



NATIONAL CITIZENS INQUIRY

Vancouver, BC

Day 1

May 2, 2023

EVIDENCE

Witness 3: Philip Davidson

Full Day 1 Timestamp: 03:00:00–03:27:30

Source URL: <https://rumble.com/v2ln3p0-national-citizens-inquiry-vancouver-day-1.html>

[00:00:00]

Wayne Lenhardt

Welcome back everyone. Phil, I see you on my screen, so I'm assuming we're ready to go now. If you could give us your full name and then spell it, and then I'll make you swear an oath.

Philip Davidson

My name is Philip Davidson. It's P-H-I-L-I-P D-A-V-I-D-S-O-N

Wayne Lenhardt

Do you promise to tell the truth, the whole truth, and nothing but the truth in your testimony today?

Philip Davidson

I do.

Wayne Lenhardt

Could you start with a little background on yourself, and what you've done? I see that you are a 14-year employee of the BC Public Service so if we could just set the table here, and then we'll get into what happened to you. Can you give us a background?

Philip Davidson

Sure. Yeah, as you mentioned, I worked for 14 years for the BC Public Service in a variety of policy roles for different ministries: Ministry of Education, Ministry of Attorney General, Ministry of Health, and lastly, the Ministry of Advanced Education and Skills Training. My last position was as Director of Policy and Stakeholder Relations in the Ministry of Advanced Education and Skills Training in the Student Financial Assistance Program.

Wayne Lenhardt

So what happened from 2019 on, in your role, as far as the mandates went?

Philip Davidson

I'll begin around August of 2021. Well, maybe I'll go back a little further than that. From about March of 2020, the BC Public Service, many of us who worked in office roles, began to work from home remotely. And that was the case for the majority of my colleagues. I continued to go into the office periodically. It was close to my home. But by about August of 2021, with the provincial vaccination program having been well underway for nearly a year, I guess, by that time, there was rumblings of vaccine passports coming in. I remember discussing with my colleagues, as it had become commonplace to do, in the office about which vaccinations people had received and when they were getting it and when they had got it.

I indicated to my colleagues at that time that I wouldn't be discussing my vaccination status because I was concerned about vaccine passports. They had already been announced for Quebec at that time. And I was concerned about the possibilities of those being implemented in British Columbia because it was my understanding that the vaccine didn't prevent infection or transmission of COVID-19. And so, I didn't understand the basis for which they'd be used to essentially segregate people in society.

So that was in August of 2021. On August 24th, the provincial government announced that they would be introducing the BC Vaccine Card, so our version of the vaccine passport for British Columbia, for entry into places like restaurants, gyms, and such. And that was to be implemented on September 13th. And so that was happening.

For the BC Public Service, we had been told as employees, 38,000 employees approximately at the BC Public Service, that a vaccination requirement for the employees would not be implemented. This had been messaging from the BC Public Service and frequently asked questions going back to about March of 2021. But with the provincial government implementing the BC vaccine card for the public as of September 2021, it seemed likely and even possible to me that the provincial government would do it for BC Public Service employees. And I kind of knew that this was coming too because in my role, I could be called for briefings to the BC legislature, the Minister. And I remember being in a meeting with my assistant deputy minister one afternoon in late August.

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I believe they had already implemented a vaccine passport requirement for entry into the BC legislature by that time. And so, we were being told to "make sure you have your vaccine passport ready if you're called to a briefing with the Minister at any point." And so that was the state of affairs in August and September. And then I can speak to what happened at beginning of October if you'd like me to.

Wayne Lenhardt

Okay, that was September of 2021, correct?

Philip Davidson

That's right.

Wayne Lenhardt

Yes. Okay. I'm sorry, proceed.

Philip Davidson

As I mentioned, I was concerned about the disclosure of vaccination status, private medical information in the workplace. And it appears the employer was, as well, because I recall reading in our ministry's communicable disease prevention plan that a person's health status is private information. I'm quoting now, it says, "this includes staff, clients, and the public. Public service staff do not have the right to inquire if someone has been vaccinated, or whether the person has or had a communicable disease infection."

