
QUESTIONS AND RESPONSES**1. QUESTIONS:**

1. What is the Board response to the letters addressed to Board Chair Ram Panda of August 16 and August 23 from professors and lecturers of the Faculty of Law concerning the legality of proof of vaccination? In particular, does the Board acknowledge that the legal advice being given by the General Counsel of McGill University, to the effect that it is illegal in Quebec for McGill to require proof of vaccination, runs counter to the advice being given in almost every university outside Quebec and is contrary to the position being affirmed by the Rector of the Université de Montréal, former McGill law dean Daniel Jutras. He has affirmed that that university has the power to impose a proof of vaccination requirement but that for prudential rather than legal reasons chooses not to do so throughout the campus (though it does within residences and for certain medical students). Will the Board therefore direct the Principal and Provost to revisit the legal position being taken?

Submitted by Professor Richard Janda, Associate Professor, Faculty of Law

2. As the Board of Governors is aware, the McGill Association of University Teachers (MAUT) and the Students Society of McGill University (SSMU) have requested that the university extend the Vaccination Passport to curricular activities, with an option for those who are not vaccinated to provide regular evidence of negative test results. We have urged this, in the face of resurgent community transmission of Covid-19, as a way to help reduce the risk that in-person educational activities, which we all value, need to be ramped down once again. The university administration has chosen not to take this step, citing as reasons a lack of legal authority and a lack of evidence of need at present. However, many academic staff from within McGill's own Faculty of Law have questioned the university's assertion that it does not have the legal authority, and public health experts from within McGill's own highly respected academic community have made the case that there is already evidence of need. Furthermore, at time of writing, the Senate is voting on a motion which (in part) urges the university to extend the Vaccination Passport to curricular activities 'if the university deems this to be operationally enforceable and justified'.

Given this, does the Board of Governors believe that the university has the legal authority to extend the vaccination passport (with an option of presentation of negative test results for the unvaccinated) to curricular activities? If not, can the Board of Governors set out the legal basis for its position? And secondly, can the Board of Governors articulate what metrics are being tracked in order to decide whether an extension of the Vaccination

Passport would be justified, how those metrics were decided on (and on the basis of which advice) and what the threshold values would be for those metrics to justify the decision?

Submitted by Professor Andrew Kirk, President of McGill Association of University Teachers

3. What is BoG's position on mandatory COVID-19 vaccinations for those accessing our campuses, and is the BoG aware of the special COVID-19-related health challenges facing McGill community members working and studying in Montreal hospitals and institutes?

Submitted by Mr. Thomas Chalmers, President of MUNACA

RESPONSE I TO QUESTIONS 1, 2 & 3

The Principal has already provided a response to the August 2021 letters from the academic staff of the Faculty of Law on August 27 and on September 16, 2021.

The Board and a number of its standing committees have been monitoring the University's COVID-19 related activities and efforts since the start of the pandemic and, most recently, in the course of the University's resumption of in-person activities on campus. The administration has taken the appropriate and necessary measures, as evidenced by the data regarding infections on campus. However, the Board agrees with the administration's plans to prepare for more stringent security measures, including a vaccine passport mandate for curricular activities, if and when it becomes necessary.

The Board was appraised of the question of the legality of proof of vaccination at a special meeting held in September 2021. The complex legal issues related to the question of proof of vaccination give rise to numerous, and sometimes divergent, legal views and interpretations. The legal advice received from the University's General Counsel is that imposing a vaccine mandate could be legal in certain circumstances. It is consistent with the submissions of the Barreau du Québec and the Commission des droits de la personne et des droits de la jeunesse du Québec on the matter of laws imposing proof of vaccination, found at: <https://www.barreau.qc.ca/media/2935/20210826-memoire-vaccination-obligatoire.pdf>; and https://www.cdpcj.qc.ca/storage/app/media/publications/avis_passeport-vaccin-covid.pdf, and with the views expressed by the Recteur of Université de Montréal. The measures put in place at Université de Montréal are similar to those implemented at McGill.

The Board acknowledges that imposing a vaccine mandate could be lawful in certain circumstances. In the absence of specific legal authorization, mandatory vaccination can be justified legally only if other reasonable means combined are insufficiently effective to ensure the health and safety of the community. This is not the case at this time. The measures put in place on our campuses are currently effective. The administration and the Board are monitoring the situation closely.

The University does not have a definitive set of metrics for the purpose of determining when a vaccine mandate could be ordered. However, the main factors are related both to the situation outside of the University and the situation occurring at the University. The data concerning the University itself would be more significant, but extrinsic factors would also carry weight as they would have an impact on the risks to the community. The following factors would be particularly relevant to a decision to impose or not a vaccine passport mandate: the number, frequency and intensity of outbreaks on campus; the % of vaccination of members of the University community; whether a vaccine mandate would serve to significantly increase the % of vaccination of members of the University community, and whether such an increase would reduce the number of outbreaks on campus; the ability to enforce a vaccine mandate given the characteristics of the University; and finally, the possibility of implementing measures other than a vaccine passport to contain the situation, such as vaccine passport in specific areas like residences, or increasing distancing in classrooms, etc. The situation in Quebec (and to some extent elsewhere) would serve as a backdrop in the sense that it may make the situation more worrisome for the University community, or in the opposite, reduce the pressure. The following factors would, among others, be taken into account: the state of the pandemic in Quebec and whether data shows that the health care sector would become overwhelmed; the existence of new variants resistant to the vaccines, mainly but not only in Quebec; a significant increase in the number of hospitalisations and deaths; a significant decrease in the effectiveness of vaccines in Quebec; the % of overall vaccination in Quebec; the availability and effectiveness of a vaccine for grade-school age children and new vaccination orders; the administration of a third dose of vaccine to vulnerable individuals. As with any such situation, the decision would be made considering this context and metrics, on the balance of risks and benefits.

