



FOR IMMEDIATE RELEASE
June 10, 2021

STATEMENT ON HUMAN RIGHTS AND MANDATORY VACCINATION, VACCINE IDENTIFICATION AND VACCINE INCENTIVE PROGRAMS

The Manitoba Human Rights Commission reminds governments, employers, service providers and landlords to use vaccination identification cards, mandatory vaccine policies and vaccination incentives in a manner that complies with human rights obligations

The Manitoba Human Rights commission is monitoring the Government of Manitoba's release of the secure Vaccination Card, which will allow third parties to identify the vaccination status of cardholders. The Commission reminds governments, employers, service and housing providers of their obligation to respect human rights when imposing vaccination requirements / requiring proof of vaccine.

Requiring individuals to produce proof of COVID-19 vaccination in order to access employment, public services or housing could result in discrimination based on the following *Code*-protected grounds:

- Disability;
- Religious Belief;
- Political Belief;
- Social Disadvantage; and
- Age

Requiring individuals to be vaccinated and produce proof of vaccine may also negatively impact individuals who cannot equitably access vaccination and other public health resources for reasons related to disadvantage, including houselessness and poverty. Existing identification schemes present significant barriers in equitable access to health care services for unsheltered populations, as documented in the 2018 Winnipeg Street Health Survey Final Report.¹ Moreover, where individuals are required to produce valid photo identification along with proof of vaccine, barriers to access may be magnified due to challenges in accessing photo identification.²

¹ Isaak, C., Hinds, A., Steur, T., Nelson, G., Campos-Ordenez, P. (2019) *2018 Winnipeg Street Health Survey: Final Report*. End Homelessness Winnipeg.

² Smirl, E. (2017) Access to Identification for Low-Income Manitobans. Canadian Centre for Policy Alternatives.

The Commission is also mindful that imposing identification requirements can result in adverse effects for communities that are more disproportionately impacted by carding, profiling or other identification requirements, such as Black, Indigenous and people of colour and people with disabilities.

Where mandatory vaccine and vaccine identification requirements are put in place, these requirements must be justifiable

To be permissible under human rights law, mandatory vaccination requirements, or the use of vaccination identification, must satisfy the standard set out by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3 (“Meoirin”) and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC), [1999] 3 SCR 868 (“Grismer”). The three-part standard requires that

1. The requirement for vaccination has a rational connection to the employment or provision of the service;
2. The requirement for vaccination be adopted in an honest and good faith belief that it is necessary to the fulfillment of a legitimate employment or service-related purpose;
3. The requirement for vaccination is reasonably necessary for the purpose of service provision. This requires evidence that the requirement was imposed on the basis of real evidence, not speculation; that the requirement is designed to minimize the burden on employees or service users; that the requirement does not treat one particular group more harshly than others without justification; and that alternatives approaches to the vaccine requirement were investigated and considered but could not be adopted without incurring undue hardship. In other words, the requirement for vaccination / vaccination identification must “incorporate every possible accommodation to the point of undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost”.³

Undue hardship must be established on the basis of real evidence, and is fact dependent. Certain contexts may present varying degrees of risk, which must be considered when establishing whether a requirement for mandatory vaccination is justified under human rights law in accordance with the standard set out above.

Governments, employers, service and housing providers must also be mindful of the emerging data related to vaccination, including varying rates of effectiveness amongst vaccine products, the complexities presented by COVID-19 variants, the delay of second dosage and its implications for vaccine efficacy, and broader vaccine uptake. This information will be relevant to the determination of whether the implementation of a

³ *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC), [1999] 3 SCR 868., at para 32.

vaccine requirement would be deemed reasonably necessary to accomplish its broader employment or service related objectives.⁴

Moreover, the specific context of implementation (i.e. personal care homes, hospitals, etc.) will impact whether the requirement for vaccination can be justified under human rights law. In other words, governments, employers, service and housing providers will need to consider the particular and distinct risks presented in specific contexts to determine whether a mandatory vaccination requirement / vaccination identification requirement is *bona fide* and reasonable in accordance with the standard set out above.

Reasonable Accommodation Must be Provided

Should a government, employer, service or housing provider proceed with the implementation of a vaccination requirement, reasonable accommodation must be provided to the point of undue hardship. Existing mandatory vaccination schemes in the context of educational systems or for health care workers provide exemption clauses for medical, religious or conscientious objection in accordance with human rights related obligations.⁵ Due consideration will need to be given to how rights to reasonable accommodation will be upheld when imposing this requirement. In accordance with the requirement to provide reasonable accommodation, the Commission cautions against the implementation of blanket policies requiring vaccination that do not provide for accommodation.

Vaccine Incentives

The Code's protected characteristics of disability, social disadvantage, religious belief, age and political belief may need to be considered when governments, employers, service or housing providers incentivize vaccination. Under *The Code*, organizations cannot deny someone access to a good, benefit or program for reasons related to a *Code*-protected ground, unless that denial can be reasonably justified. Therefore, governments, employers, service or housing providers must ensure that vaccination incentive programs do not limit the equality rights of *Code*-protected groups.

Summary

The requirement for mandatory vaccination, or the imposition of vaccination identification or incentives has implications for both direct and indirect forms of discrimination for *Code*-protected groups. Such a requirement could result in denials of service or employment for individuals who for *Code*-related reasons cannot participate

⁴ As noted by Flood, Thomas and Wilson, emerging data related to vaccine effectiveness may suggest that mandatory policies related to some vaccines may be more justifiable than others. See Flood, C., Thomas, B., and Wilson, K. "Mandatory vaccination for health care workers: an analysis of law and policy," *CMAJ* 08 February 2021;193 (6) E217-E220; <https://doi.org/10.1503/cmaj.202755>

⁵ See Walkinshaw, E. Mandatory vaccinations: The Canadian picture *CMAJ* 08 November 2011; 183 (16) E1165-E1166; <https://doi.org/10.1503/cmaj.109-3992>

in vaccination and the exacerbation of barriers to equity for individuals who experience structural disadvantage. Governments, employers, service and housing providers should exercise extreme caution in imposing any requirements or programs. In doing so, careful consideration will need to be given to how the program would be *bona fide* and reasonable under the three part standard set out by the Supreme Court of Canada in *Meiorin* and *Grismer*.

For more information on COVID-19 and discrimination, please visit www.manitobahumanrights.ca

For media enquiries, please contact the Commission at hrc@gov.mb.ca or (204) 945-3007.