And so this plan was part of the government's response to COVID-19 for its employees in the workplace, health and safety, protecting the health and safety of employees. And in this plan, which was last updated and dated October 4, 2021, it said that BC Public Service didn't have the right to inquire if someone had been vaccinated or not. But something had changed. Because on October 5, 2021, the head of the BC Public Service, Lori Wanamaker, at the time, sent an email to all BC Public Service employees, indicating that she had, quote, "decided that BC Public Service will require all employees to provide proof they are fully vaccinated beginning November 22, 2021."

So that was a bit of surprise to a number of BC Public Service employees. I think the vast majority had become vaccinated and was likely up around 80 per cent or more, consistent with the general population vaccination levels for British Columbia. But certainly, there was at that time a number of people who worked for the BC Public Service who hadn't become vaccinated. It was also interesting in this email that Ms. Wanamaker made the following comment saying, "We also know vaccination is the safest, most effective measure to reduce transmission of the virus in our communities." And she indicated that she had met with Dr. Bonnie Henry at the end of September and decided, following that conversation, to make vaccination against COVID-19 a requirement for all BC Public Service employees.

Wayne Lenhardt

So that would include you? You were unionized at this point, were you? You weren't exempt?

Philip Davidson

No, I'll clarify. I was actually an excluded non-union member of the BC Public Service, so it was excluded management. And the policy applied to all members, both non-union and unionized as well.

Wayne Lenhardt

So I assume that you didn't comply, is that correct?

Philip Davidson

Yeah, my position was that I wasn't going to disclose my vaccination status to the employer. I didn't see, frankly, the need to, especially as I had been working remotely quite a bit, although I had been going into the office. But I was perfectly able to work remotely as the majority of my colleagues were doing. The policy was ostensibly to protect the health and

safety of employees in the workplace. Since the majority of my colleagues and many across the public service had been working remotely from home for well over a year by that time, there was a desire to bring people back to the workplace, in-person work, and this was seen as a safety measure to ensure that 100 per cent of the people going into the office can prove their vaccination status. And so, I didn't feel comfortable doing that,

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and later requested to be able to continue work remotely from home, but I was denied that request.

Wayne Lenhardt

So if you could give us a bit of a timeline then. I'm assuming they started laying on deadlines where you had to do this. When did that happen and what happened? Eventually, I gather you were put on leave without pay at some point. So tell us that story.

Philip Davidson

Yeah, absolutely. So the policy came into effect on November 1st, 2021. By November 22nd, all employees had to prove their vaccination status by showing their BC Vaccine Card to their supervisor, in many cases virtually online through the computer screen. And if they didn't do so, they would be placed on leave without pay, we were told, for three months. At the end of which time your employment could be terminated.

And on November 19th, 2021, the provincial government passed an Order in Council, creating a new regulation under the *Public Service Act*, the COVID-19 Vaccination Regulation. It made proof of COVID-19 vaccination a term and condition of employment. And it deemed dismissal for noncompliance with that requirement to be dismissal for just cause: so termination for misconduct, willful misconduct. And so that came in actually on the Friday before the Monday that the requirement to prove one's vaccination status came into effect.

Wayne Lenhardt

So did requests come in then that you do this? Did you get something in writing? I assume you didn't comply. Tell us the story here.

Philip Davidson

Yeah, in my particular case, I had a very cordial relationship with my executive director, and we waited to have this conversation to the last day, essentially. And I was just clear that I wouldn't be sharing that information with the employer, and he sort of apologetically said, "Well, there's not much I can do for you. And so, you know, you'll receive a letter." This policy and the implementation of it was administered centrally through the BC Public Service Agency. So while many members of the BC Public Service work in different ministries and have supervisors and bosses that they report to, those supervisors or bosses really didn't have any individual control over things. They were following a plan that was being implemented centrally.

Wayne Lenhardt

So when were you terminated or placed on leave without pay?

Philip Davidson

I was placed on leave without pay on November 24th, I believe, and continued in that status until June of 2022, for about seven months. And then I was terminated.

Wayne Lenhardt

And that was by a letter from someone. Who sent you the letter?

Philip Davidson

The process when one is deemed to have committed misconduct in the BC public services—there's a recommendation from your supervisor for termination to the deputy minister and then the deputy minister terminates the employee.

