

School Staff Member Vaccination Status Reporting and Mandated COVID-19 Vaccination

Name: _____

Attention: BC School Board Trustees and Superintendents

RE: School Staff Member Vaccination Status Reporting and mandated COVID-19 vaccination

On Jan 17, 2022 the B.C. Health Officer, Bonnie Henry, implemented an unlawful Provincial Order¹ advising that school staff must disclose their vaccination status to their employer if so directed by the local Medical Health Officers (MHO). In this Order, Henry authorized the MHOs to create additional orders to access your private information. This is a violation of one's Constitutionally protected privacy rights.

To begin, you need to be aware of the Supreme Court of Canada's (SCC) findings in many cases on the Constitutionality of privacy. As stated by the SCC in O'Connor (1995 4 SCR 411, 1995 CanLII 51 @ para. 121) privacy, especially with respect to one's confidential private medical information as being a core of biographical information and in relation to one's lifestyle and/or political/religious opinions, is both a common law and is constitutionally protected right pursuant to s. 7 and 8 of the Charter of Rights and Freedoms. I bring to your attention the following dicta from the SCC in O'Connor:

*"In my view, it is not without significance that one of those rights, s. 8, has been identified as having as its fundamental purpose, **"to protect individuals from unjustified state intrusions upon their privacy"** (Hunter, supra, at p. 160)...**Respect for individual privacy is an essential component of what it means to be "free"**. As a corollary, the infringement of this right undeniably impinges upon an individual's "liberty" in our free and democratic society. (@ para. 113)*

Privacy has traditionally also been protected by the common law...

In Hill [v Church of Scientology of Toronto 1995 CanLII 59 SCC]...Cory J. reiterates the constitutional significance of the right to privacy...reputation is intimately related to the right to privacy which has been accorded constitutional protection. As La Forest J. Wrote in R. v. Dyment 1988 2 S.C.R. 417, at p. 427, privacy, including informational privacy, is "(g)rounded in man's physical and moral autonomy" and "is essential for the well-being of the individual". (para. 115)"

R v Mills 1999 3 SCR 668, para. 79-81, La Forest J. of the SCC held that:

*"...privacy is at the heart of liberty in a modern state"**This interest to be left alone by the state includes the ability to control the dissemination of confidential information.** As La Forest J. stated in R. v. Duarte, 1995 1 S.C.R. 30, at pp. 53-54:*

¹ <https://action4canada.com/wp-content/uploads/pho-order-school-staff.pdf>

... it has long been recognized that this freedom not to be compelled to share our confidences with others is the very hallmark of a free society. *Yates J., in Millar v. Taylor (1769), 4 Burr. 2303, 98 E.R. 201, states, at p. 2379 and p. 242:*

It is certain every man has a right to keep his own sentiments, if he pleases: he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends.

These privacy concerns are at their strongest where aspects of one's individual identity are at stake, such as in the context of information "about one's lifestyle, intimate relations or political or religious opinions": Thomson Newspapers, supra, at p. 517, per La Forest J., cited with approval in British Columbia Securities Commission v. Branch...1995 2 S.C.R. 3, at para. 62.

The significance of these privacy concerns should not be understated. Many commentators have noted that privacy is also necessarily related to many fundamental human relations.

To respect, love, trust, feel affection for others and to regard ourselves as the objects of love, trust and affection is at the heart of our notion of ourselves as persons among persons, and privacy is the necessary atmosphere for these attitudes and actions, as oxygen is for combustion.

See also D. Feldman, "Privacy-related Rights and their Social Value", in P. Birks, ed., Privacy and Loyalty (1997), 15, at pp. 26-27, and J. Rachels, "Why Privacy Is Important" (1975), 4 Philosophy & Public Affairs 323. This Court recognized these fundamental aspects of privacy in R. v. Plant, 1993 CanLII 70 (SCC), [1993] 3 S.C.R. 281, [page723] where Sopinka J., for the majority, stated, at p. 293:

In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the life-style and personal choices of the individual.

The SCC has emphasized in the strongest possible terms, that our right to privacy is sacrosanct and subsumed in both s. 7 and 8 of the Charter and is of paramount importance to our life, liberty, security of the person and from unreasonable search and seizure. **Bonnie Henrys' recent Order is in fact, an attempted unconstitutional seizure of our personal and private medical information.**

Henry quotes Section 42 of the Public Health Act which instructs school staff that they have a duty to comply with this Order and failure to do so would be considered an offence under section 99 (1) (k) of the Act.

These Sections of the Health Act do not apply to the gathering of private medical information and are being quoted to possibly deceive staff into compliance.

According to Section 52(1) of the Constitution Act ALL Statutes, Orders, By-laws, and "Acts" must be consistent with the Constitution...or they are of no force or effect.

- Section 52(1) of the Constitution Act, 1982: The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Henry is determined to vaccinate all school staff but is aware there are obstacles standing in her way, such as human and privacy rights and bodily autonomy.

In the fall of 2021 Henry attempted to put the onus on all 60 BC School Boards to individually vote and mandate school staff be vaccinated. **Action4Canada** commenced a campaign² wherein every School Board Trustee and Superintendent was served a Notice of Liability and additional letter advising them that they are at risk of personal liability should they vote in favour of this unlawful dictate. As a result of the campaign 26 School Boards have voted NO³, thus far. Several School Boards have recently reported to have voted in favour of mandating the COVID-19 vaccines as a result of Henry's Order but these school boards have now officially opened themselves up to liability.

Action4Canada is strongly recommending that these school boards rescind their decisions immediately. Henry's Order does not immunize trustees from liability and most certainly does not provide a green light to violate protected human rights or the Criminal Code and Charter of Rights and Freedoms. The Notice of Liability served is explicitly clear in regards to this and Henry's Order does not change the facts.

