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VIA COURIER AND FACSIMILE/EMAIL

City of Edmonton - See Distribution List at Appendix "A"

Attention: Mayor Amarjeet Sohi
City Manager Andre Corbould
Chief of Police Dale McFee (Edmonton Police Service)
Chief Joe Zatylny (Edmonton Fire Rescue Services)

Dear Sirs:

RE: City of Edmonton Employee Vaccination Policy

The letter is to demand, on behalf of a large and diverse group of employees of the City of Edmonton, that the City's Covid-19 *Employee Vaccination Policy* be rescinded immediately.

"We", "our" and "us" in this letter refers to members of the aforementioned group of City employees.

In our view, the Policy is fundamentally flawed or unfair in its premises, was implemented without due considerations being made, and is discriminatory, profoundly destructive on various levels, and is unlawful.

The Policy in its design and application is arbitrary and punitive; it inflicts severe consequences on those with the temerity to make an unfashionable personal medical choice. Without regard to the consequences, it scapegoats and alienates people irrespective of whether they have actually caused any harm. We believe that the Policy and others like it are among the most coercive and oppressive actions a government in Canada could take.

In this letter, we explain who we are, outline our various complaints about the Policy itself, and detail its present and foreseeable mischief.

I. Our Group

This letter is on behalf, and for the benefit, of a group of current employees of the City of Edmonton who oppose the impugned Policy.

Our group, numbering in the hundreds, includes both vaccinated and unvaccinated individuals.

It includes Sworn and Civilian members of the Edmonton Police Service, members of the Edmonton Fire Rescue Services, Municipal Peace Officers, Transit Operators, as well as employees in the Facility Maintenance, Waste Management, and Development Services, among others.

Our group is comprised of individuals whose labour is critical to the normal and orderly operation of municipal services in the City. To use the City's words, their work connects them "to almost every aspect of Edmontonians' daily lives."¹ It is comprised of individuals who have dedicated their working lives to public service. It is comprised of people who love their work, and need their jobs to support their families and plan for retirement. It is comprised of law-abiding citizens who have not actually caused harm to anyone.

This communication is being made via external legal counsel for a number of reasons, including maintenance of confidentiality, and our group's waning faith in the various unions charged with representing municipal employees.

Understandably, many members of our group are reticent to be publicly identified in any way at this point. In the present popular culture of contempt for "the unvaccinated" and their sympathizers, we expect that being "outed" unnecessarily will only lead to more scorn, reprisal and even termination.

II. The Policy

The "Policy" referred to in this letter is the City's *Employee Vaccination Policy*,² as well as its various related sub-policies, procedures and other documents.

The Policy states: "All employees are required to be fully vaccinated against COVID-19 ... by November 15, 2021."³ It continues, "Employees who do not provide proof that they have been fully vaccinated or have an approved exemption will be required to submit to ongoing COVID-19 rapid antigen testing up to twice per week ... at the employee's own cost, through the City's designated process".⁴

Exemptions may be requested only on the basis of a "sincerely held religious belief which prohibits the Employee from receiving a COVID-19 Vaccine" or a "medical condition which prevents the Employee from safely receiving a COVID-19 vaccine". Religious exemptions must be attested to under oath; medical exemptions require written confirmation from an Alberta Physician (and must state "the anticipated duration" of the required exemption), as well as "any information reasonably requested by the City".⁵ The employee must bear any cost associated with requesting an exemption.⁶

Those that do not comply with the Policy's requirements "will be deemed unfit for work and will be placed on leave without pay."⁷ Or, they may be subject to "discipline up to and including termination."⁸

We acknowledge that some City Departments (such as the Edmonton Police Service) have their own internal covid vaccine mandate policies. We understand these to be substantially similar to the Policy, and so make no distinction between them for purposes of this letter.

III. Application and Gravity of Policy

The Policy applies to "All individuals who are employed by the City of Edmonton on any basis, including full-time, part-time, permanent, temporary and casual, and also includes volunteers."⁹

The City is self-described as "one of Alberta's largest employers" and appears to have well in excess of 10,000 employees.¹⁰

According to the City's website, 93% of City employees are now fully vaccinated; a further 1% are unvaccinated and only 6% made "no submission" declaring their vaccination status. Presumably, at least some of those who made no submission are also fully or partially vaccinated. So, at most, the "unvaccinated" comprise 6% of City employees.

For purposes of this letter, we will assume that those percentages are accurate. However, members of our group have reason to believe that the various departments in which they work have underreported their numbers of unvaccinated individuals. In other words, we believe that the proportion of unvaccinated City employees is greater than is presently being communicated.