Wayne Lenhardt

Was that a termination or just a leave without pay?

Philip Davidson

It was a termination.

Wayne Lenhardt

Okay. So what did you do after that?

Philip Davidson

Well, I might rewind a little bit to say that when this was announced in October of 2021, it caught a lot of people by surprise in the public service. And there was a lot of activity amongst people who were opposed to such a heavy-handed policy. And so there emerged a group of people who found each other online and began to discuss and to see what could be done in terms of responding to this policy. I'll also add that for the majority of the BC Public Service,

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the employees are required to be members of a union, in this case, the BC General Employees' Union [BCGEU], one of the largest unions in British Columbia, not the largest. And the union really, in my estimation, did nothing to represent its members regarding the employer's mandate and sided pretty much entirely with the employer on the mandate. I wasn't a unionized employee, but a lot of these employees weren't finding any assistance from the union regarding this mandate. And so, they began to organize themselves.

An online Telegram group that was created eventually grew very quickly to 1,700 members. And so out of that, a group was born that came to be called the BCPS Employees for Freedom. And in March of 2022, I and four other colleagues incorporated a not-for-profit society for this group in order to advocate on behalf of BC government employees

and to defend their medical privacy and bodily autonomy. We undertook some legal action to seek a petition for injunction and judicial review of the Government's Order in Council and COVID-19 Vaccination Regulation. And we did have a hearing for the injunction in March and April of 2022.

Wayne Lenhardt

Okay, and that was heard, correct?

Philip Davidson

It was heard, and our petition for injunction was denied. The judge in that ruling ruled essentially that we hadn't met the test for irreparable harm, and so we weren't able to stop the termination of employees. It is interesting that the provincial government on March 10, 2022, announced that it was withdrawing the BC Vaccine Card, the vaccine passport, as a requirement for entry into public spaces like restaurants and gyms, et cetera. On April 8, 2022, is when that happened. But that the BC Public Service maintained the requirement for the vaccine passport for employment for almost a full year after that. It was just rescinded on April 3, 2023.

So terminations began in March of 2022 and to date, my understanding is that over 300 BC Public Service employees have been terminated. Also understand that a significant number of BC Public Service employees retired early to avoid termination from the mandate and that number we understand to be somewhere between 2,000 and 3,000 people. There's been a large number of vacancies with the BC Public Service over the last year and a half or so. And I know, personally, a number of people who retired early because of this mandate.

Wayne Lenhardt

And that would have negative financial consequences, would it? If you retire early, you don't get your full pension usually. Is that fair?

Philip Davidson

Absolutely.

Wayne Lenhardt

Okay. Are any of your lawsuits still continuing? Because typically an injunction is a part of a general damages application. If the injunction is not successful, usually the damage claim continues. So are there any of these claims still outstanding before the courts?

Philip Davidson

Yes. I can confirm I'm part of a group of employees that are involved in legal act regarding the mandate. Those of us who are non-union excluded employees are involved in an action as well as members of our society who are unionized members have filed section 12 failure to represent claims with the BC Labour Relations Board against the BCGEU.

When in the fall of 2021 to the winter of 2022 this grassroots group of BC Public Service employees was forming, the leaders of it at the time—I wasn't involved until later on—were seeking legal representation, and it was very difficult to find lawyers in British Columbia,

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or anywhere in Canada, willing to represent employees and to take forward an injunction action. We did find a lawyer initially, that relationship didn't continue. Then I had personally sought legal representation and found a lawyer and recommended it to this group. And so we're represented to this day by Omar Sheikh of Sheikh Law, Victoria.

Wayne Lenhardt

And so those lawsuits are still pending and still proceeding, are they?

Philip Davidson

Yes, they are.

Wayne Lenhardt

I'm going to stop and ask the commissioners if they have any questions for you.

Commissioner DiGregorio

Thank you so much for coming today and sharing your testimony with us. I wanted to explore a little bit more about the injunction that you applied for, to make sure I fully understand what the circumstances were. So this was a request to the court to stop the termination of employees for not complying with the employer mandate. Is that right?

Philip Davidson

That's correct.

Commissioner DiGregorio

Okay, and so you've mentioned that that injunction was denied. Just a step back, how long did it take between the application for the injunction, for it to be heard by the court?

