



# What's New in HR Law

## Court Refuses to Order Injunction Restraining Mandatory Vaccination Policy

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### Bottom Line

In [Costa, Love, Badowich and Mandekic v Seneca College of Applied Arts and Technology, 2022 ONSC 5111](#), the Ontario Superior Court of Justice refused to order an injunction restraining Seneca College from enforcing its mandatory vaccination policy against students. The Court also held that Seneca College's mandatory vaccination policy did not breach students' rights under the *Canadian Charter of Rights and Freedoms* (the "Charter").

### Background Facts

The applicants were four students who were entering the final year of their respective programs at Seneca College. The nature of these programs required students to attend class in person during their last year of study.

In June 2021, Seneca College advised all of its students and employees that proof of vaccination against COVID-19 would be required for any student and employee who was coming onto its campus. This policy came into effect at the start of Seneca's fall 2021 term.

*This article is for the purposes of only general information and does not constitute legal advice or opinion.*

None of the applicants had been vaccinated against COVID-19, and all four were unwilling to receive the vaccination due to fears of health-related risks. In response to Seneca College's policy, the applicants decided to take a year-long leave of absence from their studies.

In June 2022, Seneca College advised all of its students and employees that the mandatory vaccination policy would remain in place for the 2022 fall semester.

In July 2022, the applicants brought a motion for an interlocutory injunction restraining Seneca College from enforcing its mandatory vaccination policy. The applicants brought this urgent motion with the hopes of returning to school in the fall to complete their programs. Among other things, the applicants alleged that the mandatory vaccination policy violated their rights to freedom of conscience; life, liberty, and security of the person; privacy; and equality under sections 2(a), 7, 8 and 15 of the *Charter*.

## The Decision

The Court made the following findings with respect to the applicants' allegations that the mandatory vaccination policy violated their *Charter* rights:

- **Section 2(a) – Freedom of conscience and religion** – The Court held that there was no evidence of a comprehensive code or value system yielding a foundational belief that requiring vaccination is “wrong”, which would be required to engage section 2(a) of the *Charter*. The applicants did not claim a religious basis for exemption to the mandatory vaccination policy. Instead, they claimed that they had a “moral” objection to the policy that stemmed from their individual concerns regarding the dangers of the vaccine and their perception that they were being treated unfairly. The Court accepted that refusals of certain medical procedures or treatments could be genuinely grounded in conscientious or religious beliefs, but found that there was no evidence that the applicants' refusals to vaccinate were based in such beliefs.
- **Section 7 – Life, liberty, and security of the person** – The Court found that Seneca College had not breached the applicants' rights under section 7 of the *Charter*. A central claim in the applicants' motion was that the mandatory vaccination policy forced them to either submit to a medical procedure that they would otherwise refuse or be prevented from finishing their programs and pursuing their chosen careers. The applicants argued that this effect violated their right to refuse medical treatment, as protected by the liberty and security rights under section 7 of the *Charter*. The Court rejected the applicants' argument after observing that the applicants still had various options in spite of the mandatory vaccination policy: they could extend their leaves of absence for another year, self-study, pursue educational opportunities at other institutions, or explore employment opportunities.
- **Section 8 – Security against unreasonable search and seizure** – The applicants argued that the requirement to divulge personal medical information by disclosing their vaccination status violated their right to be free from unreasonable search and seizure. The Court rejected this argument, holding that the policy's requirement of voluntary disclosure of vaccination status did not constitute a search for the purposes of section 8 of the *Charter*. In any event, the Court stated that the disclosure requirement would nonetheless be a reasonable search given the extraordinary circumstances of the global pandemic.
- **Section 15 – Equality** – Finally, the Court held that vaccination status was not an enumerated ground protected by section 15 of the *Charter*, nor did it qualify as an analogous ground that was immutable or constructively immutable. Although the applicants argued that the mandatory

vaccination policy discriminated against them on the basis of their vaccination status, the Court found no proof that the applicants could not safely get vaccinated or that vaccination would threaten their immutable or even deeply held beliefs. The applicants' refusal to get vaccinated was based on a personal preference, and not an immutable characteristic that would be protected by the *Charter*.

In light of the forgoing, the Court held that Seneca College's mandatory vaccination policy did not violate the applicants' *Charter* rights. The Court also refused to order an injunction, finding that the public interest in minimizing the risks of COVID-19 transmission substantially outweighed the applicants' interests in avoiding COVID-19 vaccination.

## Check the Box

This case joins a growing number of cases in which adjudicators have confirmed that one's personal preference is not a valid ground on which to challenge a mandatory vaccination policy. In its reasons for decision, the Court noted that the applicants' refusal to get vaccinated stemmed from speeches they had viewed on YouTube, including speeches given at the trucker blockade in Ottawa. The Court cautioned that it will require applicants to engage in more than a superficial investigation of complex medical issues before it will intervene with the application of a vaccination policy on the basis of *Charter* rights. The Court also carefully examined the qualifications and credibility of the parties' expert witnesses, signalling that it is committed to being guided by objective science when considering the enforceability of mandatory vaccination policies.

## Need More Information?

For more information or assistance with enforcing or defending workplace vaccination policies, contact [Catherine Phelps](mailto:cphelps@filion.on.ca) at [cphelps@filion.on.ca](mailto:cphelps@filion.on.ca) or your regular lawyer at the firm.



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