As circumstances change, the University will adjust its measures as required, to keep our University community safe.

Staff members working or studying in health care institutions are well protected by the health and safety rules applicable within these institutions. As of October 15, 2021, staff members and students working or studying in health care institutions are subject to a vaccination obligation to enter their places of work or study.

As Chair, I am reassured that if it were necessary in the future to require a vaccine passport mandate for core curricular activities, the University will do it, as the law requires, in a way that is proportionate, rational, has minimal impact on fundamental rights, and balances the interests of the University to protect its community, including those who are at increased risk, against the rights of those individuals who do not want to be vaccinated, despite the University's strong encouragement do so. The question of the necessity of extending the vaccine passport to curricular activities is being examined from the perspective of justification and operational enforceability.

In closing, I would like to remind you of a few significant facts. 91% of the University's staff members are adequately vaccinated and we estimate that over 90% of students are also adequately vaccinated. There have been very few cases of transmission of COVID-19 on campus since the beginning of the pandemic. The University, in collaboration with the Direction

régionale de la santé publique, is carrying-out contact tracing of all cases on campus. Finally, the University is imposing a vaccine passport very broadly to all non-essential activities, including access to the Libraries and to common spaces in Residences.

Unfortunately, we will never get to a situation of zero risk, nor will we ever achieve a 100% vaccination rate of our staff and students, even with a vaccine passport.

This being said, the Board believes that vaccination remains the number one strategy to help prevent the spread of the virus. It fully supports the University in its efforts to urge members of the community to get vaccinated so that we may all stay safe and enjoy the privileges and benefits of working and studying at McGill.

QUESTION:

4. It is well-established that the SARS-Cov-2 virus is propagated via airborne transmission (Trisha Greenhalgh, Jose L Jimenez, Kimberly A Prather, Zeynep Tufekci, David Fisman, Robert Schooley, 'Ten scientific reasons in support of airborne transmission of SARS-CoV-2', The Lancet, Volume 397, Issue 10285, 2021, Pages 1603-1605, [https://doi.org/10.1016/S0140-6736\(21\)00869-2](https://doi.org/10.1016/S0140-6736(21)00869-2) ,) and thus ventilation of enclosed spaces is an essential component of any strategy to reduce the risk of transmission. We appreciate that the McGill Facilities Management Team, and the Emergency Operations Centre, under the leadership of Associate Provost Fabrice Labeau, have been working hard to maximize ventilation in our buildings. However, now that classes have resumed, and a 0-metre distancing limit established, many rooms are frequently at capacity. Instructors and students are concerned as to whether the air quality during times of high occupation meets the recommended levels to minimize transmission risk. Furthermore, there are several classrooms and offices in buildings that do not have mechanical ventilation, and the university's current solution is to open the windows regularly.

Given this, can the Board of Governors commit to instructing Facilities Management to undertake regular measurements of air quality in lecture theatres during times of high occupation and to report the results of those measurements on a publicly accessible web site? And is the Board of Governors satisfied that the strategy of opening windows for buildings that lack mechanical ventilation is going to be viable during the winter months? If not, what alternative strategies should be considered?

Submitted by Professor Andrew Kirk, President of McGill Association of University Teachers

RESPONSE II:

In line with its oversight and stewardship functions, the Board's mandate is to oversee the University's activities in order to ensure that they are carried out in line with its priorities and

interest, in support of its mission. The Board is not responsible for the day-to-day operations and management of University facility functions.

This being said, the Board is aware that the operation of ventilation systems aligns with guidance from public health agencies and more generally, with health and safety regulations. In the context of COVID-19, a process has also been put in place for units to request an assessment of ventilation systems, including during the winter months, by Facilities Management. In addition, the administration is now starting a process of regular checking of CO2 levels in classrooms on which it will report regularly. As for use of naturally ventilated classrooms during the winter, the Board understands that decisions are not made yet and that the question is under consideration by the Emergency Operation Centre. In addition, the Board and a number of its Committees will continue to monitor the University's situation in order to support the administration's work in this regard.

QUESTION:

5. Considering the issues staff have been having with Workday such as: increased workload, increased difficulty, and complexity in performing tasks and the increased stress related to using Workday we would like to encourage the BoG to investigate Workday and its viability as a tool for McGill?

Submitted by Mr. Thomas Chalmers, President of MUNACA

RESPONSE III:

The viability of Workday as a tool for McGill was examined by the Board's IT Committee and by the Board at the time that the University was considering acquiring this solution for its Human Resources functions. As the objective of Workday is to improve HR compliance, reduce risk and increase consistency of HR practices across the University, while providing access to real-time data and analytics, the Board welcomed Workday as a system for McGill's HR needs. The Board has confidence that Workday, which is a tool that has been implemented in many other universities and institutions is a viable solution that meets the University's goals and priorities.

This being said, the Board's IT Committee and HR Committee have been made aware of some difficulties the University has been experiencing in transitioning to Workday. The Committees have been apprised of the University's responses to these challenges, which, among others, include simplifying and enhancing key business processes and increasing staff training and reinforcement sessions to increase institutional knowledge and competencies needed to fully leverage the benefits of Workday. The transition to any new system is accompanied by a period of adaptation. Increase in workload and staff stress that may have occurred in the context of this transition is also attributable to the changes that Workday has introduced in local HR processes

and practices, during a time of pandemic when most staff were working from home and had fewer opportunities to interact with their colleagues. The Workday team continues to work with areas that are experiencing challenges. Staff needing support are encouraged to contact their supervisors in order to address any specific challenges and difficulties.