

EMPLOYEE LEGAL PROVISIONS

Oct 15, 2023

1. **Roncarelli v Duplessis, 1959, Supreme Court of Canada:**

Summary: The proposition that in Canada a member of the executive branch of government does not make the law but merely carries it out or administers it requires no citation of authority to support it. Similarly, I do not find it necessary to cite from the wealth of authority supporting the principle that a public officer is responsible for acts done by him without legal justification. I content myself with quoting the well-known passage from Dicey's "Law of the Constitution", 9th ed., p. 193, where he says

"... Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person."

<https://www.canlii.org/en/ca/scc/doc/1959/1959canlii50/1959canlii50.html>

2. **R. v. Eldorado Nuclear Ltd.; R. v. Uranium Canada Ltd, 1983, Supreme Court of Canada:**

Summary: When a Crown agent acts outside of Crown purposes, and not on behalf of the state, there is no immunity of the Crown agent:

"The conclusion that a Crown agent is personally responsible for an unlawful act still leaves the question whether an act is unlawful. Where the unlawfulness or the wrongfulness of the act arises without any recourse to a statute, the Crown's immunity from a statute, as expressed in s. 16 of the Interpretations Act, is irrelevant. If, for example, the agent commits a tortious act, it is the common law which characterizes it as unlawful. There is no immunity that the agent can claim."

"Where the only source of unlawfulness is a statute, however, the analysis is entirely different...the preliminary question...is whether that person is bound by that statute..."

"When the agent steps outside the ambit of Crown purposes, however, it acts personally, and not on behalf of the state, and cannot claim to be immune as an agent of the Crown. This follows from the fact that s.16 of the Interpretations Act works for the benefit of the state, not for the benefit of the agent personally."

The Court adopted this approach in the CBC v. The Queen 1983

"For all purposes of this Act..." the corporation "was not acting for the purposes entrusted to it under the Act... when the Corporation exercises its powers with a view to carrying out the purposes ...it acts as agent of Her Majesty and only as agent of Her Majesty. But, when it exercises its powers in a manner inconsistent with the purposes of the Act, it steps outside its agency role.

"The position at common law is not that those under de jure control are entitled to Crown immunity, but rather that immunity extends to those acting on behalf of the Crown."

"This Court's decision in Formea Chemicals Ltd. v. Polymer Corporation Ltd., supra, is also instructive. The case concerned s. 19 of the Patent Act, R.S.C. 1952, c. 203....

Martland J., speaking for the Court, equated "Government of Canada" with the Crown.

<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2486/index.do>

3. **Authorson v. Canada (Attorney General), 2000 ON Superior Court:**

Summary: This case law shows breach of fiduciary duty by public official is a tort if rights under Canadian Bill of Rights are violated.

<https://www.canlii.org/en/on/onsc/doc/2000/2000canlii22731/2000canlii22731.html?searchUrlHash=AAA-AAQAQIkjpbGwgb2YgUmlnaHRzlgAAAAAB&resultIndex=2>

- 4. The Credit of Alberta Regulation Act; and the Accurate News and Information Act, Supreme Court of Canada 100,1938:**
Case law Implied Bill of Rights:
Summary: The Supreme Court of Canada ruled on the Reference re Alberta Statutes. It found that the Accurate News and Information Act, along with the others submitted to it for evaluation, was ultra vires (beyond the powers of) the Alberta government. In the case of the Accurate News and Information Act, the court found that the Canadian constitution included an "implied bill of rights" that protected freedom of speech as being critical to a parliamentary democracy. **This determined that rights are a federal jurisdiction and therefore the provinces cannot override fundamental rights.**
<https://www.canlii.org/en/ca/scc/doc/1938/1938canlii1/1938canlii1.html>
5. Unifor union workers win arbitration ending the vaccine mandate because it's deemed unreasonable based on evidence supporting waning efficacy of vaccines overtime and a failure to establish "any notable difference" in the risk of transmission between vaccinated and unvaccinated workers.
<https://windsor.ctvnews.ca/stellantis-must-end-vaccine-mandate-for-auto-workers-in-windsor-brampton-next-week-arbitrator-1.5953119>
6. City workers in Richmond BC won a grievance regarding the cities' vaccine mandate. The arbitrator ruled that there was not enough evidence to prove there was an acceptable alternative to the city's mandate that would "meet the goals of preventing the spread of the virus while eliminating those personal consequences."
<https://www.richmond-news.com/local-news/backpay-ordered-for-unvaccinated-richmond-city-workers-5225644>
- 7. Jones v. Tsige, 2012:**
Summary: Case law right to sue for breach of privacy:
Summary: The Ontario Court of Appeal declared that the common law in Canada recognizes a right to personal privacy, more specifically identified as a "tort of intrusion upon seclusion", as well as considering that appropriation of personality is already recognized as a tort in Ontario law. This allows the ability for a person to sue for breach of privacy.
<https://www.canlii.org/en/on/onca/doc/2012/2012onca32/2012onca32.html>
- 8. St. Patrick's Home of Ottawa Inc. V Canadian Union of Public Employees, Local 2437, 2016:**
Arbitration ruling upholding Section 63 of OHSAA and a Collective Agreement:
Summary: Employer (long-term care home) breached OHSAA, collective agreement by sharing employee's medical information with another employer. This case illustrates the increasing importance of privacy – particularly of medical information – in the workplace, and that privacy obligations can come from unexpected places, including the OHSAA.
<https://www.occupationalhealthandsafetylaw.com/employer-breached-ohsa-collective-agreement-by-sharing-employees-medical-information-with-another-employer/>
- 9. Parmley vs Parmley, 1945, Supreme Court of Canada:**
Informed consent medical.
Summary: consent must be made freely and information about the risks must be given.
<https://www.canlii.org/en/ca/scc/doc/1945/1945canlii13/1945canlii13.html>
- 10. Hopp vs Lepp, 1980, Supreme Court of Canada:**
Informed consent medical.
Summary: Consent must be made freely and information about the risks must be given.
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2553/index.do>
- 11. R vs Ewanchuk, 1999, Supreme Court of Canada:**
If no consent, then assault.

