



## NATIONAL CITIZENS INQUIRY

Quebec, QC

Day 3

May 13, 2023

### EVIDENCE

(Translated from the French)

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**Witness 4: Gary Lalancette**

Full Day 3 Timestamp: 03:35:06–03:59:49

Source URL: <https://rumble.com/v2vbsoc-quebec-jour-3-commission-denquete-nationale-citoyenne.html>

[00:00:00]

**Samuel Bachand**

Hello, Monsieur Lalancette, can you hear us?

**Gary Lalancette**

Fine, and you?

**Samuel Bachand**

The same. My name is Samuel Bachand. I'm acting as attorney for the Inquiry in connection with your testimony. I would ask you, Gary Lalancette, to spell your name in full.

**Gary Lalancette**

G-A-R-Y L-A-L-A-N-C-E-T-T-E.

**Samuel Bachand**

I will now swear you in. Do you swear to tell only the truth to the Inquiry?

**Gary Lalancette**

I do.

**Samuel Bachand**

Very good. You are here, Monsieur Lalancette, to tell us about your experience of losing your job and claiming unemployment benefits related to COVID or COVID policies. To facilitate the Inquiry's administration of your case, I would like us to begin by introducing the bundle of documents you intend to present to us. Ladies and Gentlemen of the Inquiry, the witness's bundle is numbered [Exhibit] QU-5. It includes documents QU-5a to QU-5l in

chronological order. So Monsieur Lalancette, I'd like to ask you, do you have access to these documents? I've sent you the bundle.

**Gary Lalancette**

Yes.

**Samuel Bachand**

Okay, now open this on your computer and very briefly—because we'll go into detail later—but simply identify the procedural and other documents that appear in this bundle so that the commissioners can make notes and refer to them quickly.

**Gary Lalancette**

All right. So the QU-5a: that's the vaccination policy that's been established at the company, with all the details.

Next, the QU-5b is my note stating that my employment would be terminated if I didn't comply with this policy.

Next, QU-5c is the reference letter I received from my immediate superior.

Next is the QU-5d: this is the notice that they want everyone to return to working in the office and are extending the vaccination requirement by one month in order for us to provide proof [of vaccination].

Then you have a QU-5e, which is the code for my dismissal.

Then [QU-5]f, which is a screen shot of my employment record showing the reason for dismissal.

Then you have document QU-5g. This is the confirmation of my complaint to the CNESST [Commission des normes, de l'équité, de la santé et de la sécurité du travail – Standards, Equity and Occupational Health and Safety Commission] for dismissal without just cause.

Then document [QU-5]h: this is the document I provided to Employment Insurance showing all my reasons for refusing to comply with this policy, which were supported by sections of the law.

Then [QU-5]i, which is the refusal of my benefits, in other words, the decision of Employment Insurance to refuse my request.

Then [QU-5]j shows that I appealed and they still refused to give me benefits.

Then, [QU-5]k is my filing at the hearing: in other words, what was done by my lawyer, which proves that I made an additional appeal.

And [QU-5]l is the document which attests to the notice of hearing for the CNESST, which is coming up on June 19.

**Samuel Bachand**

Right. I don't want to cut you off. Were you about to say something?

**Gary Lalancette**

No. That concluded the description of the documents.

[00:05:00]

**Samuel Bachand**

So just to set the context for the commissioners and to avoid explanations that would interrupt your story, am I right, Monsieur Lalancette, to say that you were fired by your former employer for failing to comply with the mandatory vaccination policy?

**Gary Lalancette**

That's correct.

**Samuel Bachand**

You then filed an Employment Insurance claim which was denied. You challenged it administratively without success and are now taking the case to the Federal Court. I checked and it is indeed the Federal Court.

**Gary Lalancette**

The Federal Court, yes.

**Samuel Bachand**

In another case you're making a claim related to your dismissal in its own right, so it's not Employment Insurance. You have lodged a complaint with the CNESST, the Standards Commission, for short, and you are awaiting your hearing on this matter before the Tribunal administratif du travail [Labour Administrative Tribunal], a provincial authority.

