



Justice Centre for Constitutional Freedoms

September 16, 2021

David Duckworth, P.Eng., MBA
City Manager
The City of Calgary
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PO Box 2100, Station M
Calgary, AB, T2P 2M5

VIA EMAIL: city.manager@calgary.ca

Dear Mr. Duckworth,

Re: Mandated Vaccination Policy

We write regarding your letter of September 3, 2021, sent to City of Calgary employees, demanding that they get vaccinated by September 13, 2021 or face discipline up to and including dismissal. We raise the following legal, medical and scientific issues, and look forward to your prompt response.

The Policy Ignores Existing Natural Immunity

Your vaccine requirement does not recognize the enhanced immunity possessed by individuals who have already had a COVID-19 infection. For example, Science Magazine recently discussed an Israeli study, which found that "[t]he natural immune protection that develops after a SARS-CoV-2 infection offers considerably more of a shield against the Delta variant of the pandemic coronavirus than two doses of the Pfizer-BioNTech vaccine" [emphasis added]¹. The upshot of this study is that a vaccination requirement for those who have already been exposed to, and recovered from COVID-19, adds nothing to anyone's immunity or to workplace safety.

COVID-19 Shots Do Not Prevent Transmission

A recent peer reviewed study demonstrated that "vaccinated people who got so-called breakthrough infections carried about the same amount of the coronavirus as those who did not get the shots" indicating that vaccinated and unvaccinated individuals are equally likely to transmit the virus to others². Since vaccinated people can transmit the SARS-CoV-2 virus, as shown by a recent CDC study,³ forcing people to get vaccinated to prevent transmission is not justified by the scientific data.

¹ <https://www.sciencemag.org/news/2021/08/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-no-infection-parties>.

² <https://apnews.com/article/science-health-coronavirus-pandemic-d9504519a8ae081f785ca012b5ef84d1>.

³ <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>

Violation of the Canadian Charter of Rights and Freedom and Human Rights Legislation

It is a well-recognized legal principle in the Western world that an individual can be subjected to medical treatment only on the basis of his or her informed consent. In other words, treatment can be administered only when a person's doctor informs him or her of the risk, benefits, side-effects and alternatives to a proposed treatment; furthermore, consent is vitiated whenever an individual experiences coercion directly or indirectly in reaching the decision about treatment. This approach to medical treatment has been affirmed by the court of Queen's Bench in Alberta in the case of *Rhine v. Millan*.⁴ Thus, we must advise you are in violation of this fundamental moral and legal principle by coercing and compelling your employees with the threat of disciplinary action to make what is an inherently personal choice.

We also advise that the failure to follow the Alberta's common law would also be a violation of the rights of personal autonomy and bodily integrity recognized by the Supreme Court of Canada under section 7 the *Charter of Rights and Freedoms*,⁵ which guarantees that everyone has the "right to life, liberty and security of the person." We also maintain that your vaccination policy offends the right to decline treatment on the ground of conscientious objection or religious belief, both of which are guaranteed to Canadians under section 2(a) of the *Charter*.

Since, as noted above, the current vaccines cannot prevent the spread of COVID-19, there is no rational foundation for stigmatizing or penalizing the unvaccinated, which means that your vaccination policy also unfairly discriminates against the unvaccinated and may violate the right to equal protection of the law.

Liability for Adverse Reactions to COVID-19 Vaccines

Your vaccine policy is particularly troubling when one considers that COVID-19 vaccines have not gone through long-term trials. Moreover, reports of adverse reactions, which include blood clots, strokes, heart attacks, heart inflammation, neurological deficits, pancreatic dysfunction, spontaneous miscarriage, infertility, the onset of severe diabetes or Guillain-Barre Syndrome, and death, continue to mount.⁶ This is reflected in the Health Canada warning labels for the Pfizer, Moderna and Johnson and Johnson vaccines, which among other events, refer to myocarditis, pericarditis,⁷ Bell's Palsy⁸ and thrombosis.⁹

In light of the foregoing, can you confirm that you, as the employer, will accept all liability for any adverse reactions employees may suffer as a result of taking vaccines at your behest?

⁴ *Rhine v. Millan* (2000), Alta. L.R. (3d) 352 (Q.B.) 360.

⁵ *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at 56; *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307; *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 31, para. 62.

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>.

⁷ <https://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2021/75959a-eng.php>

⁸ <https://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2021/76203a-eng.php>

⁹ <https://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2021/75479a-eng.php>

Breach of Privacy Laws

The Justice Centre is also concerned about the privacy implications of your vaccination policy since you are using and the threat of disciplinary actions and possible termination as the basis for forcing employees to divulge personal and confidential medical information that is protected under the *Personal Information Protection Act*.¹⁰

Thus, we request that you explain how it is that your policy does not run afoul of provincial privacy legislation.

Our Position

Given the legal and ethical issues around vaccination policy raised in this letter, we request that you immediately halt and discontinue your COVID-19 vaccine requirement for City of Calgary employees.

Your timely response (or lack thereof) will be noted in the event that legal proceedings are brought against the City of Calgary in respect of this policy.

Please govern yourself accordingly.

Yours sincerely,



Jonathan Fernandes, P.Eng., MBA, J.D.
Barrister and Solicitor

¹⁰ Statutes of Alberta, 2003, Chapter P-6.5.