



## SUPPORTING CASE LAW TO HELP BUILD YOUR CASE

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## CASE LAW REGARDING RIGHTS:

### Province Cannot Override Fundamental Rights:

**The Credit of Alberta Regulation Act; and the Accurate News and Information Act, SCR 100, 1938, Supreme Court of Canada:**

<https://www.canlii.org/en/ca/scc/doc/1938/1938canlii1/1938canlii1.html>

Implied Bill of Rights, 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.

### Right to You to Sue for Breach of Privacy:

**Jones v. Tsige, 2012, Ontario Court of Appeal:**

<https://www.canlii.org/en/on/onca/doc/2012/2012onca32/2012onca32.html>

The ruling 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.

## CASE LAW REGARDING THE RIGHT TO PROTEST:

### Right to Protest, Even in a Time of Emergency:

**Beaudoin v British Columbia, 2021, Supreme Court of BC:**

<https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc512/2021bcsc512.html?resultIndex=1>

Judge ruled the Ministry of Health orders regarding restricting gatherings and events are an infringement of rights under the Charter (NOTE: you can reference case law that uses the Charter, this is NOT the same as invoking the charter that requires an application).

“Mr. Beaudoin is entitled to a part of the declaration he seeks, pursuant to ss. 24(1) and 52(1) of the *Constitution Act, 1982*. I declare that orders made by Dr. Henry entitled “Gatherings and Events” pursuant to ss. 30, 31, 32 and 39(3) of the *PHA*, including the orders of November 19, 2020, December 2, 9, 15 and 24, 2020 are of no force and effect as against Mr. Beaudoin as they unjustifiably infringe his rights and freedoms with respect to public protests pursuant to ss. 2(c) and (d) of the *Charter*.”

### Police Cannot Arrest to Prevent a Breach of the Peace:

**Fleming v Ontario, 2009, Supreme Court of Canada:**

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do>

Mr. Fleming was on his way to join a protest in Caledonia, Ontario in 2009. The protest was against the occupation of a piece of land by a First Nations group. He was carrying a Canadian flag on a wooden pole and walking down a street beside the occupied land.



Mr. Fleming was known to the police and had been violent in the past. Mr. Fleming was arrested by the police to prevent a breach of the peace, because of their belief the situation would get escalated. The police forced him to the ground, took his flagpole and took him to jail where he was held for a few hours.

Police officers saw him as they drove by. There had been violence in the past, and they were planning to keep the groups apart. The officers turned their vehicles around and sped toward him. Mr. Fleming got off the road and crossed a low fence. He said he did this to get away from the speeding vehicles and onto level ground. The officers were yelling. Mr. Fleming said he didn't think they were yelling at him because he hadn't done anything wrong. He was charged with obstructing a police officer (preventing a police officer from doing their job). He went to court a dozen times to fight the charge, which was later dropped.

In 2011, Mr. Fleming sued the Province of Ontario and the officers involved in his arrest. He said the officers acted wrongfully. He said they assaulted and battered him, wrongfully arrested him, and falsely imprisoned him. He also said they violated several of his rights under the *Canadian Charter of Rights and Freedoms*, part of Canada's Constitution.

Police officers get their powers from statutes (like the *Criminal Code*) and common law (the law made by judges deciding cases). They can only act within those laws. Under the common law, the police can limit someone's freedom (for example, arrest them) if it's reasonably necessary to carry out their duties. The police argued they had the power to arrest Mr. Fleming under the common law. They said it was to prevent a "breach of the peace." A breach of the peace is more than a disturbance. It means there is a risk of violence and that someone will get hurt.

The Supreme Court unanimously said the officers didn't have the power to arrest Mr. Fleming. The police can't arrest someone acting lawfully just because they think it will stop others from breaching the peace. They already have other powers to deal with these situations under the *Criminal Code*. Since they had these less drastic options, arresting Mr. Fleming wasn't really necessary.

The Court noted that preserving the peace, preventing crime, and protecting life and property are the main duties of police officers under the common law. They have the power to take actions to support these duties, even if these actions aren't specifically set out in the *Criminal Code*. Preventing breaches of the peace is obviously related to preserving the peace, preventing crime, and protecting life and property. But the Court said it wasn't reasonably necessary to arrest someone to prevent a breach of the peace, if that person hadn't done (and wasn't about to do) anything wrong.

Police are allowed to use as much force as reasonably necessary to carry out their duties. But in this case, they weren't allowed to arrest Mr. Fleming, so no amount of force was justified.

Taking away someone's freedom, even temporarily, is serious. Often, in situations like Mr. Fleming's, the person wouldn't have any way to challenge their arrest in court, because there wouldn't be any charges. The only option would be an expensive civil lawsuit. This was another reason the Court said the standards for judging police actions should be strict.

### **Right to Protest on Public Land:**

#### **Bracken v Town of Fort Erie, Court of Appeal Ontario 2017:**

<https://www.canlii.org/en/on/onca/doc/2017/2017onca668/2017onca668.pdf>

Ban on 'loud' protester from town property overturned as unconstitutional. Ruled that "The area in front of a Town Hall is a place where free expression not only has traditionally occurred but can be expected to occur in a free and democratic society," Miller said. "The literal town square is paradigmatically the place for expression of public dissent."

## CASE LAW ON EMPLOYMENT RIGHTS:

### Leave Without Pay:

#### **Cabiakman v. Industrial Alliance Life Insurance Co., 2004, Court of Appeal for Quebec:**

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

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.

### 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:**

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

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.