**Gary Lalancette**

Correct.

**Samuel Bachand**

Very well. So now, start from the beginning and tell us what happened to you.

**Gary Lalancette**

Well, just as a preamble, I'm a career computer scientist. I have about 30 years' experience in IT in several jobs prior to this one. I was in my second-last position for seven-and-a-half years, and left it only because they closed the IT department and repatriated it to Toronto. As I wasn't among those who wanted to move to Toronto, my employment ended right there.

Let's start again with my former employer: February 23, 2018 was the date I got my confirmation of employment as an analyst, and March 12 was my first day of work.

**Samuel Bachand**

Sorry, I'm going to interrupt you from time to time. Could you tell us very briefly, as to an outside observer, what your tasks were like on a normal day?

**Gary Lalancette**

Yes, that's what I was just about to describe. At the beginning of my employment, we did office work; and mostly my job was to take remote posts and solve computer problems for the company's internal employees. Sometimes, when it's a hardware problem, we would go to people's offices to remedy it, but most of the time it was done from our workstation in the office using remote access. So under this system, we had an employee regulation that included working two days a week from home. So I was officially telecommuting two days a week for a while.

**Samuel Bachand**

So this was happening before the declaration of a health state of emergency.

**Gary Lalancette**

Yes, correct.

**Samuel Bachand**

Continue.

**Gary Lalancette**

And indeed, that lasted until the declaration on March 13, 2020. Following the declaration of a health emergency, I worked remotely all the time. In other words, I was working remotely full time. One of my main tasks was to provide technical support to employees, which I did remotely by connecting to their computers. So the operating process wasn't really any different; it was the same thing, except that instead of being in the office, I was at home.

Then on August 19, 2021, my employer adopted a vaccination policy—which is document QU-5a—that required all employees to provide proof of full vaccination—which at that time was two doses—between August 23 and September 30, 2021. Did I get the date right? Yes.

Okay, so between August 23 and September 30, 2021. So I had to show my vaccination status and hand it over to the company so they could record all of that. The only possible exemptions were medical or religious. Testing wasn't a part of that, so it wasn't even possible to take a test to be able to do this. The goal of their policy was to have us return to the office gradually and that's why they asked for this.

[00:10:00]

By then, we knew that the vaccine had already been shown to be not all that effective and also that it didn't prevent spreading or having the disease.

**Samuel Bachand**

I would simply ask you to continue with the history.

**Gary Lalancette**

So on the following September 15, I notified my employer that I had no plans to be vaccinated against COVID 19 and that I wasn't invoking any exemptions, either religious or health-related, because they didn't apply to my situation.

I then received a letter from Human Resources on the 21st, which is document QU-5b, stating that if I did not provide proof of vaccination that I was fully vaccinated by September 30, or proof by September 23 of my intention to make an appointment to receive the series of vaccinations, my employment would be terminated as of September 30. On the 23rd, two days later, I replied to the letter by e-mail advising that I stood by my decision, and that I wanted to continue my employment but with the conditions agreed upon in my employment contract. In other words, this was a policy that came into effect after I was hired and I didn't agree to it. I also made it clear that I refused to be vaccinated as it was still an experimental vaccine at that time, and that it contravened my fundamental rights—that is, my free and informed consent before accepting a medical treatment that infringed upon my bodily integrity.

**Samuel Bachand**

Did you express these arguments to your employer?

**Gary Lalancette**

Yes, I told my employer.

**Samuel Bachand**

Continue.

**Gary Lalancette**

On September 26, I received an e-mail from the head of human resources stating that the vaccination policy was reasonable and necessary to protect the health and safety of employees and that it complied with applicable laws. I question all that but I'm not going to discuss it right now. Seeing that my employment was heading towards an end, on September 28 I asked my immediate superior for a reference letter, which is under Exhibit QU-5c. I'm going to read this one because it'll show you what kind of employee I was with the firm.

**Samuel Bachand**

Yes, and if I may, this will also allow the Inquiry to bridge the gap with Service Canada's decision on your unemployment insurance claim. Please go ahead.

