. Simply stating that something is unsafe is enough to start the work refusal process. It has to be rationally defensible to believe the work to be unsafe. If the work situation cannot be corrected immediately, the worker, supervisor and Joint Health and Safety (JHSC) member will initiate the investigation process. The worker will resume work only if the workplace is fully made safe and mutually agreed by the employer and worker. If the condition cannot be made safe, a government health and safety inspector is brought in to investigate the situation. The inspector will provide a decision in writing. The employer should not assign any other worker to the job without informing them about the work refusal and the reason for refusal.

If the worker is not satisfied with the report of the investigating officer, he/she can appeal for a review within 30 days. The flow chart from the Canadian Labour Code summarizes the sequence of process followed in the event of refusing unsafe work (Part II of the Canada Labour Code (Occupational Health and Safety), 2015). Consequences of refusing unsafe work Employment and Social Development Canada enforces the Canada Labour Code which notifies the employees and employers of their legal right and obligations if a refusal of work takes place in the workplace. According to the code, the employer is defined as " a person who employs one or more employees and includes an employer's organization and any person who acts on behalf of an

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employer” (Part II of the Canada Labour Code (Occupational Health and Safety), 2015) If an employer or supervisor receives notification that an employee has used the legal right and refused to carry out unsafe work, an investigation should immediately be conducted to assess the imminent danger, in the employee’s presence.

The investigation can also take place in the absence of the employee if he/she agrees to it. The work cannot be re-assigned to any other employee while the investigation is on. Once the investigation is completed, the employer has to prepare a written report stating the outcome of internal investigation. If the employer agrees that there is a danger based on the investigation results, the employer should take urgent action to protect the employees from that danger and should inform the workplace committee or representative about the corrective action taken.

Once the corrective measures are taken and the employee is satisfied, he or she can return to work. If the employee disagrees with the decision taken by the employer after the investigation, the employee can continue to refuse the work, which then should be immediately reported to the employer and to the workplace committee or representative. The workplace committee or representative will then immediately initiate an investigation in the employee’s presence. The investigation will be conducted in an unbiased manner by a team consisting of one member representing the employees and one member representing the employer. When the investigation is completed, the workplace committee or representative will give a written report with the investigation results and any recommendations to the employer.

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If the employer wishes to provide any additional information to have the report reviewed, and if the workplace committee or representative finds them as appropriate to be taken into account, they can provide a revised report to the employer. If the employer decides that the danger exists after reviewing the workplace committee's report, the employer should take immediate corrective action to protect the employees and this should be reported to the workplace committee. Once the corrective measures are taken and the employee is satisfied, he or she can return to work. If the employer decides that the danger exists but the refusal cannot be permitted under ss.

128.(2) "as it puts lives, health or safety of another person directly in danger or the danger is a normal condition of employment", then the employer should let the employee know about this in writing and if the employee agrees to it, then he or she can return to work. If the employee disagrees with the decision taken by the employer, the employee should inform the employer that the refusal to work would continue.

The employer will then immediately report it to the Minister of Labour and the workplace committee or representative. A copy of the two earlier investigation reports is also provided to the Minister. The Minister, upon receiving the report about the continued refusal, will decide if the refusal can be more effectively addressed by some other legislation or is "trivial, frivolous or vexatious, or made in bad faith" in which case, the Minister will not proceed with an investigation and will provide his decision in writing to the employee and the employer. The employee no longer has the right to refuse to work. If the employee is not satisfied by the Minister's decision, the employee can file a judicial review application with the Federal Court within <https://assignbuster.com/introduction-of-internal-responsibility-stipulates-that-workers-take/>

thirty days after the decision. If the Minister proceeds with an investigation, this will be done in the presence of the employer, employee and a member of the work place committee appointed by the employees. While the Minister's investigation is on, the employee can continue the refusal to work; and the employer may bring in another qualified employee to do the same work.

The employer has to inform this employee of the continued refusal and the reasons for it and assure that he/she will not be exposed to danger. If there is a previous or ongoing investigation for this employer which involves almost the same issues, the Minister can consider whether or not to trust the previous investigation findings. The Minister can also consider if this investigation can be combined with any ongoing investigation so that a single decision can be handed out. The Minister will then conduct an investigation and will give a written report with the decision to the employer and the employee.

If the Minister determines that an unsafe situation exists at work, the Minister will issue appropriate directions regarding the work. The employee can continue to refuse to work until the working situations have met the terms as in the directions or until they are modified or cancelled. If the Minister decides that the danger exists but the refusal cannot be permitted under ss. 128.(2) "as it puts lives, health or safety of another person directly in danger or the danger is a normal condition of employment", then the Minister should provide this decision in writing, and the employee is no longer entitled to refuse work. If the Minister decides that the danger does not exist, then the Minister should provide this decision in writing, and the employee is no longer entitled to refuse work.

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After providing the Minister's written decision, a copy of the written report will also be provided to the employee, employer and the work place committee or representative within 10 days of its completion. If the employee is not happy with the Minister's decision that no danger exists or the refusal is not permitted under s. 128.(2), the employee can appeal in writing to an appeals officer within 10 days after receiving the decision. If any employer, employee or trade union is not happy with the Minister's direction, they can appeal in writing to an appeals officer within 30 days after the direction was issued.

Discipline for refusing work believed to be unsafe An employee cannot be disciplined or dismissed if the refusal to dangerous work was in compliance with the legislation and regulations. However, if the employer can prove that an employee has deliberately misused his right to refuse dangerous work, disciplinary action can be taken against that employee, once all the investigations and appeals have been completed. The reasons for the disciplinary action should be provided in writing to the employee within 15 working days of the employee's request. The employee can make a complaint regarding the disciplinary action within 90 days to the Canada Industrial Relations Board. If the employee is a public servant, he/she can complain to the Public Service Labour Relations Board (PSLRB).

If the board receives a complaint that an employee is penalized for exercising the right to refuse unsafe work, then the employer will have to demonstrate before the Board that the decision is not related to the incident of refusing work by the employee. The final decision will be taken by the Board or PSLRB; but, if the employee is not satisfied, he/she can appeal the Board's decision <https://assignbuster.com/introduction-of-internal-responsibility-stipulates-that-workers-take/>

to the Federal Court. Conclusion Despite the Federal and Provincial legislations that governs workplace health and safety in Canada, every year many Canadians are still injured and killed in their workplace. Safety of workers should be enforced by the government and laws should encourage employers to act more responsibly. Right to refuse dangerous work has proved as a deterrent in Canadian workplace against unsafe work practices. Majority of Canadian workers are shielded against acts of retaliation by employers for declining to perform unsafe work. The most glaring inadequacy in this legislation is the lack of standards to determine the rationality of any worker's claim of an unsafe work.

Employers are at time forced to retrieve due to the stringent legislation which seems to favour the worker. Legislations are meant to be followed and not to be bypassed.