

No constructive dismissal of employee who refused vaccination says the B.C. Supreme Court

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The Supreme Court of British Columbia, in *Parmar v. Tribe Management Inc.* 2022 BCSC 1675, is the first court in Canada to confirm that a non-unionized employee was not constructively dismissed when the employee was placed on an unpaid leave of absence for failing to comply with the employer's mandatory COVID-19 vaccination policy

The decision represents a significant win for employers across Canada that have faced similar claims by former employees who have alleged constructive dismissal due to their failure to comply with mandatory vaccination policies. The decision is a continued evolution of COVID-19 case law in the non-unionized context, which demonstrates a judicial willingness to uphold reasonable vaccine policies and requirements that were adopted during the COVID-19 pandemic and that are consistent with government and public health authority guidance.^[1]

Background

The plaintiff was employed at Tribe Management Inc. (Tribe) when the COVID-19 pandemic commenced. In response to the pandemic, Tribe introduced a number of health and safety measures, including remote-working arrangements and social distancing. Informed by federal and provincial government and public health authorities' guidance, Tribe implemented a mandatory COVID-19 vaccination policy in October 2021 to supplement and strengthen its COVID-19 response (the Policy). The Policy was applied consistently to all employees and visitors to Tribe's workplace, while contemplating an exemption on medical or religious grounds, in accordance with human rights legislation. Under the Policy, employees who remained unvaccinated based on personal reasons (or in the absence of medical or religious reasons) would be placed on an unpaid leave of absence.

The plaintiff refused to be vaccinated, citing certain media outlets and literature regarding the effectiveness and potential risks associated with the vaccines. The plaintiff did not assert medical or religious reasons that may have qualified her for an exemption under the Policy, and suggested alternative courses of action such as working from home and taking rapid tests when she had to attend the office. Tribe declined these alternative measures and insisted on consistently applying the Policy to all employees. As a result, the plaintiff was placed on an unpaid leave of absence on December 1, 2021 for failing to comply with the Policy and, on January 26, 2022, she resigned from Tribe and commenced a civil claim alleging constructive dismissal.

Decision

The Court dismissed the plaintiff's claim for constructive dismissal and made some key findings:

- The Policy was reasonable in its substance and implementation. The Court found it struck an appropriate balance between Tribe's business interests, the rights of its employees to a healthy and safe work environment, its clients' interests, and the interests of the residents in the properties it serviced. The Court importantly assessed the Policy based on the knowledge about the COVID-19 virus and vaccines available at the time of the Policy's implementation.
- It did not matter that Tribe's employment policies did not previously require its employees to be vaccinated. The Court held that COVID-19 presented an unprecedented worldwide challenge to governments, health authorities, and providers, and also presented a unique and unanticipated challenge to employers and employees.
- The plaintiff was entitled to her beliefs about vaccines; however her beliefs did not entitle her to impact other Tribe employees or, potentially, the thousands of residents in buildings to which Tribe provides property management services. The Court specifically noted that the plaintiff's objections to the Policy were made under circumstances where the overwhelming majority of Tribe's other employees had complied with its terms.
- The plaintiff's refusal to comply with the Policy was a repudiation of her contract of employment and Tribe acted reasonably in placing her on an unpaid leave of absence pursuant to the Policy. As a result, the Plaintiff was not constructively dismissed and was held to have resigned from Tribe of her own personal choice, and
- In the context of the extraordinary health challenges posed by the COVID-19 pandemic, policies impacting an employee's bodily integrity (such as the Policy) are reasonable and do not force an employee to be vaccinated. The Court held that such policies only force "a choice between getting vaccinated, and continuing to earn an income, or remaining unvaccinated, and losing their income."

The Court notably took judicial notice of certain facts around the COVID-19 pandemic. These facts include the potentially severe and deadly outcomes of COVID-19, how easily the virus is transmittable, that there is no known immunity to contracting the virus and no verifiable evidence of natural immunity to contracting it, and that vaccines work and are effective in reducing the severity of symptoms and bad outcomes. The Court's willingness to take judicial notice of these facts demonstrate a clear blow to other claims brought by former employees that rely on questioning the science of the virus and the vaccines as part of its attack on the employer's mandatory vaccination policy.

[1] See for example *Benke v. Loblaw Companies Limited*, 2022 ABKB 461 and *Lewis v. Alberta Health Services*, 2022 ABKB 479, where the Alberta Court of Kings Bench upheld various masking and vaccination requirements.