

# An Example of Courageous Pushback for Those Facing Vaccine Mandates in the Workplace

This letter/legal notification was sent by Police Constable Adrienne Gilvesy (a member of the Toronto Police Service) to her Chief of Police in response to mandatory vaccination and mandatory COVID testing requirements.

I am posting it here with her permission and for your benefit. Never flinch. Be informed about the law. And call an employment lawyer.

Adrienne, thank you for allowing me to make your letter public! I hope your courage inspires many others to take a stand for their rights. Creating an unstoppable flood begins with a single drop.

**Update:** The good folks at *Police On Guard For Thee* have posted [a generic template of Adrienne's letter that you can download and modify for your employer](#). As always, it is not a replacement for legal advice from your employment lawyer.

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(This is not intended as legal advice. Provided for informational purposes only.)

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Saturday, August 28th, 2021

To: Chief of Police James Ramer  
Toronto Police Service  
40 College Street

Toronto, ON

██████████@torontopolice.on.ca

**and**

To whom it may concern,

I am writing in relation to the recent eUpdate “Mandatory Vaccination Requirement for TPS Members” sent to all members via email on Tuesday August 24<sup>th</sup>, 2021.

I am not going to disclose my vaccination status to the Toronto Police Service as my medical health is protected by privacy laws. My medical health and choices are private and confidential and I am not required to disclose these to anyone. The Toronto Police Service does not have the right to ask me about my vaccination status. My privacy is protected under the Personal Information Protection and Electronic Documents Act, 2000 (PIPEDA) as well as the Personal Health Information Protection Act, 2004 (PHIPA) as well as the Ontario Occupational Health and Safety Act, R.S.O. 1990, c. O.1 and the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990. The same privacy laws apply to all members.

I am not going to consent to any type of COVID-19 testing that the Toronto Police Service may mandate. I do not give my informed consent.

Informed consent means that the person who will administer the medical treatment or procedure, needs to **inform** you of all the benefits and risks associated with the medical treatment or procedures as well as alternative treatments before you decide if you will consent or not. This is medical freedom. These are our God-given inalienable rights.

Elements of consent: your expressed, informed and explicit consent (voluntary) must be obtained **prior** to treatment. Without consent it is

considered assault under the Criminal Code of Canada. Consent given under fear or duress is **not** consent. Section 265(3) of the Criminal Code of Canada defines consent in relation to assault as:

## **Consent**

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) **fraud**; or
- (d) **the exercise of authority**.

The Ontario Health Care Consent Act, 1996 defines “consent” as well :

### Consent to Treatment

#### **No treatment without consent**

**10** (1) A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,

- (a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or
- (b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act. 1996, c. 2, Sched. A, s. 10 (1).

### Elements of consent

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

1. The consent must relate to the treatment.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud. 1996, c. 2, Sched. A, s. 11 (1).

Treatment is defined in the Ontario Health Care Consent Act, 1996 as follows:

“means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan”. This definition would include any vaccination or any COVID-19 test, as they are both, allegedly, “preventive”, “diagnostic” and for a “health-related purpose”.

The Nuremberg Code, to which Canada is a signatory, states that it is essential before performing a medical procedure on human beings, that there is voluntary informed consent. It also confirms a person involved should have legal capacity to give consent, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him/her to make an informed decision.

Nuremberg Code: Article 6, Section 1:

Any preventative, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be expressed and may be withdrawn by the person

concerned at any time and for any reason without disadvantage or prejudice.

Nuremberg Code: Article 6: Section 3:

In no case should a collective community agreement or the consent of a community leader or other authority substitute for an individual's informed consent.

By forcing members to submit to a COVID-19 vaccination or test (including the rapid antigen test), you will also be in breach of the Nuremberg Code.

Furthermore, the Supreme Court of Canada has well established case law that deals with medical treatment without the informed consent of the patient. Case law, to some in the legal field, would be regarded as the most recent, gold-standard-type of law. As you know, being the Chief of Police for the biggest police service in Canada, case law cannot be overturned or overruled without new case law on that issue. We, as police officers, have a duty to be up to date and knowledgeable on recent case law. The Supreme Court of Canada has made it clear that it is **unconstitutional** to force medical treatment of any kind without the informed consent of the patient. Any action taken by police in contravention of case law, would be unlawful. Furthermore, ignorance of case law could be considered willful blindness or neglect of duty, to name a few.