Ultimately, the Policy forces people to submit to a specified medical procedure (or diagnostic tests), then disclose information about that to their employer as a condition of keeping their jobs – irrespective of whether that procedure or test is medically necessary for the individual. Or, the employee must provide documented and highly personal information to justify why they "cannot" receive a possibly-unnecessary medical procedure.

Although exemptions to the Policy are hypothetically available, we have no faith in the circumstances here that exemptions will be (or have been) adjudicated fairly.

As noted, exemptions require written support from a physician or religious leader. Yet it cannot be forgotten that, in Alberta and elsewhere, doctors are being disciplined, investigated, and censored if they have a dissenting opinion as to covid measures and vaccines.¹¹ And religious leaders in this province have been jailed and publicly shamed for violating oppressive covid restrictions.¹²

Moreover, the exemption regime under the Policy makes no mention whatsoever of the possibility that an individual may have adequate levels of immunity to Covid infection without being vaccinated. In other words, naturally-acquired immunity is ignored all together. The City apparently has not published any data online as to the number of exemptions sought or granted, or the basis upon which those exemptions have been granted thus far. Our group is not aware of a single instance of an exemption having been granted yet, within their respective

departments. And, there are reports that decisions on exemptions are being unreasonably delayed, with applicants made to submit negative tests in the meantime (which defeats the purpose of the exemption, in our view).

A person considering seeking an exemption cannot be blamed for feeling that there is no realistic possibility that their exemption will be granted, let alone treated fairly. To any neutral observer, the exemption option appears to be nothing more than a façade.

Given the 15 November deadline, it is foreseeable that many City employees will lose their jobs shortly before or after the coming holiday season. And this will be inflicted upon people who have already endured nearly two years of severely restricted individual freedoms and all of the economic and other harms that covid-related restrictions have caused thus far.

We believe that the Policy and other government vaccine mandates are the most coercive and oppressive actions by a public authority in Canada, in this generation. Parallels may be drawn between such vaccine mandates and previous government actions towards minority groups that have been formally apologized for (and compensated for), long after the fact.

The internment of Japanese Canadians in World War II,¹³ the Chinese Head Tax,¹⁴ and the Indian Residential Schools Program¹⁵ immediately come to mind. All of these now universally-condemned episodes in Canadian history involved government actions that were taken pursuant to the law and popular sentiment at the time. They were measures taken to respond to risks or perceived risks, or to remedy issues that were perceived to exist at the time. They were based on unjustified fears and/or prejudicial attitudes. Vaccine mandates repeat such mistakes.

Our group feels that covid vaccine mandates provide the City and other institutions the opportunity to decide whether they want to end up on the “wrong side of history”.

IV. City’s Stated Justification of The Policy is Inadequate

The City’s website – the primary source of information about the Policy, for those who want it – provides no meaningful explanation of the basis for the Policy, why it is necessary in the circumstances, or how, when and why it is expected to be effective in achieving its stated goals.

As of the date of this letter, over 81% of eligible Albertans are fully vaccinated.¹⁶ We are not aware of anything to suggest that vaccination rates amongst City employees has ever been significantly lower than amongst the Alberta population as a whole. As of the date of this letter 93% of the City’s employees are fully vaccinated.¹⁷ And the City has many other covid-mitigating policies in place for its employees, including face coverings, physical distancing, and work-from-home directives.¹⁸ Those measures and others have largely been in place for the whole of the pandemic, and began long before the vaccine rollout in Alberta.

In these circumstances, and given the application and gravity of the Policy, it is incumbent upon the City to provide clear, comprehensive, compelling and transparent explanations. But that has not been done, or even attempted here.

Many legitimate questions arise: Why must the small existing minority of unvaccinated City employees (less than 6%) be forced to get vaccinated? What “safety” impact would eliminating that minority have on covid infections or “safety” in City workplaces? Or, more generally, what impact will it have on covid infections in Edmonton or Alberta? Why is 100% the only acceptable number? On what bases, if any, has the City concluded that the likely benefits of the Policy will outweigh its likely harms? No answers are provided on the City’s website.

The City’s website for the Policy includes the following statements.

- The COVID-19 Vaccination Policy FAQs¹⁹ reads in part (underline added):

Why is the City introducing a COVID-19 vaccination policy?

Since the launch of the Provincial vaccination program, the City has encouraged employees to make an informed choice on vaccination and strongly encouraged participation by all employees who are able to be vaccinated, including paid leave to receive the vaccine. At the same time, the City has maintained a number of layered workplace controls to minimize the spread of COVID-19 in the workplace.

As provincial COVID-19 cases continue to increase and hospitals across Alberta face unprecedented capacity, the Province has declared a state of public health emergency. Given the data, the circumstances in Alberta, and the information gathered on the vaccination rates of employees through the Administrative Policy and Procedure A1700: *Employee COVID-19 Vaccination Disclosure*, the Executive Leadership Team (ELT) determined that it is necessary to implement a COVID-19 vaccination policy as another layer to the City’s workplace controls against the hazard of COVID-19.

