



What's New in HR Law

Ontario Divisional Court dismisses legal challenge to McMaster University's COVID-19 vaccination policy

June 6, 2022 | By [Hayley Smith](#)

Bottom Line

In [Michalski v. McMaster University, 2022 ONSC 2625](#), the Ontario Divisional Court dismissed a judicial review application challenging McMaster University's (the "University") mandatory COVID-19 vaccination policy (the "Policy"). The application was brought by four students (the "Applicants") who were refused a creed-based exemption under the Policy. The Court found that the University used a fair process to evaluate the students' exemption requests before denying those requests. However, the Court did not consider the merits of the University's decisions, as the issue of alleged creed-based discrimination fell within the jurisdiction of the Human Rights Tribunal of Ontario (the "HRTO").

Background Facts

In the summer of 2021, the University announced a requirement for its employees and students to be vaccinated against COVID-19. Shortly thereafter, the Council of Ontario Medical Officers of Health recommended that all universities implement a mandatory vaccination policy, which led to the formalization of the University's Policy.

By October 2021, the Policy required students, faculty, and staff to provide the University with proof of full vaccination against COVID-19. Individuals could obtain an exemption from the Policy on the basis of a

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ground protected under the *Human Rights Code* (the “Code”) by completing a COVID-19 Vaccine Exemption Request form.

Process for Assessing Exemptions Based on Creed

The University established a “Validation Team” to evaluate non-medical exemption requests from students.

The Validation Team was equipped with various informational resources to assist with their evaluation of exemption requests, including policies produced by the Ontario Human Rights Commission, a memorandum from the University’s Ecumenical Chaplain about the vaccination-related positions of various faith groups, and the University’s internal guideline on how to handle creed-based requests (the “Guideline”). The Validation Team was also given a document summarizing reasons for denying an exemption request and a template denial decision letter.

The Applicants’ Exemption Requests

Each of the Applicants submitted a creed-based exemption request under the Policy. The Applicants, who were all members of the Christian faith, cited both scriptural and non-scriptural sources for the reasons why they decided not to be vaccinated against COVID-19. This included arguments that COVID-19 vaccines used aborted human fetal cell lines in its production, that they were religiously forbidden from participating in “falsehoods” (insinuating that COVID-19 vaccines were ineffective), and that they had a religious right to be “free” from any coercion to receive a vaccine.

The Validation Team rejected the Applicants’ exemption requests and provided each Applicant with a version of the University’s template decision letter.

The Court’s Decision

The Applicants sought judicial review of the University’s decisions to deny their exemption requests. The Applicants alleged that the University had breached its duty of procedural fairness and that the denials were unreasonable.

Procedural Fairness was Given to the Applicants

The Court held that that the exemption process reasonably balanced the Applicants’ personal interests with the University’s interests of safeguarding the health and safety of all students, faculty, and staff.

First, the Applicants argued that the University had acted unfairly because the Policy was not explicit about the serious consequences that could arise from the denial of an exemption request. The Court dismissed this argument, as both the Policy and the University’s website clearly stated that students could be required to unenroll from the University if they were non-compliant with the Policy.

Second, the Applicants alleged that they should have been given the internal documents and/or the information used in the Validation Team’s decision-making. The Court rejected this argument and stated that the University was not required to instruct students on how to support their creed-based exemption requests. The Court also noted that the COVID-19 Vaccine Exemption Request form explicitly instructed the Applicants to attach supporting documentation to substantiate their exemption requests and, as such, the Applicants had an obligation to put their best foot forward.

Third, the Applicants alleged that the Validation Team had been biased and had rejected the Applicants' exemption requests without conducting a proper individualized assessment of their religious beliefs. The Court did not find any reasonable apprehension of bias nor any evidence that the exemption requests were not given proper consideration. To the contrary, the Validation Team was given appropriate tools to complete their decision-making and such tools did not lead to 'rubber stamp rejections' of creed-based exemption requests. Although the Validation Team used template decision letters for denials, this was appropriate for ensuring expediency and consistency in the processing of exemption requests.

Finally, the Applicants argued that the University provided them with inadequate reasons for the rejection of their exemption requests. The Court disagreed, finding that the Validation Team had provided sufficient written reasons and was not required to respond to "every extraneous point" raised by the Applicants.

The Court Declines to Substantively Review the University's Decisions

The Court declined to substantively review the Validation Team's decisions, as to do so would require a ruling on whether the Validation Team correctly interpreted the meaning of "creed" under the *Code*. In the Court's view, the HRTO was the more appropriate forum in which to adjudicate this issue.

Check the Box

While the Court declined to assess the substance of the Policy and the University's enforcement of same, this case provides an example of what constitutes a fair process to be followed by an employer when considering individual requests for exemption from a vaccination policy requirement. This case highlights that, in respect of reviewing individual requests for exemption from a vaccination policy, the elements of a fair and objective process include: notice to all employees of consequences of non-compliance; opportunities for applicants to provide supporting evidence so that they can put their best foot forward; avoidance of a 'rubber stamp' approach in decision making; and ensuring individualized assessment is, in fact, undertaken.

Need More Information?

For more information about or assistance with COVID-19 vaccination policies, contact [Hayley Smith](#) at 416-206-2460, or your regular lawyer at the firm.



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