

# RATH & COMPANY

*Barristers & Solicitors*

ESTABLISHED 1995

October 15, 2021

## Open Letter

**To: All Alberta Health Service and Alberta Public Service Employees and Contractors  
c/o MyAPSChoice.ca**

**Re: Opinion regarding the Illegal COVID-19 Vaccine Mandates for Alberta Health  
Services and Alberta Public Service Employees**

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Rath & Company has been retained to provide a general legal opinion with regard to the Alberta Health Services' ("AHS") *Immunization of Workers for COVID-19 Policy* and the Government of Alberta's COVID-19 Vaccination Policy for all Alberta Public Service ("APS") employees.

It is my legal opinion that any policy that vitiates the consent of an employee (including staff, students, volunteers, contractors, and other persons acting on their behalf) by threatening to either terminate or suspend them in order to coerce the employee into being vaccinated is a violation of Canadian law.

Section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter") states that "**Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.**"<sup>1</sup> As stated by Chief Justice Dickson and Justice Lamer on behalf of the Supreme of Canada in *R. v. Morgentaler*:

*The law has long recognized that the human body ought to be protected from interference by others. At common law, for example, any medical procedure carried out on a person without that person's consent is an assault.*<sup>2</sup>

This is why the College of Physicians and Surgeons of Alberta (the "CPSA") Standards of Practice clearly sets out that the minimum acceptable Standard of Practice for the provision of any medical treatment or procedure in the Province of Alberta is informed consent.<sup>3</sup>

NO MEANS NO.

It is the right of any employee of AHS or APS to refuse to grant consent to their employers to access their private medical information or records in order to punish them or refuse to provide

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<sup>1</sup> *Canadian Charter of Rights and Freedoms*, s 8, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>2</sup> *R. v. Morgentaler*, [1998] 1 SCR 30 at para 16.

<sup>3</sup> College of Physicians & Surgeons of Alberta, Standards of Practice: Informed Consent, June 1, 2016 at 1 retrieved from: <https://cpsa.ca/wp-content/uploads/2020/05/Informed-Consent.pdf>.

282050 Highway 22 W  
Foothills, Alberta T0L 1W2  
Phone: (403) 931-4047  
Fax: (403) 931-4048  
Toll-Free Number: 1-866-231-7284

consent to be injected with an experimental mRNA vaccine, including the Moderna Spikevax vaccine. The Moderna vaccine is now being withdrawn from use internationally, and in Ontario for patients under the age of 30 due to the high incidence of potentially fatal myocarditis associated with the use of that experimental vaccine. This same guidance is being withheld by Dr. Hinshaw in Alberta.

Any suggestion on the part of the Government of Alberta that either disclosure of personal medical information or the forced vaccination of employees through a coercive vaccine mandate policy is unjustifiable on the basis of case law reviewed by our office. This includes the recent *Saint Michael's Hospital v. Ontario Nurses' Association* case. This case found that a vaccine and mask policy for influenza was unreasonable for lack of scientific evidence.<sup>4</sup>

In this case, the Government of Alberta has not provided any cogent medical or scientific evidence to prove that healthy, unvaccinated employees working from home or taking appropriate social distancing measures and complying with existing personal protection policies, are in any way responsible for the large percentage of patients over the age of 70 with multiple comorbidities currently in hospital with COVID-19.

From the outset of the pandemic, Dr. Hinshaw, Dr. Yiu, and the Government of Alberta, including Premier Jason Kenney, have repeatedly made numerous false, misleading and scientifically unsupported claims. Some of these statements have included “15 days to stop the spread”, that “vaccines will stop the spread”, that “we are in a pandemic of the unvaccinated”, that “vaccines are more effective than natural immunity derived from recovering from COVID-19”, that the “vaccine provides immunity to COVID-19”, and that “children are at risk from dying of COVID-19”.

The most recent attempt by Dr. Deena Hinshaw to terrorize parents, was by her ghoulishly claiming that a 14-year old with Stage 4 brain cancer had died from COVID-19. This “misinformation” was only walked back by Dr. Hinshaw after that child’s tragic death was reported in social media by the family as being a cancer death, not a COVID-19 death as falsely claimed by Dr. Hinshaw. It is a fair question to ask as to whether Dr. Hinshaw would have corrected the public record had she not been caught.

