

September 3rd 2021

INDUSTRIAL ACTION BY NURSES NOT IN ANYONE'S BEST INTEREST

INTRODUCTION

The serving of notice to the Governor General by nurses to indicate their intention to withdraw their service for four days from 7th to 10th September, 2021 is not only ill-timed, but ill-considered and grounded in mis-information and a misguided notion of constitutional rights and freedoms. The ULP administration, lead by Comrade Ralph, urges all nurses to reflect on the decision taken and encourages these professionals to consider the impact of their actions on the health sector. The regulation that is currently in draft, is intended to protect all frontline workers from contracting the deadly virus and possible transmission to patients in their care. This is in no way unreasonable, nor does it affect your constitutional rights, since what is being done adheres to constitutional and common law provisions. The narrative that this worker-friendly government is targeting hard-working Vincentians through unconstitutional actions is completely false and is inconsistent with the track record of this government. This week, we outline for your consideration the legal basis for the regulations and the context within which the regulations are framed.

ASSOCIATED PROVISIONS OF RELEVANCE IN THE CONSTITUTION AND STATUTE LAW

- (A) In the on-going discussion on vaccinations against Covid-19, some public servants assert an unfettered, individual “do-as-I-please” approach to the constitutional protection of freedom of assembly and association as provided for in Section 11 of the Constitution. But this protection is not unfettered. The entire Section 11 reads as follows:

- (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision —
 - (a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;
 - (b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
 - (c) That imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

“and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

There are relevant statute laws and regulations addressing these precise limitations or restrictions on the presumed absolute right of public officers to assembly or associate.

Please note that section 10 of the Constitution which provides for the protection of freedom of expression is similarly framed in respect of the limitations or restrictions on that fundamental freedom.

- (B) In relation to the vaccination issue on Covid-19, the Public Health Act and associated pieces of legislation provide the framework for all relevant statutory provisions for employers, employees, and the public health interest.

GENERAL COMMENTS

The following comments, additionally, are relevant in the on-going discussion on vaccination against Covid-19:

1. The Government of St. Vincent and the Grenadines does not have a policy of mandatory or compulsory vaccination against Covid-19. It intends to make Rules under the Public Health Act to do the following, among other things:
 - (a) Offer the choice to “front-line workers” (for example: doctors, and nurses, police and prison officers, employees at the airports and sea-ports including Customs and Immigration officers). If the employee fails and/or refuses to comply with the requirement for those specific jobs, he or she is free to choose employment elsewhere. Such a failure/refusal may constitute misconduct.
 - (b) Other central government employees and those in public enterprises who are not “front-line” workers, who are not fully vaccinated will be required to take the PCR test every two weeks. The employer (the State) will provide the first two tests free of charge; the subsequent tests will be paid for by the employee. If for any reason a vaccinated public sector worker requires a test, for whatever reason, the test will be provided free of cost.
2. Despite the non-mandatory nature of the government’s policy, it should be made clear that the Constitution, the common law, and statute law permit mandatory or compulsory vaccination in the interest of public health and general public interest, especially during a very risky pandemic or public health emergency; In the extant factual circumstances of the pandemic, the legal tests touching and concerning “reasonable requirement”, “reasonably justifiable in a democratic society”, inclusive of “proportionality”, are easily passed by the State. In these circumstances, the Courts have always accepted established science and facts (not conspiratorial myths) on the vaccines and have balanced any conflicting rights in favour of public health and public interest as advanced by the State as employer.
 - (c) The legal exceptions to mandatory vaccination have been recognized as fact-based “medical exemptions” and “religious exemptions”.
3. On Wednesday August 11, 2021, at a meeting of the OECS Authority (Meeting of Heads of Government of the OECS), the legal advice which was tendered by Professor of Law, Dr. Rosemary Antoine, and former Chief Justice of the OECS Supreme Court and President of the Caribbean Court of Justice (CCJ), His Lordship Denis Byron, squares with the articulated position of the government of St. Vincent and the Grenadines.

4. Meanwhile, the Government of St. Vincent and the Grenadines continues to promote the necessity and desirability of vaccination as a vital tool against Covid-19. In this regard, the government is at one with the stance of the World Health Organisation (WHO) and the position of all 193 member-countries of the United Nations. St. Vincent and the Grenadines has a sufficiency of vaccines to vaccinate the adult population (over 18-year-olds). Available are the AstraZeneca and Sputnik vaccines. Shortly, St. Vincent and the Grenadines will receive a grant of Pfizer vaccines from the US government.

5. Both the common law and statute law justify the private sector employers adopting a similar stance on this matter as the government.