- The Policy is said to be due to the City’s “legislated obligations to provide a safe and healthy workplace”²⁰
- The Policy is said to be aimed at “stopping the spread” of covid-19²¹ and having a “maximally vaccinated workforce”.²²
- The City acknowledges that “breakthrough infections are possible” but claims that “[a]lthough health experts are still studying breakthrough infections, it has been confirmed that the likelihood of COVID-19 infection is significantly reduced as a result of receiving full vaccination”.²³ No evidence for that claim – which is the central premise of the entire Policy – is cited.

Vague and repetitive allusions to “obligations”, “safety”, “the data”, “the circumstances” in Alberta, and determinations of “necessity” by the Executive Leadership Team explain nothing. And it is not sufficient to expect all employees to put their faith into this Policy merely because of ubiquitous daily government and media reporting of covid case counts, deaths, hospitalizations and other statistics.

In our view, where the City simultaneously mandates vaccinations and encourages employees to make an “informed choice”, it must provide the information upon which employees may make choices – as regards the disease, vaccination and about the Policy itself. This should, at minimum:

- provide accurate, fair and balanced information to quantify the health and safety risks of the disease itself;
- identify and quantify the specific risk that covid has caused in the workplace for employees (including whether there been any significant transmission or outbreaks in City workplaces);
- provide accurate, fair and balanced information about benefits and risks of the vaccines themselves; and
- disclose the specific information that the City's "ELT" considered in implementing the Policy, including the actual data, scientific studies, or health advice that was considered.

Absent full and transparent public disclosure of such information by the City, our group is left to conclude that the City seeks to shield itself from any meaningful scrutiny of the decision-making behind the Policy. Similarly, it may be inferred that the City does not want its employees to make an "informed" choice; *i.e.*, the City sees 100% vaccination amongst its employees as being the only acceptable outcome.

Without the City properly explaining itself, employees are entirely justified in thinking that the Policy is not about safety at all; it is about conformity and the exercise of power. It is about giving an unjustified benefit to those who make the "correct" vaccination choice, and an unjustified punishment to those who do not.

Our group's opposition to the Policy is all the more understandable considering the following points:

- For many months, Albertans have been told repeatedly that the approved covid vaccines were the "way out" of this pandemic. Provincial health authorities even implemented a short-lived plan to drop nearly all covid-related restrictions once 70% of the eligible population in Alberta had been fully vaccinated.²⁴
- *After* that target had been met,²⁵ Alberta saw its fourth covid "wave", which included record-high numbers of hospitalizations.²⁶ Other jurisdictions that had previously imposed vaccine mandates still saw similar "waves" despite high levels of vaccination.
- In the meantime, other jurisdictions such as Florida, Texas and Sweden that had not imposed covid vaccine mandates saw relatively low rates of infection and/or still saw "waves" of infection occurring nonetheless.
- In Alberta, more than 1/3 of all "active" covid cases and nearly 1/4 of current covid hospitalizations are among "completely" vaccinated individuals.²⁷ And those proportions appear to be *increasing* over time. (We note that AHS only considers one "completely" vaccinated 14 days after receiving the second vaccine dose – so the actual numbers of cases amongst people who have received two doses may be higher.)

- Despite all of the foregoing, we are still being told that this is a pandemic being caused by, and primarily affecting, “the unvaccinated”.²⁸

So our group, City Employees, and Citizens at large desire and deserve explanations – particularly from those who have been elected to serve them. Ever-moving goalposts are unacceptable; they only serve to lessen the faith and confidence that citizens have in their government, and increase frustration and cynicism.

V. The Implementation of the Policy is Unfair and Flawed

A. No Consultation With Affected Employees

To our knowledge, the Policy was implemented by the City without any prior consultation with its employees having been made. Certainly, nothing of the sort is disclosed on the City’s website.

Asking City employees, without success, to voluntarily disclose their covid vaccination status²⁹ is not “consultation” about the Policy.

While the City invokes its legislative obligations regarding workplace safety, it seems that the Policy has been implemented irrespective of whether the employees themselves (or any significant proportion of them) desire it. One is left to wonder: Does the Policy actually reflect the sentiments, wishes, or concerns of the employees themselves, in any way?

A policy made for the “safety” of employees seems quite meaningless where it apparently did not actually take into account the actual interests and wishes of those very employees.

B. Prejudicial, Unfair and Unequal Treatment of People

Without any clear rationale, the Policy unfairly treats fully vaccinated, unvaccinated and exempt City employees unequally. This is discrimination.

It bears emphasis that “fully” vaccinated people can still contract and transmit the covid virus, and can still become seriously ill from it.³⁰ The City appears to both accept and ignore this at the same time.