In other litigation that our office is engaged in with the Government of Alberta relating to unlawful CMOH Orders, Dr. Hinshaw recently subverted a scheduled hearing and her cross-examination in open Court on the basis of her claim that she was “too busy” dealing with the emergency to come to Court and answer questions of concern to every Albertan. After advising through counsel that she was unavailable because she was “too busy” due to the “emergency”, and after counsel were forced to adjourn the proceeding, Dr. Hinshaw promptly went on vacation.

It is clear on the basis of recent data from the UK that the rate of positivity of fully vaccinated people in comparison to unvaccinated people are rapidly rising in UK<sup>5</sup> and a recent study at the

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<sup>4</sup> *St. Michael's Hospital v. Ontario Nurses' Association*, 2018 CanLII 82519 (ON LA).

<sup>5</sup> UK Health Security Agency, COVID-19 vaccine surveillance report: Week 40, 7 October 2021, p 12 and 17, retrieved from:

University of California Davis, Genome Center and UC San Francisco found that there was no significant difference in viral load between vaccinated and unvaccinated groups, or between asymptomatic and symptomatic groups infected with the Delta variant.<sup>6</sup> The study found that a substantial proportion of asymptomatic fully vaccinated individuals had high Ct-values, indicative of high viral loads, which is consistent with the potential for transmission from breakthrough infections (i.e., infection in vaccinated persons, prior to any emergence of symptoms).<sup>7</sup> **The study also found that data gathered during the surge of the Delta variant strongly supported the notion that neither vaccine status nor the presence or absence of symptoms should influence the recommendation and implementation of public health practices designed to mitigate the spread of COVID-19.**<sup>8</sup>

In other words, the most recent available science does not support Premier Jason Kenney and Doctors Hinshaw and Yiu **conspiring to assault** either APS or AHS employees through coercive vaccine mandates on pain of dismissal or suspension or the violation of the medical privacy of individual APS or AHS employees.

Every AHS and APS employee that consents to the sharing of their personal medical information with the Government of Alberta may soon find themselves on the “QR Code” train. Their medical privacy and rights to make personal medical decisions with regard to their own bodies will be violated on an ongoing basis every time that AHS, through its partnership with the World Economic Forum, decides that another round of boosters is required or some new “Great Reset” measure like “QR Code Vaccine Passports” or “Social Credit Scores” are implemented in the name of “public health”.<sup>9</sup>

### ***Freedom of Information and Privacy Act (“FOIP Act”)***

Pursuant to the FOIP Act, any personal health information, including vaccination or immunization status, is personal health information protected by that Act.<sup>10</sup>

Further, any such collection of information must include the specific legal authority for the collection and the contact information of an officer or employee of AHS who can answer individuals’ questions about the collection.<sup>11</sup> Further, the FOIP Act makes it clear that a public body can only use personal health information if the individual consents to its use.<sup>12</sup> Accordingly,

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1023849/Vaccine\\_surveillance\\_report\\_-\\_week\\_40.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1023849/Vaccine_surveillance_report_-_week_40.pdf).

<sup>6</sup> Charlotte B. Acharya, et al., (September 28, 2021), “No Significant Difference in Viral Load Between Vaccinated and Unvaccinated, Asymptomatic and Symptomatic Groups When Infected with SARS-CoV-2 Delta Variant”, MedRxiv, <https://doi.org/10.1101/2021.09.28.21264262>.

<sup>7</sup> *Ibid*, p 7.

<sup>8</sup> *Ibid*, p 8.

<sup>9</sup> Gregory Kennedy, *Global recognition grows for AHS: Invitation to join World Economic Forum coalition gives Albertans access to cutting-edge research & resources*, July 2, 2020, retrieved from: <https://www.albertahealthservices.ca/news/Page15540.aspx>.

<sup>10</sup> *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, s 1(n)(vi) and s 1(u) [FOIP Act].

<sup>11</sup> *Ibid*, s 34(2).