**In terms of accessing my health records, the Ontario Occupational Health and Safety Act also speaks to this. Under the Ontario Occupational Health and Safety Act, R.S.O. 1990, c. O.1 under Section 63(2) it states:**

**Information confidential**

**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).

Also under the Ontario Occupational Health and Safety Act, R.S.O. 1990, c O.1 it outlines penalties:

#### PART IX OFFENCES AND PENALTIES

##### Penalties

- 66** (1) Every person who contravenes or fails to comply with,
- (a) a provision of this Act or the regulations;
  - (b) an order or requirement of an inspector or a Director; or
  - (c) an order of the Minister,

is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than twelve months, or to both. R.S.O. 1990, c. O.1, s. 66 (1); 2017, c. 34, Sched. 30, s. 4 (1).

While I recognize that Section 63(2) of the Ontario Occupational Health and Safety Act, 1990, states that accessing the health records of an employee is subject to any other statute (which presumably includes the Reopening Ontario {A Flexible Response to Covid-19} Act, 2020), it is nonetheless important to highlight this Act, for a several reasons. We have, after all, been relying partly on this Act to govern our internal Toronto Police routine orders and mandates surrounding COVID-19. Laws surrounding mask exemptions for employees, for example, found within the Reopening Ontario Act, is one example where the Toronto Police Service has relied on (legally or not) the Ontario Occupational Health and Safety Act over the Reopening Ontario Act. Furthermore, “any other statute” is a very broad legal

inclusion and would include many of the laws I have referenced in this letter.

Furthermore, the Canadian Charter of Rights and Freedoms Section 2 (a) (freedom of conscience and religion) and Section 7 (everyone has the right to life, liberty, and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice), apply to these mandates. Human bodily autonomy is as basic as it gets in terms of rights. I have the right to liberty – and this includes my right to refuse medical treatment (including vaccines or any of the available or future tests for COVID-19).

The PCR test is a form of genetic test and also would fall under the definition of a medical procedure. The following legislation also applies: Bill S-201, Statutes of Canada 2017: “An Act to prohibit and prevent genetic discrimination”. In it, it clearly defines “genetic test”: *genetic test* means a test that analyzes DNA, RNA or chromosomes for purposes such as the prediction of disease or vertical transmission risks, or monitoring, diagnosis or prognosis. (*test génétique*)

Furthermore, in this legislation it also outlines Prohibitions:

Prohibitions

### **Genetic test**

**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 or agreement with that individual; or

(c) offering or continuing specific terms or conditions in a contract or agreement with that individual.

This legislation also outlines “Offences and Punishment”

### **Contravention of sections 3 to 5**

7 Every person who contravenes any of sections 3 to 5 is guilty of an offence and is liable

(a) on conviction on indictment, to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding five years, or to both; or

(b) on summary conviction, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding twelve months, or to both.

Lastly, as indicated by Ontario Public Health numerous times (and as evidenced in our ICU statistics), vaccinated persons can still get and transmit COVID-19 despite their inoculation. With this “scientific” evidence, if you target only the non-disclosed, unvaccinated or accommodated persons under the Human Rights Code to COVID-19 testing, this is grounds for discrimination.

The testing, hypothetically, is to ensure that you don’t transmit COVID-19 to other co-workers or the citizens of Toronto that you interact with on a regular basis. If you do in fact outwardly target unvaccinated, accommodated or non-disclosed employees only, this is grounds for discrimination and harassment and is liable for legal action as well. In addition, by discriminating against non-disclosed,

unvaccinated or accommodated employees, the Toronto Police Service will be breaking its own Procedure. Contained within the Toronto Police Service's Procedure 08-12 titled "Workplace Harassment" it states in the first line: **"The Toronto Police Services Board (Board) and the Toronto Police Service (Service) are committed to providing a workplace that is free of discrimination and harassment to all its members"**.

I would also like to bring the Service's attention to an eUpdate that was sent via email to all Toronto Police Service employees on February 10<sup>th</sup>, 2021. Contained within the contents of the eUpdate was the following paragraph: **"As all medical decisions, you will have the right to choose. Below are some links to get you started and help you make an informed decision"**. I have retained a copy of this eUpdate, if required, for reference. In February of 2021, the Toronto Police Service recognized that informed consent was required for any medical procedure, yet in August of 2021 their message has changed. What laws have changed between the months of February 2021 and August of 2021 that would overrule this fact?

It is evident that the Toronto Police Service is in breach of various federal and provincial legislations, as well as case law and their own internal procedures with the recent COVID-19 vaccine disclosure requirement, vaccination and possible testing mandates.

In conclusion, I hereby notify you that I will hold you personally liable for any financial injury and/or loss of my personal income and my ability to provide food and shelter for my family if you use coercion or discrimination against me based on my decision to not participate in Toronto Police Service's COVID-19 vaccination and testing mandates nor will I disclose my vaccination status to you.

Name: DC Adrienne GILVESY

Signature: 