The premise of the Policy seems to be that fully vaccinated employees *are in need of protection from unvaccinated ones* (irrespective of masking and physical distancing). But, common sense would suggest the exact opposite. If the vaccines are effective, then unvaccinated people are the vulnerable ones.

Under the Policy, neither fully vaccinated nor exempt individuals are required to provide negative covid tests at all, to attend their jobs. This ignores the very real possibility that a vaccinated employee is an asymptomatic covid carrier and is infecting others in the workplace.

If workplace safety and “stopping the spread” are the goals, then why would the Policy not require a negative test from all employees, irrespective of their vaccination or exemption status?

The City has effectively communicated that *covid transmission within the workplace, and resulting illness, is an entirely acceptable safety risk – so long as that only occurs amongst the fully vaccinated or exempt.*

The Policy treats the unvaccinated – merely by reason of that status alone – as being infected with the virus and likely to infect others. It puts a heavy onus upon them to prove to their employer, twice per week, *that they are not infected.* And that onus exists irrespective of whether the unvaccinated employee is symptomatic for covid, whether or not they have had any known close contacts with infected individuals, and irrespective of all other factors that create risk, or mitigate the likelihood of, covid infection.

Our group reports that daily “Fit for Work” questionnaires (which seem to be required for some or all City employees irrespective of their vaccination status) are not being subjected to equal scrutiny. The Questionnaires (which query the employee on symptoms, close contacts, travel and the like) are being rigorously checked when submitted by unvaccinated employees, yet are being all but ignored when submitted by vaccinated employees.

Our group also reports that unvaccinated Edmonton Police officers, despite presenting negative covid tests, are being denied access to their gymnasium and workout facilities, and cannot attend any “non-essential” training – but vaccinated officers can do all of that.

Adding insult to injury, the Policy makes unvaccinated employees bear the time and cost of the twice weekly testing that the City requires – a cost that the City itself says will not be covered by employees’ health benefits plans.³¹

These are but a few examples of the patent unfairness in the Policy’s design and application.

It is not rational or fair to treat unvaccinated individuals as being infected (or likely to be infected) with covid-19, simply because of their vaccination status. As an analogy, consider that the vast majority of people in prison in Canada for having committed murder are men. That does not make it sensible or fair to treat all men as being murderers, or even likely to commit a murder. But that is the logic apparently employed by the Policy. It is worth noting that *even amongst people in Alberta who have a reason to get tested for covid*, only about 5% are presently testing positive.³² And the positivity rate in Alberta has never been higher than about 13%-14%.³³

We say that any covid policy premised on the assumption that unvaccinated individuals are infected with covid and pose a risk to others (yet does not make that same assumption for vaccinated individuals) is totally unwarranted and unfair. And it may actually do nothing at all to achieve the stated goal of “stopping the spread” of covid.

C. The Policy Is Indeterminate

This Policy has no objectively-identifiable beginning or endpoint (*i.e.*, triggering statistical or other threshold).

That is a matter of grave concern for our group, and should be for anyone else affected by policies of this ilk.

It is acknowledged that the Policy's "Next Scheduled Review" is 31 March 2022³⁴ and that it "may be reviewed and revised [before then] as circumstances warrant."

But, because the City has not made public the specific criteria it considered in deciding the Policy was "necessary" in the first place, it is impossible for those affected to determine whether, when, how or on what basis it might become "unnecessary".

Many legitimate concerns exist in this regard:

- How will the City know, or be able to determine whether the Policy is working? Or, not working at all? Against what benchmark will that be determined, and using what metrics or dates (case numbers; hospitalizations; hospital capacities; deaths; R-values; when the pandemic is declared to be "over")?
- Will the City's definition of "fully vaccinated" change over time with waning vaccine efficacy, or the emergence of new covid variants that render the existing vaccines useless?
- Will employees be required to receive 3rd or 4th doses and beyond, in order remain employed by the City?
- Will the Policy be expanded to mandate vaccination for other infectious diseases?

In summary, what is the exit plan? What is the endgame? When will the City say that the Policy is at an end?

Such concerns must be addressed by the City and any other authority imposing covid vaccine mandates; they must not be obscured or avoided merely by pointing to the existence of a pandemic, nor by invoking ill-defined mantras of "safety" or "the circumstances".

VI. The Policy is Harmful To People and is Destructive

A. Intrusion Upon Individual Freedoms and Privacy

The Policy necessarily diminishes the freedoms and privacy of all City employees (vaccinated and unvaccinated) – and, and is harmful for that reason alone. As said, it makes one's employment – their means of earning a living – contingent on submitting to a medical procedure that has been pre-selected for them by others, and then giving information about that to their superiors.

