Court upholds McMaster University's COVID exemption request process

June 27, 2022

What you need to know

- In *Michalski v. McMaster University*, the Ontario Divisional Court dismissed an application for judicial review of four McMaster University decisions regarding creed-based exemption requests from its COVID-19 vaccination policy.
- In the decision, the court emphasized that the Human Rights Tribunal of Ontario (HRTO) is the appropriate place to decide on these matters.
- The court also found that McMaster's process for addressing accommodation and exemption requests gave applicants the necessary procedural fairness.
- This finding suggests that similar employer processes will satisfy the procedural fairness requirement.

Background

As Ontario considered a return to in-person learning, McMaster developed a COVID-19 vaccination policy requiring all faculty, staff, and students who attended university property to be fully vaccinated against COVID-19. Alternatively, individuals could request exemptions based on a protected ground under the *Human Rights Code* (the Code).

Anticipating a high volume of exemption requests, McMaster developed an internal review process to assess submissions to determine whether the applicant had a valid reason for exemption under the Code. The university would accommodate valid requests, while those denied meant the applicant could no longer study on campus.

McMaster assembled a validation team and provided them a guideline outlining the criteria to assess creed-based submissions. Literature from the Human Rights Commission informed the guideline.

The four applicants were Christian undergraduate and graduate students requesting exemptions based on their religious beliefs. McMaster denied their exemption requests and the applicants went to the Divisional Court to try to defeat the university's decision.

Decision

In a unanimous decision, the Divisional Court dismissed the application and declined to exercise its discretion to judicially review the university's decisions.

The court held that the applicants were asking the court to decide whether the university's validation team correctly interpreted the meaning of "creed" under the Code. As a result, the court ruled that the HRTO was the appropriate place to adjudicate the applicants' claims.

Although the court declined to review the university's decisions, it made several helpful observations regarding the duty of procedural fairness owed to the applicants for processing their exemption requests.

The court noted that the duty of procedural fairness is variable and context-specific and is informed by these factors:

- The nature of the decision being made and the process followed in making it;
- The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- The importance of the decision to the individual or individuals affected;
- The legitimate expectations of the person challenging the decision; and
- The choices of procedure made by the agency itself.

What this means for employers

While the court declined to conduct judicial review in this matter, its decision in *Michalski v. McMaster University* offers several helpful takeaways for institutions and employers alike:

- In declining to exercise its discretion to judicially review the university's exemption request decisions, the court has sent a strong signal to future applicants that the HRTO is the appropriate place to challenge the denial of COVID-19 vaccination exemption requests.
- Organizations with similar COVID-19 vaccination policies should ensure their review process includes basic procedural requirements, such as giving individuals an opportunity to make their case and ensuring an impartial decision-maker considers the requests fairly. Where an exemption request is denied, the applicant should be told why.
- Importantly, the Divisional Court did not rule on the reasonableness of the university's policy or its authority to implement it. It also did not indicate the merits of the requests or whether McMaster's denial was discriminatory. It remains to be seen how the HRTO will assess the difficult issues associated with such claims.

If your organization finds itself in a similar situation, BLG's Disputes group can help. Reach out to the group or your regular BLG lawyer for assistance with matters regarding COVID vaccination policies.

By

Erica Sanderson, Neva Lyn Kew

Expertise

Labour & Employment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

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

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.