

Educating you on why the policy of mandatory vaccination is illegal and what the legal consequences could be for you as employers, business owners and educators (in Canada at large).

The Policy or Mandate and Potential Liability for Private Entities

First of all, it is important to understand that a public health order is based on the powers given to the Public Health Officer under other legislation (the public health act), but it is not a law. It is a public directive and therefore not enforceable in the same way. Whether you adopt the policy is ultimately up to you and while they can try to enforce it or impose some kind of penalty for non-compliance if they want to, they are unlikely to stick-especially if the order requires actions which are discriminatory, divisive, and, therefore, violates the legal rights of citizens protected under the Canadian Charter of Rights and Freedoms, the Nova Scotia Human Rights Act and other legislation which supersede the legal authority of a public health order.

As you are no doubt aware, defending against a human rights complaint can be very costly, not only financially but with respect to the reputation of your business, union, professional association, educational institution, any other type of private enterprise that you are involved in. In a time when so many have lost so much, we feel that it is only right that you be forewarned about this and have an opportunity to protect yourselves from the potential legal and financial consequences of adopting the requirements of this public health order at the direction of, or on behalf of, the government which is most certainly not going to pay your legal bills or compensate you for your losses.

A Brief Summary of the Applicable Law

The biggest problem with this proof of vaccination policy is that we are being asked to discriminate against people based on vaccination status and to force them to disclose very personal information as a condition to providing service or access to otherwise public spaces- both of which are highly illegal and can carry serious penalties.

You likely realize that the most common recourse for anyone who feels discriminated against is to file a human rights complaint. While the Human Rights Commission assists the complainant, the party complaining against them has to incur costly legal bills and damage to their reputation, and, if discrimination is found, to pay thousands of dollars in damages.

Section 5 of the Nova Scotia Human Rights Act prohibits discrimination in employment, education, the provision of goods and services, housing, accommodations and a number of other contracts based on 'genetic characteristic', among other things. In this context, a genetic characteristic would mean either a perception of whether they were protected against Covid19 or the results of a genetic test. It is likewise prohibited to discriminate based on an irrational fear of contracting any illness or disease ie Covid19.

Therefore, any attempt to exclude anyone based on vaccination status or a fear of infection with Covid19 could be deemed discriminatory.

Discrimination is also prohibited under Section 15 of the Canadian Charter of Rights and Freedoms, which is part of the Constitution. Although genetic characteristic isn't specifically mentioned, it should be presumed to be included in the prohibited grounds of discrimination because all laws, policies, actions of government, etc. have to comply with the Constitution, which the Charter is part of. Therefore, any law or policy that requires any form of discrimination will be deemed illegal. The only exceptions are if the law or order is made to serve the interests of a minority/disadvantaged group - which it is not - or if their interests are otherwise accommodated - which the government has made no provision for under this policy.

They have said that there is a medical exemption but this is, in fact, not true. The only exemption available is if someone takes one of the injections and has a negative reaction - by which time the damage has already been done - and for some people with serious health issues such as cancer, MS, blood disorders, etc. even taking one shot is not an option. These injections have also been proven to have an incredibly high rate of negative effects for even healthy people. So essentially, the government is forcing a choice between an injection which could put a person's health, or even their life, at risk or exclusion from society. Clearly this is not acceptable.

Section B of the Charter protects a person's right to privacy. Since personal medical information is considered private and confidential, any inquiry about this type of information ie. vaccination status will be considered a violation of the person's privacy.

Unlike human rights legislation, the Charter doesn't usually apply to a private entity. However, if the private entity is deemed to be carrying out a government policy or program - such as the proof of vaccination policy - the Charter will apply and the private entity can be liable for damages for the violation of the person's rights.

The last consideration is the Genetic Non-Discrimination Act. Like Section 8 of the Charter, this act makes it illegal to ask anyone to disclose a medical condition and, like Section 15 of the Nova Scotia Human Rights Act, makes it illegal to refuse access to goods or services, employment or other opportunities on that basis or their refusal to do so. It also makes it illegal to require anyone to undergo any type of test that analyzes DNA, RNA, or chromosomes (genetic material) for the presence or transmissibility of any disease ie Covid test, a protection that is similar to the rights protected in Section 7 of the Charter, not previously discussed here.

In other words, you can't ask, they don't have to disclose, and if they do it has to be by consent in writing each time. Even then the disclosure should only be to a health care professional who, in turn, can't disclose without the person's written consent. That is an incredibly cumbersome process to bring you into compliance with the law, if not completely impossible. And it's still not permissible to exclude the person because of the protections in this act, human rights acts and the Charter.

We admit that the applicability of the Genetic Non-Discrimination Act isn't as straightforward as the applicability of the Nova Scotia Human Rights Act and the Charter in this context; it is certainly arguable depending on the specific situation. However, the penalties under the statute are definitely more certain-imprisonment of up to 5 years and fines ranging between \$300 thousand and \$1 million and certainly more than most business can bear.

These are not risks that business owners, employee organizations and educational institutions should be expected to take on behalf of government in exchange for going to the trouble of implementing a policy that isn't even law and is completely illegal anyway. We ask that you stand with us against this kind of oppression and manipulation by government.