The “informed choice” that the City encourages employees to make is a “Hobson’s Choice” – it is no real choice at all, because there is clearly only one acceptable outcome.

We believe that medical decisions – no matter how trivial, from the perspective of another – *are for the individual to make based upon whatever considerations they wish to entertain.*

The Policy unnecessarily compels employees to make “public” (or make known to their employer) which “camp” they are in – vaccinated or not. If providing a negative covid test makes one “fit” for work, then why must the employee’s colleagues and superiors know the vaccination status of a given employee? In other words, should it not suffice to know that a given employee is either vaccinated or covid negative, *without actually knowing which of those is the case?* The Policy as implemented ignores medical privacy altogether.

B. Creation of Division Amongst People

A corollary of the Policy’s forced disclosure of vaccination status is that it creates and fosters an unequal dichotomy of employees: vaccinated/unvaccinated; clean/unclean; “safe”/unsafe; responsible/irresponsible; holy/unholy, etc.

It warrants repeating that this division is created irrespective of whether a given employee actually poses any significant risk of infecting another person with the covid virus. It gives others a reason to instantly pre-judge their fellow employee, where no such reason had existed before. Vaccine mandates encourage unjustified sanctimony between people.

This dichotomy is antithetical to any notion of equality, and makes a mockery of covid pandemic slogans such as “we’re all in this together”.

We believe that treating others, and being compelled to treat others, as though they pose a lethal risk – irrespective of whether they actually pose any risk at all – will inevitably harm human relations and society as a whole. It does not take an “expert” to conclude that such mentalities alienate people from their neighbours.

The Policy and others like it serve to create a culture of fear and suspicion amongst employees in the workplace. It helps to create a type of “police state”, and stokes workplace politics. Members of our group have already noted many instances of verbal threats, bullying, feelings of intimidation, and uncomfortable confrontations amongst employees and their superiors, in recent weeks.

The entire purpose and effect of the Policy runs counter to other values that the City claims to embrace, encourage and require: diversity and inclusion, respectful workplaces, accessibility and integrity.

C. Social Stigma and Mental Health Impacts

In today’s culture, there is real and deepening social stigma associated with being unvaccinated against covid. Vaccine mandates like the City’s Policy only serve to worsen that.

The inescapable feelings of loneliness and rejection that many unvaccinated people now feel (only by virtue of being part of a small societal minority) are only the beginning of the harm.

As it becomes more and more clear that high uptake of covid vaccines will not end the pandemic as touted all along, public anti-unvaccinated rhetoric has somehow both worsened and become socially acceptable.

Politicians, media outlets, miscellaneous health experts, and lay people alike now all blame “the unvaccinated” for the pandemic and all of its related harms, with total impunity: The phrase “pandemic of the unvaccinated” has become something of a war cry.³⁵ The clear and persistent message is that “the unvaccinated” alone are responsible for over-capacity hospitals, cancellations of non-emergency surgeries, and delaying life getting back to normal for the rest of society. Some even call for “the unvaccinated” to be “shamed”.³⁶ This is the very definition of scapegoating.

In this burgeoning culture of contempt, people who are unvaccinated are quickly given prejudicial and entirely unwarranted labels, such as “anti-vaxxers”, “anti-science”, “far-right”, or “religious nutcases” as a means of quick dismissal and ridicule. History teaches us that nothing unifies a population quite like identifying a convenient common enemy – and that is precisely what we are seeing here.

In our view, much of what is being said publicly about “the unvaccinated” would constitute hate speech under the *Criminal Code*³⁷ if it referred to, for example, religious or racial minorities, instead of “the unvaccinated”.

This is all despite the fact that fully vaccinated people quietly make up very significant proportions of current covid cases and hospitalizations in Alberta³⁸ and elsewhere. And this is despite the fact that “the unvaccinated”, by having that status, have not committed any crime or done anything wrong at all. They have merely made a medical choice for themselves that is highly unpopular.

The resulting social stigma has already had significant adverse effects on the mental health of unvaccinated City employees, with grave outcomes in some instances. Many are suffering and will require professional help. Media reports of growing mental health problems, addictions and rates of suicide and other problems are now frequent. However, there is a conspicuous reluctance to acknowledge that this is or may be connected to covid restrictions and mandates – rather than the impacts of the virus itself.

The City – which repeatedly invokes its legal obligation to keep workplaces safe and healthy – has an obligation not to create or allow work environments that risk harming the mental health of its employees. The Policy causes more harm than it could ever prevent, in our view.

VII. The Policy is Contrary to Law

The Policy is unlawful in many respects.

It is unconstitutional, violates the privacy and medical rights of employees, and is in breach of countless employment contracts. And, insofar as it coerces “choice” or “consent” to be vaccinated, or causes harm to vaccinated or unvaccinated individuals, the Policy may be the basis for civil, criminal or regulatory liability against individuals and institutions.

