COVID-19: Superior Court confirms mandatory vaccination in maritime, air and rail transport

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Context

In the fall of 2021, Canada's minister of transport issued by ministerial orders a mandatory vaccination requirement for federally regulated marine, air and rail transportation in the context of the COVID-19 pandemic.

The United Steelworkers challenged some of these ministerial orders by way of judicial review[1], claiming that they violated the right to liberty and the right to security of the person protected by section 7 of the *Canadian Charter of Rights and Freedoms* (the Charter).

On July 5, 2022, the Superior Court of Québec, under the direction of Justice Mark Phillips, dismissed the application for judicial review filed by the United Steelworkers.[2] In order to verify the legality and constitutionality of the orders of the Department of Transport of Canada, Justice Phillips had to rule on the following three questions:

1. Do the challenged provisions of the ministerial orders infringe on the right to liberty or the right to security of the person under section 7 of the Charter?
2. If so, is there otherwise a violation of one or more principles of fundamental justice?
3. If the answer to the first two questions is yes, is the violation of section 7 justified by section 1 of the Charter?

Grounds for decision

At the outset, it should be noted that as of June 20, 2022, during the deliberation of the Superior Court, the last forms of vaccine requirements issued by the Department of Transport of Canada were lifted, rendering moot the United Steelworkers' application for judicial review. Despite this, the Court chose to exercise its discretion and settle the issue.

After a detailed analysis of the applicable legal principles, Justice Phillips answered the first question by establishing that there was an infringement of section 7 of the Charter.

According to the judge, the combined effect of the (non-absolute) obligation to be vaccinated and the related consequence for the individual in the event of a refusal, that is, the loss of their job, results in a definite coercion that weighs on the decision to consent or not to the medical treatment. Thus, according to the judge, this is an infringement of the individual's liberty.

In addition, there is also an infringement to the security of the person in the form of a breach of psychological integrity, since the psychological harm suffered by the plaintiffs is due in particular to the intervention of the government.

As to the second question, whether there is also a violation of one or more principles of fundamental justice, at this point the Court had to decide whether the vaccination requirement was arbitrary, overbroad or grossly disproportionate.

According to Justice Phillips, the measure was clearly not arbitrary since it was directly related to its objective, which was to limit the risk of spreading the virus and to ensure transport safety.

Nor was it overbroad in that mandatory vaccination is deemed necessary in the workplace.

Finally, the plaintiffs argued that the measure was disproportionate because it was permanent in nature even though it attempted to correct a temporary problem. The Court responded to this argument by saying that it minimized the seriousness of the situation the country was facing as of fall of 2021. The judge concluded that while the measure had an effect on the individual that was not trivial, the effect was proportionate to the objective, which was no less important.[3]

Key takeaways

This decision is consistent with past decisions of administrative tribunals and courts, most of which have upheld mandatory workplace vaccination policies. The Court accepts the evidence that vaccination is the best way for an employer to prevent the risk of contagion in the workplace, to protect infected individuals from severe forms of the disease and thus to protect the health and safety of its employees.

In a context where most health restrictions have been lifted, this reminder of the appropriateness of vaccination measures is not trivial. Furthermore, with a resurgence of COVID-19 cases in Québec and Canada at the time of writing (in July 2022), this is also a reminder that the issue is still relevant and will remain a hot topic.

Contact us

As always, BLG's Labour and Employment Group will continue to monitor these vaccination policy cases as they proceed through the courts and adjudicators to keep you informed of relevant case law and regulatory developments.

If you have any questions about this bulletin or how your company may be affected by the implementation or rollout of vaccination policies, please contact any of the contacts below.

[1] *Syndicat des métallos, section locale 2008* c. *Procureur général du Canada*, 2022 QCCS 2455.

[2] It should be noted that despite the presence of numerous companies involved in this litigation, the mandatory vaccination policies put forward by these companies are not the subject of the application for judicial review. Furthermore, the sanctions imposed on individuals who refused to be vaccinated are not the subject of the debate.

[3] Following his analysis, Justice Phillips also took the time to address the alternative argument of the Government of Canada's counsel, that if there was a violation of section 7 of the Charter, it would be justified as a reasonable limit under section 1 of the Charter, an argument with which he agreed.

By

Maude Galarneau, Patrick Trent, Samuel Roy

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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