Summary: Where there is a threat of harm or reprisal or pressure from an authority there is no consent and therefore the act is assault.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1684/index.do>

12. Employment Standards Act, S.O., 2000, c.41:

There are no provisions in the Employment Standards Act for an employer to place an employee on unpaid leave. Only an employee can request unpaid leave.

<https://www.ontario.ca/laws/statute/00e41>

13. Cabiakman v. Industrial Alliance Life Insurance Co., 2004:

Supreme Court of Canada ruling states that the following are required when placing an employee on administrative suspension:

- The suspension must be necessary to protect the legitimate business interest;
- The employer must be acting in good faith;
- The suspension must be for a relatively short time period for a fixed term; and
- Other than in exceptional circumstances, the suspension must be paid.

If you are placed on an unpaid suspension for administrative reasons where your employer is refusing to pay you, you are able to refuse the suspension and this would not be construed as a resignation but rather a constructive dismissal.

<https://canliiconnects.org/en/commentaries/46624>

14. Occupational Health and Safety Act R.S.O.1990, c.0.1:

Crown

2 (1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown.

Section 63, Information Confidential:

- (1) Except for the purposes of this Act and the regulations or as required by law,
- (a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;
 - (e) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and

Employer Access to Health Records:

(2) No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute, to a health record concerning a worker without the worker's written consent. R.S.O. 1990, c. O.1, s. 63 (2).

(f) No person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case

Section 25, Duties of the Employer:

Subsection (1) An employer shall ensure that,

(h) take every precaution reasonable in the circumstances for the protection of a worker;

Subsection 28, Duties of the Worker:

Subsection (3) Consent to medical surveillance

A worker is not required to participate in a prescribed medical surveillance program unless the worker consents to do so

Section 50, No discipline, dismissal, etc., by employer:

Subsection (1) No employer or person acting on behalf of an employer shall,

- (b) dismiss or threaten to dismiss a worker;
- (c) discipline or suspend or threaten to discipline or suspend a worker;
- (d) impose any penalty upon a worker; or
- (e) intimidate or coerce a worker

<https://www.ontario.ca/laws/statute/90o01>

15. Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56:

Act requiring **local government institutions protect the privacy of** an individual's personal information existing in government records.

Section 28, Personal Information:

(1) In this section:

“personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act.

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Section 14, Personal Privacy:

(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

<https://www.ontario.ca/laws/statute/90f31>

16. Health Care Consent Act (Ontario), 1996, S.O. 1996, c. 2, Sched. A:

Section 11 on elements of informed consent:

Elements of consent 11 (1) The following are the elements required for consent to treatment:

- a) The consent must relate to the treatment.
- b) The consent must be informed.
- c) The consent must be given voluntarily.
- d) The consent must not be obtained through misrepresentation or fraud.

<https://www.ontario.ca/laws/statute/96h02>

17. Criminal Code of Canada, R.S.C., 1985, c. C-46:

Extortion, Criminal Code, section 346 (1):

Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

Assault, Criminal Code, section 265:

(1) A person commits an assault when

- i. without the consent of another person, he applies force intentionally to that other person directly or indirectly;
 - ii. he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- b. For the purposes of this section, **no consent** is obtained where the complainant submits or does not resist by reason of
- i. the application of force to the complainant or to a person other than the complainant;
 - ii. threats or fear of the application of force to the complainant or to a person other than the complainant;
 - iii. fraud; or
 - iv. the exercise of authority.

<https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>