<sup>12</sup> *Ibid*, s 39(1)(b).

if you reply electronically to AHS and APS, consenting to the use of your personal immunization information, they may be able to utilize that personal medical information to “discipline” you on a going forward basis should you later chose not to receive “boosters” or further injections.

If you do not provide them this consent to access your personal medical information, they will not be able to access your personal vaccination status.

### Standards of Practice

The Standards of Practice of the CPSA are the “minimum standards of professional behavior and ethical conduct” expected of all regulated members of the CPSA in the Province of Alberta.<sup>13</sup> These Standards are enforceable under the *Health Professions Act* (the “HPA”). For AHS employees and contractors, who are the subject of a direct vaccine mandate being promulgated by Dr. Yiu as a matter of AHS policy, know that Dr. Yiu’s support for this policy is likely a direct contravention of her medical licence.

Further, know that in the *St. Peter’s Health System v. C.U.P.E. Local 778* (“*St. Peter’s*”) case in Ontario, the arbitrator looked at the issue of whether an employer can force medical treatment on people that do not give consent in the context of the hospital’s policy requiring staff to either have a flu shot or agree to be treated by Amantadine if there is a flu outbreak in the hospital.

Similar to the AHS immunization policy, in the *St. Peter’s* case, hospital staff were suspended from work without pay until the outbreak subsided if they did not get the flu shot or did not agree to be treated with Amantadine. The arbitrator held that suspending hospital employees for refusing to undergo medical treatment was a violation of their s. 7 *Charter* rights. That decision was based on case law from the Supreme Court of Canada and the Ontario Court of Appeal, including *R. v. Pohoretsky*<sup>14</sup>, *R. v. Morgentaler*<sup>15</sup>, *Rodriquez v. British Columbia (Attorney General)*<sup>16</sup>, and *R. v. Stillman*<sup>17</sup>, which clearly state that forced medical treatment is an assault if there was no consent.

The arbitrator in *St. Peter’s* had no difficulty whatsoever in finding that suspension without pay or the threat of suspension without pay in the context of medical treatment or a medical procedure amounted to an **assault** and a violation of section 7 of the *Charter*.

Please be advised that the opinions expressed in this letter are general in nature. They do not take in account the various collective bargaining agreements or individual contracts of employment or service that AHS and APS employees or managers may have entered into.

There are cases from Ontario, Alberta and British Columbia, where vaccine mandates for healthcare workers were upheld, some of which suggest that where a collective bargaining

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<sup>13</sup> College of Physicians & Surgeons of Alberta, Standards of Practice: Informed Consent, June 1, 2016 retrieved from: <https://cpsa.ca/wp-content/uploads/2020/05/Informed-Consent.pdf>.

<sup>14</sup> *R. v. Pohoretsky* (1987), 39 D.L.R. (4<sup>th</sup>) 699 (S.C.C.).

<sup>15</sup> *R. v. Morgentaler*, *supra*.

<sup>16</sup> *Rodriquez British Columbia (Attorney General)* (1993), 107 D.L.R. (4<sup>th</sup>) 342 (S.C.C.).

<sup>17</sup> *R. v. Stillman* (1997), 144 D.L.R. (4<sup>th</sup>) 193 (S.C.C.).

agreement contains a provision requiring immunization as a *bona fide* occupational requirement that those agreements may in fact govern.

That being said, I do not believe, on the basis of case law from the Supreme Court of Canada, and the fact that the mRNA injections do not provide “sterilizing immunity”, that a collective bargaining agreement would have the effect of overriding section 7 of the *Charter* given the direction of the Supreme Court of Canada that governments cannot contract out of their constitutional obligations.

Each individual member of the AHS and APS will have to make their own difficult personal decision with regard to how they wish to respond to these clearly misguided and illegal attempts to obtain your private medical information, as well as to perpetrate a form of **assault** or attempted **assault** upon all APS and AHS contractors and employees under the guise of “public health”.

