

³⁵ Hamilton Health Sciences, supra note 18 at para 40.

The foundational principle is that employees have a strong right to privacy with respect to their bodily integrity and a medical practitioner, therefore, a trespass is committed if an employee is examined against his or her will. Consequently, the employer cannot order an employee to submit to a medical examination by a doctor chosen by the employer unless there is some express contractual obligation or statutory authority.

Notwithstanding the above, it is also well established that employers have an important obligation to ensure a safe workplace. This means employers have the right to know more

The question of whether an employer has the ability to force an employee to attend an independent medical exam is less clear. In a 2007 decision of the Federal Court, Justice Shore noted:

to obtain updated medical information from a treating specialist.

If the information provided by the family physician is incomplete or if the employer has reason to doubt the information provided by the family physician, the employer can ask the employee

Where appropriate, an employer can ask the family physician to disclose on a medical information form whether the employee is being treated by a specialist in relation to the illness or injury which is causing the employee's absence from work or need for other accommodation. If the information provided by the family physician is incomplete or if the employer has reason to doubt the information provided by the family physician, the employer can ask the employee

I recognize that the real world is not an ideal one. In the ideal world doctors would have perfect knowledge of the relevant medical matters, their patients and their patients' workplaces, and would be completely objective. If that were so, a doctor's simple statement certifying that an employee was ill and unable to work for some specified period of time, and specifying restrictions for return to work and accommodation purposes when and as appropriate, would be good enough for all purposes and nothing further, including any diagnoses or even a statement of the nature of the illness or injury would be required. But that is not the real world, or at least not the one I am familiar with. Medical health professionals are also human beings. The fact is that they are not always entirely objective. It is quite appropriate for medical health professionals to act as advocates for their patients in medical matters within their competence, but not when the advocacy extends beyond their medical expertise or matters of which they have direct knowledge, such as when they have little or no knowledge of the workplace or their patient's job or employment situation other than what their patient decides to tell them.³⁵

COUSE
BUTLER

COMMUNICATE
WILLINGLY

TO
BUTLER

PARA 18
CIRCUIT
NATIONAL

ABSTRACT

REASONABLE DECISION