The below discussion is by no means an exhaustive one in respect of the various legal concerns engaged by the Policy. It outlines, in very general terms, some of the legal issues engaged.

A. *Canadian Charter of Rights and Freedoms*

The *Canadian Charter of Rights and Freedoms*³⁹ is part of our Constitution – which is the “supreme law of Canada”; Laws and government actions that are inconsistent with the *Charter* are “of no force or effect”.⁴⁰ The *Charter* “guarantees” rights that are necessary in our “free and democratic society”.⁴¹

The *Charter* is not a bestowing of rights and freedoms *from government to people*. It stops governments in Canada *from taking away the rights and freedoms that people have by virtue of being people*. In other words, its entire purpose is to protect people from government. It incorporates countless historical lessons that when government power is not carefully restrained it leads to the complete opposite of freedom.⁴²

The *Charter* protects the “fundamental” freedom of conscience and religion, the “fundamental” freedom of thought, belief, opinion and expression”, and the “fundamental” freedom of association.⁴³

It also protects an individual’s “right to life, liberty and security of the person”⁴⁴ – which encompasses the rights to privacy and bodily autonomy.⁴⁵

The *Charter* states that “Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law...”.⁴⁶

The legal recourse provided to people by the *Charter* is not obscure, rare, frivolous or feeble. It is powerful, and has helped shape law and policy in this country for nearly 40 years. The *Charter* has led to federal, provincial and municipal laws being struck down by the courts. It has invalidated, prohibited and mandated certain actions by executive branches of government. It regulates the manner in which police officers and other elements of government interact with citizens. It has ended legal proceedings against people who have been charged with even the most serious of crimes. The list goes on.

To our knowledge, the constitutional validity of government-imposed covid restrictions and vaccine mandates has not yet been adjudicated upon by the courts. In other words, the Canadian judiciary has not upheld such vaccine measures as being lawful.

For the reasons described throughout this letter, our group believes that the Policy infringes all of the aforementioned provisions of the *Charter*.

B. Occupational Health and Safety Act

As said, the City has not explained precisely why the Policy is necessary at all, let alone because of its “legislated obligations” under the *Occupational Health and Safety Act*.⁴⁷

We note that the *OHS Act* contains the following provisions:

- The purposes of the *OHS Act* include “the promotion and maintenance of the highest degree of physical, psychological and social well-being of workers”⁴⁸ (underline added) and ensuring that workers “have the right to meaningful participation in health and safety activities pertaining to their work and work site, including the ability to express health and safety concerns”.⁴⁹
- Employers “shall ensure, as far as it is reasonably practicable for the employer to do so, the health, safety and welfare of workers” (underline added).⁵⁰ Neither “health” nor “safety” are specifically defined in the *OHS Act*.
- Workers have a duty to “take reasonable care to protect” *their own* health and safety.⁵¹

In our view, nothing in the *OHS Act* necessitates the Policy. In fact, the Policy may contravene the statute insofar as it harms those who have not been vaccinated against covid.

C. Consent and Coercion

In our view, the Policy wrongfully relies on either the absence of consent to be vaccinated, or else consent that is invalid in law.

Having 93% of its employees “fully” vaccinated is nothing for the City to boast about, to the extent that that outcome was brought about by people feeling coerced or pressured into making the “choice”.

Consent is central to many of our laws that govern interactions between people and institutions: Consent between parties is the essence of every legally enforceable contract. Express or implied consent is generally needed where organizations collect, use or disclose personal information. Medical procedures done without the “informed consent” of the patient may constitute the torts of assault, battery or negligence. The application of physical force by one person upon another is criminal assault, without consent. Lawful sexual relations require consent, and the *Criminal Code* contains provisions defining valid consent. There are countless other examples.

Wherever consent is required in law, its validity invariably requires that it be given freely, and without undue influence, coercion, duress, or threats being made.

Covid vaccination mandates like the Policy seek to procure the “consent” of employees by threats. Many of those who “choose” to be vaccinated do so purely because they know that

they will otherwise be subjected to unfair and burdensome testing requirements or will be disciplined or terminated. Or, they do so knowing that social isolation, ridicule or the contempt of their peers awaits them unless they make the correct “choice”. That is “coercion” by any definition of the word.

As to employment contracts, fundamental changes to the terms of one’s employment without consent of the employee amount to a “constructive dismissal” by the employer. So too do non-consensual “unpaid leaves of absence.” On our view, the Policy amounts to a wrongful dismissal of those who do not accept it.

Finally, we note, agree with, and support the pending civil suit by Alberta physicians against AHS⁵² that alleges that vaccine mandates by that employer amount to a conspiracy to commit an assault, among other forms of malfeasance.