**Gary Lalancette**

Correct. So dated September 28, addressed to me, reference letter:

To whom it may concern,

This is to certify that Gary Lalancette has done an excellent job at—my employer— for the entire duration of his employment since March 2018. The main qualities I have noted in Gary are his courtesy, his organizational skills, and his ingenuity in improving some of our processes. During his time with us, Gary has been a pillar of our service center. He has also been in charge of our mobile device fleet and iPhones for the Montreal office and has taken part in a number of deployments and other tasks involving the firm’s mobile devices. He is therefore a great asset to any IT department. Please do not hesitate to contact me for any further information. I’ll be happy to recommend him to you in person.

And this was from my DTI manager.

**Samuel Bachand**

Continue.

**Gary Lalancette**

So you can see from this letter that it wasn’t due to my work that they wanted to fire me but it really was about policy. The same day, September 28, as seen in Exhibit QU-5d, the return-to-work plan was postponed to November 1, 2021. So the plan to vaccinate and to provide proof of vaccination was pushed back another month. However, the company did not take the extension into account, and on September 30, they terminated my employment.

**Samuel Bachand**

When you say return to work, what you mean is the return-to-work deadline that had been postponed or delayed, right?

**Gary Lalancette**

Correct.

**Samuel Bachand**

Okay, continue.

**Gary Lalancette**

So following my dismissal—as anyone would—I tried to limit the damage. I made an application at the employment centre. That happened on October 3, 2021.

[00:15:00]

I filed my application at that time and on October 14, under Exhibit QU-5g, I also filed my complaint with the CNESST, and I received my confirmation notice on that date. On

December 19, as Exhibit QU-5h, you'll find the reasons for my refusal. We could go on at length about that but I'll try to keep it brief.

**Samuel Bachand**

Okay, just tell us who refused what and why. Because it's central; explain it to us.

**Gary Lalancette**

Okay, this is my refusal to comply with the company's vaccination policy. The Employment Insurance office asked for justifications for my actions, and in response to that I provided this letter, which I've put under the Exhibit I've just mentioned: 5h. In it, I refer to several articles of law, including under the theme that I have the right to refuse any medical treatment, under the Civil Code articles 3, 4, 10, 11.

**Samuel Bachand**

Monsieur Lalancette, I'm going to stop you there. We have access to the document, and I would ask you to explain to the Inquiry rather than referring to sections of the law, to tell us perhaps the four or five fundamental rights that you feel are the most important among those that you invoked against Service Canada in this letter dated December 19, 2021, labelled QU-5h.

**Gary Lalancette**

Yes, that's exactly what I wanted to do. Article 1 [sic] [3] of the Civil Code clearly states that "Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy." So that's a very important point. And the next one, Article 4 [sic] [11]: "No one may be made to undergo care of any nature, whether for examination, specimen-taking, removal of tissue, treatment or any other act, except with his consent. Except as otherwise provided by law, the consent is subject to no other formal requirement and may be withdrawn at any time, even verbally." So I had the right to refuse this one.

**Samuel Bachand**

So for the other rights invoked, I'll refer the Inquiry to document QU-5h. We don't have much time left, but I want you to be able to explain what happened procedurally, so let's say in about ten minutes, please.

**Gary Lalancette**

Yes, all right. So as a result, Service Canada denied my application for benefits, which is under QU-5i. I appealed this decision on January 18, 2022.

**Samuel Bachand**

Let me stop you right there. The Service Canada decision—

**Gary Lalancette**

Yes, for Employment Insurance.



**Samuel Bachand**

—which denies you unemployment insurance, to use a good Québécois expression, is based on what grounds? What is the reason for denying you this benefit?

**Gary Lalancette**

This was refused on the grounds of misconduct because I didn't follow company policy which was, in short, vaccination.

**Samuel Bachand**

Is any other information provided? Does Service Canada elaborate on the meaning of this reason, which is your, quote, "misconduct"?

**Gary Lalancette**

That's the only thing. My disobedience of the policy in effect led to my misconduct. So my dismissal was my responsibility and not that of the employer.

**Samuel Bachand**

Am I right in saying that what you've just mentioned doesn't appear in document QU-5i? Are these things you were told afterwards?

