

Bonnie Henry's January 17, 2022 Order (School Staff Member Vaccination Status Reporting) does not remove personal liability.

Charlene McKay

395 Wakesiah Avenue
Nanaimo, BC V9R 3K6

Date Feb. 9, 2022

Dear Charlene McKay,

Notice to SD68 School Board Trustees and Superintendent

RE: School District Staff Vaccination Status Collection and Rapid Antigen Testing

On Jan 17, 2022, the BC Provincial Health Officer, Bonnie Henry, implemented an unlawful Provincial Order^[1] 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 the private medical information of school staff. This is a violation of one's Constitutionally protected privacy rights.

With this letter I am giving notice that any collection of employee vaccination status or any requirement for rapid antigen testing is unlawful on several counts, and that individuals who participate in the implementation of such a policy are opening themselves up to personal liability.

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 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. Dymnt 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:

... 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:

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.

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 lifestyle 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 Henry’s 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 *Public Health Act* do not apply to the gathering of private medical information but 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 campaign^[2] 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 27 School Boards have voted NO ^[3] thus far. Several School Boards, including Nanaimo-Ladysmith, have recently 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 *Charter of Rights and Freedoms*, *Criminal Code*, *Genetic Non-Discrimination Act*, *Canada Labour Code*, or *Freedom of Information and Protection of Privacy Act*.

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 notice^[4] from **Action4Canada** once again warning him of liability. The data grab failed and it was recently reported by the Epoch Times^[5] that Kaardal admitted that the Notice did not gain the traction they were hoping for.

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 MHOs. 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.

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 under the *Criminal Code* to use extortion (s. 346) or intimidation (s. 423) to force staff to disclose their private medical information.

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 citizens' rights; secondly, it is now 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. According to the BCCDC's own data for Dec. 28/21 to Jan. 26/22, the majority of hospitalizations in BC are among the vaccinated. ^[7] This trend is showing up around the world. So not only is this vaccination status collection unlawful, it doesn't make sense.

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 or genetic testing (rapid antigen tests) is also committing an indictable offence. Using extortion and/or intimidation to force vaccination compliance is against the law.

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 treatment.^[8]

Genetic Non-Discrimination Act

Prohibitions

- 3 (1) It is prohibited for any person to require an individual to undergo a genetic test as a condition of
- (a) providing goods or services to that individual;
 - (b) entering into or continuing a contract with that individual; or
 - (c) offering or continuing specific terms or conditions in a contract or agreement with that individual.

There are other applicable prohibitions in Sections 4 and 5.

Canada Labour Code

DIVISION XV.3

Genetic Testing

Genetic test

- (2) Every employee is entitled not to undergo or be required to undergo a genetic test.

Disclosure of results

- (3) Every employee is entitled not to disclose or be required to disclose the results of a genetic test.

Disciplinary action

- (4) No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Division, have worked, or take any disciplinary action against or threaten to take any such action against an employee

- (a) because the employee refused a request by the employer to undergo a genetic test;
- (b) because the employee refused to disclose the results of a genetic test; or
- (c) on the basis of the results of a genetic test undergone by the employee.

Disclosure by third party

- (5) No person shall disclose to an employer that an employee has undergone a genetic test, or disclose to an employer the results of a genetic test, without the written consent of the employee.

Collection or use

- (6) No employer shall collect or use the results of a genetic test without the written consent of the employee who has undergone the test.

In Superintendent Saywell's Information Sheet provided to the Board of Education at the January 26, 2022 public meeting, item 27 under Privacy Statement contains misleading information.

27. Personal information collected under or in connection with this policy is collected under the authority of sections 26(c) and (e) of the Freedom of Information and Protection of Privacy Act.

Under **Purpose for which personal information may be collected**, section 26 of FIPPA is clear that *all* criteria (a) through (e) must be satisfied, which includes 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 are exposing themselves to personal liability if they vote in favour of, or support these unlawful dictates.

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

Therefore, this letter serves as an additional warning to all Superintendents and Trustees who voted in favour of School Boards implementing the collection of vaccination status of school staff, that action will be forthcoming.

Govern yourself accordingly,

Geraldyn Hindmarsh
Geraldyn Hindmarsh

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

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>

⁶ <https://rumble.com/vsz48e-surrey-school-superintendent-tinney-on-staff-vax-status-collection.html>

⁷ <http://www.bccdc.ca/health-professionals/data-reports/covid-19-surveillance-dashboard>

(Click on Vax Donut Charts Tab to see the data)

⁸ https://bottomlineresearch.ca/pdf/informed_consent.pdf