

# Scorecard: Work Refusals for Fear of Getting an Infectious Illness



The OHS laws clearly allow workers to refuse work when they have “reasonable” cause to fear serious injury **or illness** to themselves and/or others. As with all work refusals, the supervisor who receives the refusal must make a determination about whether the worker’s concerns are reasonable. Unfortunately, that’s easier said than done. OHS statutes and regulations don’t go into details or specifics about what makes a refusal reasonable. The only official source to go for guidance are the cases in which a court or arbitrator had to apply the principles to real-life refusals. Here’s a rundown of the 8 cases where that actually happened.

## SCORECARD: INFECTIOUS ILLNESS WORK REFUSAL CASES

CASE	GROUND FOR REFUSING	OUTCOME	EXPLANATION
<i>Caverly v. Canada (HRSD)</i>	HRSD worker fears getting SARS from immigrants	Refusal Invalid	Worker not exposed to infection risk, but HRSD should have done a better job of addressing concerns
<i>Chapman v. Canada (Customs and Revenue Agency)</i>	Customs agent fears getting SARS from new Asian immigrants	Refusal Invalid	Custom agents don’t encounter individuals with SARS; even if they did, they can’t get it from proximity to infected individuals
<i>Cole v. Air Canada</i>	Air Canada ticket agents fear getting SARS from Asian passengers	Refusal Invalid	Medical evidence shows SARS isn’t transmitted by proximity to infected individuals; airline adequately addressed SARS concerns

<i>Hogue-Burzynski v. VIA Rail Canada</i>	Railroad crew members fear getting intestinal virus from sick passengers on previous trip	Refusal Invalid	Railway took steps to minimize risk and workers had to accept that risk as part of their job
<i>Swan River Valley Hospital (Re)</i>	Hospital workers fear getting Hepatitis B	Refusal Invalid	Not reasonable to require hospital to vaccinate all workers, especially when they didn't demand vaccination in collective bargaining
<i>Walton v. Treasury Board</i>	Prison guard fears getting Hepatitis B from inmates	Refusal Valid	Fear of being doused with waste bucket is reasonable given that Hepatitis B is spread via contact with feces, urine and semen
Unreported	Quebec paramedics fear getting Ebola from patients	Refusal Valid	Employer didn't have ample infection control measures in place
Unreported	Ontario paramedics fear getting Ebola from patients	Refusal Invalid	Risk of paramedics actually being exposed only hypothetical