



Written by [Michael Tennant](#) on March 1, 2022

New Zealand Judge Rules Police, Military Vaccine Mandate “Unlawful”

A New Zealand High Court judge ruled Friday that a government mandate requiring police and military personnel to be vaccinated against COVID-19 was “unlawful” and therefore of no effect.

In a [40-page decision](#), Justice Francis Cooke found that the mandate, which required employees of the police and the New Zealand Defense Forces (NZDF) to get two doses of a vaccine by March 1 or lose their jobs, both infringed on individual rights and did not “materially advance[]” its stated objective of guaranteeing continuity of government services.



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The mandate, issued by Workplace Relations and Safety Minister Michael Wood in December, was challenged by three employees who objected to being vaccinated. Thirty-seven other employees in the same situation filed sworn affidavits supporting the claim.

Cooke agreed with the plaintiffs that the mandate violated the New Zealand Bill of Rights. Although New Zealand’s version, unlike America’s, allows for enumerated rights to be “subject only to such reasonable limits ... as can be demonstrably justified in a free and democratic society,” Cooke ruled that the mandate went far beyond such “reasonable limits.”

First, he contended, it violated the Bill of Rights’ guarantee that individuals should be able to manifest their religious beliefs “in worship, observance, practice, or teaching.” “An obligation to receive the vaccine which a person objects to because it has been tested on cells derived from a human fetus, potentially an aborted fetus, does involve a limitation on the manifestation of a religious belief,” wrote Cooke.

Second, the Bill of Rights declares that “everyone has the right to refuse to undergo any medical treatment.” The government conceded that its order infringed on this right but claimed, of course, that it was “reasonable.” However, as Cooke observed, while the order didn’t “literally compel” anyone to be vaccinated, by tying employment to vaccination, it infringed on other recognized rights such as “the right to retain ... employment,” which is “recognized not only in domestic law” but also in international agreements.

Rights violations aside, the mandate simply wouldn’t accomplish its stated purpose, wrote Cooke:

In essence, the Order mandating vaccinations for Police and NZDF staff was imposed to ensure the continuity of the public services, and to promote public confidence in those services, rather than to stop the spread of COVID-19. Indeed health advice provided to the Government was that further mandates were not required to restrict the spread of COVID-19. I am not satisfied that continuity of these services is materially advanced by the



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Order. The actual number of affected staff — 164 Police staff and 115 NZDF staff [—] is very small compared to the overall workforce of over 15,000 for each of the Police and NZDF. Moreover there is no evidence that this number is any different from the number that would have remained unvaccinated and employed had the matter simply been dealt with by the pre-existing internal vaccine policies applied by Police and NZDF. Neither is there any hard evidence that this number of personnel materially effects [sic] the continuity of NZDF and Police services.

“COVID-19 clearly involves a threat to the continuity of Police and NZDF services. That is because the Omicron variant in particular is so transmissible,” penned Cooke. “But that threat exists for both vaccinated and unvaccinated staff.”

The judge wrote that vaccination does little to prevent the contraction and transmission of the virus, particularly the Omicron variant, and while “it does still provide protection from serious illness and death,” the effect wanes over time. The “one concrete example of affected workers” in documents supplied to the court was that of an “NZDF diving team whose capacity was interrupted because of COVID-19 infection,” noted Cooke. But, he added, “the divers were all vaccinated,” so the incident didn’t bolster the government’s case.

After Cooke’s decision was released, both the plaintiffs’ counsel and the Police Association called for the immediate reinstatement of workers who had been suspended but not yet fired (since the deadline had not arrived) for failing to get vaccinated, reported the [New Zealand Herald](#). Both the police and NZDF, wrote the paper, “said that any move to terminate staff contracts as a result of the vaccination order will be suspended while the decision is considered by government.”





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