Similar legal proceedings should be expected by the City if the Policy is maintained.

D. Prior Statements by Government

Our concerns about the unlawfulness of the Policy seem all the more justified when one considers prior statements by the Alberta Government.

Premier Jason Kenney had previously assured Albertans that vaccine mandates would not be introduced. And he repeatedly expressed the view that vaccine mandates would be illegal:⁵³

Dec. 9, 2020 – quoting Premier Jason Kenney

- “Will vaccines be mandatory or will vaccine passports become part of the plan? The answer ... is no and no.”
- “All I know is this, that it’s illegal based on the *Privacy Act* to ask someone if they’ve received a certain medical procedure or not, including a vaccine. So the Alberta government will not be participating in anything like that.”
- “The [vaccine passport] would contravene the *Health Information Act* and possibly *FOIP*. We also amended the *Public Health Act* to remove the 110-year old powers allowing Alberta to force people to be inoculated.”
- “So these folks who are concerned about mandatory vaccines have nothing to be concerned about. There will be no vaccine passports in Alberta.”

Dec 31, 2020 – quoting Premier Jason Kenney

- “There will be no mandatory or coerced administration of the Covid 19 vaccines in Alberta, period. Full stop.”
- “It’s your choice at the end of the day.”

Sept 16, 2021 – quoting Premier Jason Kenney

- “No one will be compelled to get vaccinated against their wishes and a negative test option will be offered.”

Yet, here we are. Provincial and Municipal governments, and private companies in Alberta have all imposed covid vaccine mandates.

VIII. Practical and Legal Ramifications of Policy

As said, the City has not shown whether or how it has studied or accounted for the expected harms of imposing the Policy. It seems to have ignored that altogether.

We believe those harms will manifest themselves in the months and years to come – and will long outlive the covid pandemic itself. We are confident the Policy and others like it will turn out to be a burden – not a boon – for society as a whole. After the dust settles on the pandemic, perhaps long after, governments within Canada will be apologizing for vaccine mandates – not congratulating themselves for them.

Disciplining, suspending and terminating unvaccinated City employees will inevitably diminish the capacity and ability of the City to provide quality, timely services to its citizens. Our group, simply does not accept that any employer can rid itself of a segment of its workforce and continue on as though nothing has happened. And it is reasonably foreseeable that morale amongst remaining City employees will be adversely affected.

Even without proceedings concerning covid vaccine mandates, Courts and other institutions in this province are already severely clogged and backlogged, having operated at reduced capacity for large portions of the pandemic already. The Policy and others like it will only worsen that problem.

As a result of the Policy, the City should expect to be faced with an unprecedented torrent of labour union grievances, human rights complaints, civil lawsuits and legal proceedings of various other types. That has undoubtedly already started.

VIX. Conclusion

Unvaccinated City employees – like their vaccinated counterparts – are people.

They have done nothing illegal, immoral or harmful. And they have no such intentions. All they have done is made a lawful medical choice for themselves that many others disagree with. They have perfectly rational, valid, and deeply-held reasons for that decision.

Unvaccinated people are entitled to fair and equal treatment under the law, and by their fellow citizens. Their dignity and freedom of choice are worthy of respect and zealous protection. Their status as a small statistical minority does not justify or trivialize or excuse violations of their fundamental rights – it does the exact opposite.

Our group sees covid vaccine mandates like the Policy as a “line in the sand”; an issue of generational importance with implications that go way beyond the risk of individuals becoming infected by or sick from the covid virus. This is about freedom, the rule of law, societal values, and what we want our world to be – or not be.

The Policy is unfair, ill-conceived, has not been properly explained. By all appearances, it is a knee-jerk, draconian and reckless reaction to a complex health issue. It seeks to alleviate people’s fears about covid by arbitrarily punishing a small and easy target; “the unvaccinated.”

Our group will not be coerced or shamed into compliance with a policy that we believe to be irrational, arbitrary, immoral, illegal and destructive on many levels.

We will continue to stand up, speak up, and fight for our rights and freedoms.

The Policy must be rescinded now, to mitigate the harms it has already caused and to avoid those that will obviously continue to result otherwise.