## CASE LAW ON INFORMED CONSENT:

### Informed Medical Consent:

#### **Parmley vs Parmley, 1945, Court of Appeal BC:**

<https://www.canlii.org/en/ca/scc/doc/1945/1945canlii13/1945canlii13.html>

#### **Hopp vs Lepp, 1980, Supreme Court of Appeal Alberta:**

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2553/index.do>

Both of the above case laws concluded that consent must be made freely and information about the risks must be given.

### If There is No Consent, the Act is Assault:

#### **R vs Ewanchuk, 1999, Court of Appeal Alberta:**

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

Where there is a threat of harm or reprisal or pressure from an authority there is no consent and therefore the act is assault. Therefore, forced masks, forced vaxx, quarantine including business lockdown and stay home order is a criminal offence.

## PERSONAL/CRIMINAL LIABILITY OF AGENTS OF THE CROWN/MEMBER OF EXECUTIVE BRANCH:

### Immunity Regarding Crown Agent:

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

<https://www.canlii.org/en/ca/scc/doc/1983/1983canlii34/1983canlii34.html>

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.*

### Member of Executive Branch Liable for Punishment for Acting in Excess of Their Lawful Authority:

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

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2751/index.do>

*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.*

#### **Peace officer civil liability:**

##### **Hudson v. Brantford Police Services, 2001, Court of Appeal Ontario:**

<https://www.canlii.org/en/on/onca/doc/2001/2001canlii8594/2001canlii8594.html?searchUrlHash=AAAAAQAfUz11ICgxKSBDcmltaW5hbCBDdb2RlIG9mIENhbmFkYQAAAAAB&resultIndex=1>

S. 25(1) of the Criminal Code of Canada, which provides that a peace officer who is authorized by law to do something in the enforcement of the law is justified in doing what he or she is authorized to do if the officer “acts on reasonable grounds”. In effect, s. 25(1) protects the officer from civil liability for reasonable mistakes of fact and authorizes the use of force. It does not protect against reasonable mistakes of law, such as mistake as to the authority to commit a trespass to effect an arrest.

##### **English Bill of Rights, Dispensing of Power:**

<https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction>

*Dispensing Power.*

*That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyament is illegal.*

## **PROCEDURAL CASE LAW:**

#### **Police Cannot Escalate Bylaw to Criminal Charges:**

##### **R v Sharma, SCC 1993:**

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/970/index.do>:

The power of arrest...has to be exercised promptly, yet, strictly speaking, it is impossible to say that an offence is committed until the party arrested has been found guilty by the courts. If this is the way in which this provision [now s. 495 of the Criminal Code] is to be construed, no peace officer can ever decide, when making an arrest without a warrant, that the person arrested is "committing a criminal offence". In my opinion...the power to arrest without a warrant is given where the peace officer himself finds a situation in which a person is apparently committing an offence.

“In my view, Arbour J.A. was correct in holding that, even if s. 11 of Metro By-law 211-74 were valid, the police cannot circumvent the lack of an arrest power for a violation of the by-law by ordering someone to desist from the violation and then charging them with obstruction. The power to arrest in order to enforce the by-law cannot be inferred in the face of clear language in the Municipal Act and the Provincial Offences Act setting out more moderate means of dealing with repeated infractions. The officer had no authority, either at common law or under statute, to arrest the appellant for failing to comply with an order to desist from conduct prohibited by the by-law. The power to arrest without a warrant for disobeying an order to desist from conduct prohibited by s. 11 of Metro By-law 211-74 cannot be founded upon the language of Metro By-law 211-74, nor on ss. 3 and 23 of the Provincial Offences Act, nor on s. 57 of the Police Act. Johanson v. The King, supra, has no application in the absence of a statutory duty of obedience to police officers. The police constable in this case indeed had an obligation to enforce the by-law. The



legislature defined the enforcement power as ticketing the offender, and the appellant did not obstruct the constable in the performance of this duty. The power of arrest cannot be derived as a matter of common law from the officer's duty to enforce the by-law given the legislature's definition of what such enforcement entails."

### **Right To Be Tried Within a Reasonable Time:**

#### **R. v. Jordan, SCC 2016:**

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do>

At paragraph [5] A change of direction is therefore required. Below, we set out a new framework for applying s. 11(b). At the centre of this new framework is a presumptive ceiling on the time it should take to bring an accused person to trial: 18 months for cases going to trial in the provincial court, and 30 months for cases going to trial in the superior court. Of course, given the contextual nature of reasonableness, the framework accounts for case-specific factors both above and below the presumptive ceiling. This framework is intended to focus the s. 11(b) analysis on the issues that matter and encourage all participants in the criminal justice system to cooperate in achieving reasonably prompt justice, with a view to fulfilling s. 11(b)'s important objectives.

## **MISCHIEF CRIMINAL CHARGES:**

### **Damage is Essential for a Mischief Charge:**

#### **R vs K. T., 2005, Manitoba Court of Appeal:**

<https://www.canlii.org/en/mb/mbca/doc/2005/2005mbca78/2005mbca78.html?resultIndex=1>

Damage is an essential element of the actus reus (the act or omission that comprise the physical elements of a crime as required by statute) for a mischief charge. Failure of the crown to show property in question was damaged will be fatal to a conviction. Paragraph 17 states "...without damage there was no mischief to property"

The charge of "Obstructing" police includes disobeying a lawful police order. It was not a LAWFUL order.

[http://criminalnotebook.ca/index.php/Obstruction\\_of\\_a\\_Peace\\_Officer\\_\(Offence\)](http://criminalnotebook.ca/index.php/Obstruction_of_a_Peace_Officer_(Offence))

There are several criteria that must be met for proof of offence. Point 7 "the peace officer was engaged in lawful duty at all relevant times". The Emergencies Act and orders carried out under it were not lawful. Therefore, the peace officers were not engaged in lawful duty. As such, the proof of offence has not been fulfilled, and there was no legal cause for arrest.