Philip Davidson

The application was filed in about mid-February 2022, and we had a hearing in mid-March. So it was relatively quick.

Commissioner DiGregorio

During that time, did terminations occur or was there a pause? Or they were on hold during the time that the injunction had been applied for, but had not been heard yet in the court?

Philip Davidson

I can't say specifically, but it is my understanding that terminations did commence on or around that time. I myself was warned that I would be terminated by February 24th, 2022. That didn't happen. I ended up being terminated several months later, but I am aware of other individuals who were terminated in March.

Commissioner DiGregorio

Thank you. And so the other side of it, then, is what the analysis that was done by the court was. I think I heard you say that the reason the injunction was not granted was because the court did not find irreparable harm. And that, I think, is one of the requirements under the common law in Canada to grant injunctions.

How could the court say that there was no irreparable harm? What was advanced as the basis for the harm that would underlie the application for the injunction?

Philip Davidson

Well, I wish I could get into more specific detail about the legal specifics of our case. Being a non-expert in this area, I don't want to venture too far. But my takeaway from the ruling is that by ruling that there was no irreparable harm to allow the termination to continue that the justice was suggesting that the harm was repairable. In other words that we could proceed with legal action and, through the courts, obtain some sort of award or monetary compensation for the harm caused to us. That is yet to play out, but that's my takeaway from that.

Commissioner DiGregorio

So essentially, the argument being that there is still an opportunity for the employees to have compensation say if they lose their jobs—not finding that losing your job is irreparable harm. Was there also a reason given perhaps that employees could go and find other employment, or do you know if that was a piece of the reasoning? And I'm sorry if I'm asking you details that aren't at top of mind.

Philip Davidson

No, that's fine. I don't recall specifically, but I'm sure those details could be found in the judge's reasons themselves, which are available.

Commissioner DiGregorio

Okay, and perhaps our commission will be able to access the reasons to that because I'd very much like to read them.

Was the decision on the injunction appealed?

Philip Davidson

No. It was a two-part action, so it was a petition for injunction and judicial review. We haven't yet proceeded with the second part, and we're sort of determining the next steps on that.

Commissioner DiGregorio

Okay, thank you.

Commissioner Drysdale

Good morning. In your testimony, you discussed a certain policy that I believe came out in September or October of 2021, which talked about the public service did not have the legal ability to ask questions about vaccine status.

[00:25:00]

My question to you is do you have a copy of that that you can submit to the Commission for the record?

Philip Davidson

Yes, I do. Actually, I submitted it maybe a couple of weeks ago to the Commission [exhibit number unavailable]. But I'll just specify that that was a workplace policy specific to where I worked in my office. It wasn't a Public Service Agency policy, which would override an individual worksite, but it did state the following: "A person's health status is private information. This includes staff, clients, and the public. Public Service staff do not have the right to inquire if someone has been vaccinated or whether the person has had a communicable disease infection."

When I read that, I was a bit puzzled that the very next day, the head of the Public Service could come out with a communication to all staff saying that not only did the Public Service have a right to inquire, but it was a duty and obligation and a term and condition of employment for Public Service employees to prove their COVID-19 vaccination status.

Commissioner Drysdale

Thank you.

Philip Davidson

Sorry, to add to that. I think it's important to emphasize that the Government of British Columbia legislated this. They passed an Order in Council on November 19, 2021, and created a new regulation requiring this under the *Public Service Act*. I'm not aware of any other jurisdiction in Canada that did that. And that was the basis for our petition for judicial review as to the constitutionality of such a law.

Wayne Lenhardt

We have another question. Heather, go ahead.

Commissioner DiGregorio

Sorry, one more question. Actually, it was about that Order in Council. Do you know if that is still in effect, or has it been repealed? Or has it expired?

Philip Davidson

It's my understanding that it was rescinded on April 3rd, 2023.

Commissioner DiGregorio

Thank you.

Wayne Lenhardt

Are there any final questions? No. Okay, on behalf of the National Citizens Inquiry, I want to thank you for submitting your testimony today.

Philip Davidson

Thank you.

[00:27:38]

Final Review and Approval: Margaret Phillips, August 25, 2023.

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