

## Legal Provisions for Municipal Employees Ontario

1. We will also be relying on two court rulings, one from BC regarding Deena Henshaw and the other in Alberta regarding Bonnie Henry who are being sued for COVID-19 measures. The court decided that the claims can progress because no one is above the law. This decision was based on Roncarelli v Duplessis which found:  
“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. Case law implied bill of rights:  
The Credit of Alberta Regulation Act; and the Accurate News and Information Act, SCR 100,1938  
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>
3. 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>
4. 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>
5. Case law right to sue for breach of privacy:  
Jones v. Tsige, 2012  
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>
6. Occupational Health and Safety Act R.S.O.1990,c.0.1. (ONTARIO)  
**3. Section 2, Crown and other Acts**  
**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,

(a) dismiss or threaten to dismiss a worker;

(b) discipline or suspend or threaten to discipline or suspend a worker;

(c) impose any penalty upon a worker; or

(d) intimidate or coerce a worker,

7. Arbitration ruling upholding Section 63 of OHSA and a Collective Agreement:

St. Patrick's Home of Ottawa Inc. v Canadian Union of Public Employees, Local 2437, 2016

Summary: Employer (long-term care home) breached OHSA, 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 OHSA.

<https://www.occupationalhealthandsafetylaw.com/employer-breached-ohsa-collective-agreement-by-sharing-employees-medical-information-with-another-employer/>

8. Informed consent case law:

Parmley vs parmley, 1945

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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>

Hopp vs Lepp, 1980

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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>

R vs Ewanchuk, 1999

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>