Courses of action that are available to you include obtaining an exemption based on a protected ground under the *Alberta Human Rights Act*, such as religious or medical reasons, or alternatively, to claim a blanket legal exemption under the *Alberta Human Rights Act* or section 7 of the *Charter* given the clear direction of the Supreme Court of Canada that **the most basic form of security of the person under section 7 consists of asserting autonomy over one’s own physical person.**

Also know that any attempt to discriminate against unvaccinated people by forcing them to be tested for COVID-19, either at their own costs or at the cost of the Government, without making the equal requirement for vaccinated employees, may offend the section 15 equality provisions of the *Charter*. Given the scientific certainty that vaccinated people spread COVID-19 at rates higher than unvaccinated people any testing discrimination directed at unvaccinated people would likely not survive justification under section 1 of the *Charter*. As an example, in Alberta, we have approximately 300% more vaccinated people than unvaccinated people. For unvaccinated people to be spreading COVID-19 at a rate higher than vaccinated people data would have to exist to prove that unvaccinated people spread COVID-19 at a rate 300% higher than vaccinated people. No such data exists in the Province of Alberta.

### **Suggested Course of Action**

I would strongly suggest that every APS and AHS employee or contractor concerned for their own physical autonomy and future bodily integrity stand up to these totalitarian and unlawful orders. I would strongly suggest that you do not reply electronically and do not provide consent to access your private medical information and that any reply to demands for either health status or vaccination status, or demands that you be vaccinated, be responded to in writing either by regular mail or registered mail.

In the event that you choose not to seek a medical, religious or other specific *Alberta Human Rights Act* exemption, you may wish to claim a legal exemption on the basis of the illegality of the policy under section 7 of the *Charter*. I would strongly suggest that a simple letter in the following form be returned as follows:

“I, \_\_\_\_\_, hereby advise that I am exempt by operation of Canadian law and section 7 of the *Canadian Charter of Rights and Freedoms*, from having the Government of Alberta unlawfully access my personal health information or force me against my will to be injected with any form of mRNA injection. I make this declaration knowing that it has the full effect of protecting my rights under the Constitution of Canada without fear or coercion.

I DO NOT CONSENT TO THE RELEASE OF MY PERSONAL MEDICAL INFORMATION WITH REGARD TO MY MEDICAL STATUS. I BELIEVE THAT ANY ATTEMPT TO PUNISH ANY PERSON ON THE BASIS OF THEIR REFUSAL TO GRANT CONSENT TO A MEDICAL PROCEDURE CONSTITUTES AN ATTEMPTED ASSAULT.

Please govern yourselves lawfully.”

Hopefully, **vaccinated members of AHS and APS** that are concerned with the degree to which you have all been lied to, misled, and coerced into either being injected against your will or threatened with job action or discipline if you do not, will join in **solidarity** with unvaccinated employees and contractors who have *bona fide* medical, scientific, religious, moral, or ethical concerns in sending a legal exemption notice to the Government of Alberta and AHS.

I understand that these are extremely trying times for all of us, and that any personal decision to send a written communication to the Government of Alberta standing up for your individual rights and the rights of your families as Albertans may have personal consequences.


Please be advised that our firm has been retained by MyAPSChoice.ca to commence a number of different legal actions to protect your rights both as APS and AHS employees. These legal actions will include applications to the Alberta Human Rights Commission and class action lawsuits seeking injunctive relief against AHS and the Government of Alberta with regard to these coercive and illegal vaccine mandates.

Should you wish to support these actions, please support [MyAPSChoice.ca](http://MyAPSChoice.ca). Any individual seeking legal advice with respect to their personal situation or wishing to register as a class action litigant, please contact our office by email (**not by telephone**) at [rathco@rathandcompany.com](mailto:rathco@rathandcompany.com).

Due to the high volume of emails and telephone calls our office is already receiving, please do not expect an immediate reply. That being said, our office will do its best to review each individual email and prioritize requests for personal legal advice on the basis of urgency.

Yours very truly,

**RATH & COMPANY**

A handwritten signature in blue ink, appearing to be 'Jeffrey R. W. Rath', written over a horizontal line.

Jeffrey R. W. Rath, B.A. (Hons.), LL.B. (Hons.)  
Barrister and Solicitor