

FEDERAL COURT DENIES INJUNCTION TO SUSPEND FEDERAL GOVERNMENT'S SUPPLIER MANDATE

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The Federal Court of Canada recently dealt another blow to those challenging workplace vaccine mandates when it denied an interlocutory injunction that would have suspended the implementation of the federal government's COVID-19 mandatory vaccination requirement for suppliers.

Consequently, as of November 15, 2021, all employees of third party suppliers to the federal government must be fully vaccinated against COVID-19 to access Government of Canada workplaces where federal government workers are present.

Overview of *Lavergne-Poitras v Canada (Attorney General)*^[1]

In this case, the applicant's employer, a supplier to Transport Canada, implemented a vaccination policy following the federal government's announcement^[2] that it would require all supplier employees to be fully vaccinated before accessing government premises. Mr. Lavergne-Poitras chose not to get vaccinated and, in accordance with his employer's vaccination policy, was scheduled to be either laid off or terminated on November 15, 2021.

Mr. Lavergne-Poitras initiated a court challenge alleging that the federal government's supplier vaccination requirement breaches his rights to liberty and security of the person guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms* ("**Charter**"). However, since the supplier vaccination requirement was set to take effect on November 15, 2021, well before the application could be heard, Mr. Lavergne-Poitras sought an injunction that would suspend the implementation of the supplier vaccination requirement until the Court rules on the supplier mandate's constitutionality.

An applicant seeking an interlocutory injunction must satisfy a long-standing three-part test (the *RJR McDonald* test) and prove that:

1. There is a serious issue to be decided at the hearing of the ultimate application;
2. They will suffer irreparable harm if the injunction is not granted until the hearing; and
3. The 'balance of convenience' factors favour granting the injunction.

Here, Mr. Lavergne-Poitras failed at step one. The Court held that he did not demonstrate that the federal government lacks authority to issue and implement the supplier vaccination requirement. This is because, quite simply, the government has a right to implement contractual terms with its suppliers. The vaccination mandate is one such term.

Notably, the Court held that Mr. Lavergne-Poitras failed to demonstrate that he would face any deprivation, notwithstanding the risk of loss of employment, that is contrary to the principles of fundamental justice, a necessary component of a section 7 challenge. McHaffie J. wrote:

“Here, the effect on Mr. Lavergne-Poitras is that he will lose his employment since he chooses not to be vaccinated. This is not a direct impact on his physical integrity, but it remains a serious consequence. Despite this, I cannot conclude there is a serious issue that this deprivation is totally out of sync with the objective of the measure. The importance of protecting the health and safety of employees and the evidence of risks arising from COVID-19 infection allow for even the significant consequence of loss of employment with a third party supplier to the government to be proportionate to the objective. Mr. Lavergne-Poitras has not raised a serious issue that the effects of the supplier vaccination policy are grossly disproportionate to its purpose.” [emphasis added]

While the applicant’s failure to prove that he had a serious issue to be tried was sufficient to defeat the injunction request, the Court continued its analysis and found that he would not suffer irreparable harm before the ultimate hearing if the court did not grant the injunction. McHaffie J. wrote that although an employee’s loss of employment is a significant consequence, “loss of employment is something that can be compensated in money damages and is therefore not ‘irreparable harm’ in the sense required to obtain an injunction.” [emphasis added]

Finally, the Court concluded that the balance of convenience test does not favour granting the injunction. Ultimately, the employee’s loss of employment does not outweigh the material harm to the public interest that would result from the injunction, including increasing health risks for federal employees and undermining a policy implemented by the federal government as employer.

Takeaways for Employers

The federal government’s supplier vaccination requirement is in force as of November 15, 2021. This means all employers who are third party suppliers to the federal government must currently have mandatory COVID-19 vaccination policies in place and certify that their employees who attend federal government workplaces are fully vaccinated. Employers that do not certify their employees are fully vaccinated risk having their federal government contracts terminated or losing out on bids.

The *Lavergne-Poitras* decision may also have broader implications. The Federal Court's findings that the risk of loss of employment does not necessarily mean that one has a serious issue to be tried and does not mean that one faces irreparable harm suggest that employees will face major hurdles in seeking injunctive relief against employers' vaccine mandates. Although this decision does not confirm whether or not a termination due to a failure to be vaccinated amounts to cause or whether failure to be vaccinated can frustrate an employment contract, it should provide employers with an added level of confidence, particularly as many employers approach internal December 2021 and January 2022 mandatory vaccination deadlines.

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[1] *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232.

[2] Public Services and Procurement Canada, "[Covid-19 vaccination requirement for supplier personnel](#)" (2021), online.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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