**Gary Lalancette**

Yes, yes, that's part of the discussions with the employment center, yes. These are discussions I've had.

**Samuel Bachand**

All right. Continue.

**Gary Lalancette**

So as I was saying, on January 18, I appealed this decision, which in turn was rejected on February 4, 2022. One of the main reasons for this was that everything to do with constitutional laws and so on is not a part of their mandate. They follow Employment Insurance laws and have no authority or competence to deliberate on this.

**Samuel Bachand**

Okay, let's stay on that for a moment. I assume you're referring to document QU-5j?

**Gary Lalancette**

Correct.

**Samuel Bachand**

Entitled "Objet : demande de révision de décision d'assurance emploi" ["Subject: request for review of Employment Insurance decision"], this appears to be a mechanism for



administrative review of the initial decision denying you the benefit of unemployment insurance.

[00:20:00]

In the context of this administrative review, I'm guessing that you raised constitutional arguments or certain fundamental rights; and then you told us that, well, the tribunal felt it didn't have jurisdiction. Tell us a little about how that happened, how you raised those arguments, and then how the decision came about.

**Gary Lalancette**

Okay. It was recorded in the document I mentioned, the QU-5h, which I had given to the employment center with all the articles of law that protected my decision. And it was as a result of these documents that they—at the hearing, as soon as I brought up one of these points—said that it wasn't something they had the competence and the possibility to deliberate on.

**Samuel Bachand**

Help me out here: I don't see any references to your fundamental rights arguments in the QU-5j review decision.

**Gary Lalancette**

No, they didn't really stipulate that in the decision. They only said that they were keeping the misconduct decision on file. And that's why I'm still appealing, to be able to go to the Federal Court of Appeal to debate these issues.

**Samuel Bachand**

Okay, help me out once more. You seem to be saying that Service Canada, or the Employment Insurance Review authority, has told you that it has no jurisdiction to rule on constitutional issues. I don't see it here in the file; maybe I'm mistaken. How was this communicated to you?

**Gary Lalancette**

At the hearing I attended to argue my case.

**Samuel Bachand**

Okay. Your case under review or initially?

**Gary Lalancette**

Under review.

**Samuel Bachand**

All right. Around what date?

**Gary Lalancette**

I don't have the date in front of me right now.

**Samuel Bachand**

Okay. We can always refer to your timeline with the notes anyhow.

**Gary Lalancette**

Yes.

**Samuel Bachand**

Very well. So you're now before the Federal Court to contest this decision. Now what happened with the CNESST and the TAT [Tribunal administratif du travail - Administrative Tribunal of Labour]?

**Gary Lalancette**

Okay. For the CNESST, it's the [Exhibit] 5k. This is the notice of hearing I filed. So this is my appeal that I filed with the help of my lawyer, to once again appeal the decision that had been refused twice to that date. Because, as I was saying, they didn't have the expertise for the constitutional debate. So I'm taking it to the federal level to do just that.

On August 23, 2022, the Social Security Tribunal, in other words the CNESST, allowed my appeal in this regard. Basically, that's the essence of this story. Right now, as far as Employment Insurance is concerned, I'm waiting for a date for the next Federal Court hearing. And as for the CNESST, I've submitted it and I've got a hearing date of June 19 coming up for this. So I'm at that stage right now.

**Samuel Bachand**

Well, thank you for your conciseness. We still have a bit of time. I'll give the floor to commissioners who would like to ask questions. It's all good? There won't be any. So the Inquiry thanks you for your testimony, Monsieur Lalancette. You're free to go.

**Gary Lalancette**

Thank you very much.

**Samuel Bachand**

Thank you.

**Gary Lalancette**

Enjoy the rest of your day.

[00:24:43]

**Final Review and Approval:** Erin Thiessen, November 15, 2023.

*The evidence offered in this transcript is a true and faithful record of witness testimony given during the National Citizens Inquiry (NCI) hearings. The transcript was prepared by members of a team of volunteers using an “intelligent verbatim” transcription method, and further translated from the original French.*

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