Yours truly,



Ravi Jadusingh
Barrister & Solicitor
/jlm

¹ quoting <https://www.edmonton.ca/city-government/jobs>

² See <https://www.edmonton.ca/programs-services/emergency-preparedness/covid-19/employee-vaccination-policy>

³ *Ibid*

⁴ Procedure: COVID-19 Vaccination, p. 3 https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/A1701_COVID-19_Vaccination_Procedure.pdf?cb=1636471895

⁵ *Ibid*, p. 2

⁶ Request for Vaccination Exemption form, p. 4 of 4 (Version: 2021.09.13)

https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/Request_for_Vaccination_Exemption_Application.pdf?cb=1636567296

⁷ Administrative Policy A1701, p.3 <https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/A1701.pdf?cb=1636567296>

⁸ *Ibid*

⁹ Administrative Policy A1701, p. 1

¹⁰ See https://edmonton.ca/programs_services/emergency_preparedness/covid-19

¹¹ e.g., recent CBC article <https://www.cbc.ca/news/canada/edmonton/alberta-doctors-regulator-covid-inspections-1.6237202>

¹² See e.g. <https://www.cbc.ca/news/canada/calgary/tim-stephens-fairview-baptist-church-arrest-monday-calgary-1.6065952>

¹³ See <https://www.cbc.ca/archives/entry/1988-government-apologizes-to-japanese-canadians>

¹⁴ See <https://www.canada.ca/en/news/archive/2006/06/prime-minister-harper-offers-full-apology-chinese-head-tax.html>

¹⁵ See <https://www.rcaanc-cirnac.gc.ca/eng/1100100015677/1571589339246>

¹⁶ See <https://www.alberta.ca/covid19-vaccine.aspx>

¹⁷ See https://www.edmonton.ca/programs_services/emergency_preparedness/covid-19

¹⁸ https://www.edmonton.ca/city_government/city_organization/employee_experience/covid-19

¹⁹ COVID-19 Vaccination Policy FAQs (updated 4 October 2021), p.1

https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/FAQ-COVID-19_Vaccination_Policy.pdf?cb=1636567576

²⁰ Administrative Policy A1701, p.2

²¹ See <https://www.edmonton.ca/programs-services/emergency-preparedness/covid-19/employee-vaccination-policy>

²² Administrative Policy A1701, p.2

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- ²³ COVID-19 Rapid Testing Program FAQs (updated 20 October 2021), p. 4
https://www.edmonton.ca/sites/default/files/public-files/assets/PDF/FAQ-COVID-19_Vaccination_Policy.pdf?cb=1636471895
- ²⁴ See <https://www.cbc.ca/news/canada/edmonton/alberta-reopening-plan-covid-19-jason-kenney-1.6040694>
- ²⁵ See <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#vaccinations>
- ²⁶ See <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#severe-outcomes>
- ²⁷ See <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#vaccine-outcomes>
- ²⁸ See e.g. <https://edmontonjournal.com/opinion/columnists/david-staples-lockdown-restrictions-on-the-fully-vaccinated-a-bitter-pill>
- ²⁹ Administrative Policy A1700 <https://www.edmonton.ca/sites/default/files/public-files/assets/PoliciesDirectives/A1700-Employee-COVID-19-Vaccination-Disclosure-Policy.pdf?cb=1633636290>
- ³⁰ See e.g. <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#vaccine-outcomes>
- ³¹ See Rapid Testing PAQs, p.2
- ³² See <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#laboratory-testing>, Figure 26
- ³³ *Ibid*
- ³⁴ See Policy A1701, p. 1
- ³⁵ e.g., Premier Jason Kenney implores the unvaccinated: “For the love of God, get vaccinated” (<https://www.thestar.com/new/canada/2021/09/03/for-the-love-of-god-get-vaccinated-as-covid-cases-soar-jason-kenney-offers-100-to-get-a-shot.html>)
- ³⁶ CNN Host Don Lemon says about unvaccinated people “...it’s time to start shaming them ... or leave them behind.” 16 September 2021
<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-319.html>
- ³⁷ <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-319.html>
- ³⁸ see <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#vaccine-outcomes>
- ³⁹ <https://www.canada.ca/content/dam/pch/documents/services/download-order-charter-bill/canadian-charter-rights-freedoms-eng.pdf>
- ⁴⁰ *Constitution Act*, 1982, s. 52
- ⁴¹ *Charter*, s. 1
- ⁴² See e.g. the *Magna Carta*
- ⁴³ *Charter*, s. 2 (a), (b), (d)
- ⁴⁴ *Charter*, s. 7
- ⁴⁵ See e.g. *Rodriguez v. British Columbia (A.G.)*, 1993 CanLII 75 (SCC) and *A.C. v. Manitoba*, [2009] 2 SCR 181 (SCC)
- ⁴⁶ *Charter*, s. 15(1)
- ⁴⁷ SA 2020, c O-2.2
- ⁴⁸ s. 2(a)
- ⁴⁹ s. 2(d)(ii)
- ⁵⁰ s. 3(1)
- ⁵¹ s. 5(1)
- ⁵² *Payne et al v. AHS et al.* (see <https://calgary.ctvnews.ca/4-alberta-doctors-file-lawsuit-against-ahs-over-vaccine-requirement-1.5637496>)
- ⁵³ <https://rubble.com/vmsm52-case-no.-2001-14300-what-have-you-done-alberta.html>