Bonnie Henry has not been successful in fully mandating vaccination via the School Boards so she is attempting to create a workaround and come at this from another direction via local MHO's. But no matter how they approach this it all leads back to School Board Trustees being the ones in the position of handing over the private medical information and opening themselves up to personal liability.

A data collection grab was already attempted in School District 23 and failed. On Dec. 10, 2021, School Superintendent, Kevin Kaardal, sent a letter to SD23 school staff demanding they fill out a Vaccination Data Collection Notice by January 2022 or risk consequences (such as unpaid leave). Kaardal was immediately sent a notice⁴ from **Action4Canada** once again warning him of liability. The data grab failed, and it was recently reported by the Epoch Times⁵ that Kaardal admitted that the Notice did not gain the traction they were hoping for.

Henry's most recent Order has been implemented to counter the success of **Action4Canada's** campaign, along with backlash from school staff. However, the most recent Order does not change the fact that it is unlawful to force staff to disclose their private medical information and/or to use extortion (s. 346), intimidation (s. 423) of the Criminal Code, and coercion. It is a violation of the Privacy Act and Section 7, 8 of the Charter of Rights and Freedoms.

Henry claims in the Order that she has the authority to violate the human rights and Charter rights of others in the interests of protecting children from the risks of being in the presence of non-vaccinated staff. First of all, at no time does Henry have the authority to violate citizen's rights, secondly it is now

² <https://action4canada.com/no-to-unlawful-mandate-to-vaccinate-educators/>

³ <https://action4canada.com/bc-trustee-campaign/>

⁴ <https://action4canada.com/wp-content/uploads/letter-SD23-okanagan-kaardal.pdf>

⁵ <https://action4canada.com/wp-content/uploads/epoch-times-bc-school-staff-vax-status.pdf>

accepted medical and public knowledge that the vaccinated are just as likely to spread the virus and thirdly, children are at nearly zero percent risk of contracting the Covid-19 virus.

The Surrey Superintendent, Jordan Tinney, responded to the Order⁶ stating that Surrey would not be requiring staff to provide their vax status because they have already voted no to mandating vaccination. But Tinney goes on to say that if the local MHO requests vax status they will comply. If Mr. Tinney does so, he will be committing a criminal offence and will be held liable.

Anyone participating in the “collection” of this information or “providing” it to local Medical Health Officers is putting themselves at great risk of personal liability as they are complicit in an illegal act. Anyone mandating vaccination is also committing an indictable offence. Using extortion and/or intimidation to force vaccination compliance is against the law.

According to the Public Health Agency of Canada, Canadian National Report on Immunization, 1996

“Vaccines are not mandatory in Canada and they cannot be made mandatory because of the Canadian Constitution.”

Consent to Medical Treatment and Testing In Canada, a doctrine of informed consent regarding any medical treatment has become part of Canadian Federal law. According to Supreme Court rulings, no Canadian citizen is required to take any medical treatment without informed consent, which includes the right to refuse such treatment⁷.

In addition, CUPE is in breach of their collective agreement with their members as they responded⁸ by providing false and misleading information:

- ...this Order enables local Medical Health Officers (MHOs) to direct school boards to obtain the vaccination status of school staff and share that information with the local MHO.
- School districts have been told that they are not required to collect staff vaccination status information unless they are ordered by their local MHO with a specific directive.
- PHO orders are not a grievable matter as they are not a decision from an employer. As an order from the PHO, it does carry penalties for non-compliance that are unrelated to the workplace.

CUPE is misleading members into believing that they will actually be required to provide their vax status and that the employer is immune from liability. This is false information on all counts.

On December 10th Teri Mooring, President of the BC Teacher’s Federation, responded to Kaardal’s Vaccine Data Collection Notice as a “serious violation of privacy rights.” This was, and is, an accurate response. However, Mooring is also on record advocating for mandating forced vaccination.

In addition to previous correspondence with Kaardall, after further research it has come to our attention that the *Vaccination Data Collection Notice* of Dec. 10, 2021 contains additional misleading information.

⁶ <https://rumble.com/vs48e-surrey-school-superintendent-tinney-on-staff-vax-status-collection.html>

⁷ https://bottomlineresearch.ca/pdf/informed_consent.pdf

⁸ https://bcschools.cupe.ca/files/2022/01/K12_bulletin_PHO_vax_order_JAN19_01_19_2022.pdf

On page 4 of that notice, under *Legal Authority for Collection*, reference is made to section 26(c) and (e) of FIPPA.

Under **Purpose for which personal information may be collected**, section 26 is clear that *all* criteria (a) through (e) must be satisfied, including d).

26 A public body may collect personal information only if

(d) with respect to personal information collected for a prescribed purpose,

(i) the individual the information is about **has consented** in the prescribed manner to that collection,
and

(ii) a reasonable person would consider that collection appropriate in the circumstances.

Therefore, under section 26(d) (i), if an individual does not consent to the collection of their personal information, the public body may not collect that personal information, and any attempt to do so is in violation of the very Act being presented as justification. It is deceitful to omit a relevant part of a statute, while only including the parts that suit their purposes.

Bonnie Henry's Order has been interpreted by some School Boards as a green light to mandate vaccination and collect personal, private, protected information. As explained in this Notice this is incorrect and School Board trustees and superintendents have, and are, exposing themselves to personal liability if they vote in favour of, or support these unlawful dictates.

All School Staff have the right to employment without being subjected to coercion, extortion, threats and intimidation and privacy rights violations.

Therefore, this letter serves as an additional warning to all Superintendents and Trustees who voted in favour of, or are about to vote, that should the School Boards demand the vaccination status of school staff or mandate vaccination action will be forthcoming.

Govern yourself accordingly.

Signature: _____

Name: _____

Date: _____