

CANADA / JUDGMENT

R. v. James

2021 BCSC 1555

COURT

Supreme Court of British Columbia

DECIDED

8 August 2021

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2021 BCSC 1555 R. v. James IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. James, 2021 BCSC 1555 Date: 20210808 Docket: 16588-2 Registry: Powell River Regina v. Brent Wesley James Before: The Honourable Mr. Justice Gomery Oral Reasons for Ruling Concerning Jury Selection Counsel for the Crown: J. Simpson Counsel for the Accused: M. Cacchioni Place and Date of Trial/Hearing: Powell River, B.C. August 8, 2021 Place and Date of Judgment: Powell River, B.C. August 8, 2021

- [1] Crown counsel asked me to consider asking members of the jury panel about their vaccination status, assuring them that they are not obliged to answer, and to stand aside any panellists who would not confirm that they had been fully vaccinated. Defence counsel did not favour the proposal. I advised that I would not ask the question, for reasons to follow. These are my reasons.
- [2] Criminal jury trials have been taking place under the threat of the Covid-19 pandemic since the fall of 2020. Until quite recently, it could be assumed that most jurors were unvaccinated. While the virus appears to have become more contagious, weekly provincial case counts at points over the past year have been considerably higher than they are at present. Protective measures including distancing, masking, health protocols, and the installation of Plexiglas dividers in courtrooms have been effective in securing the health of jurors and other participants in the criminal trials that have been taking place. I am unaware of a Covid-19 outbreak that has been traced to the conduct of a criminal or civil trial in this Court.
- [3] Objectively, the risk to jurors, if some of them are unvaccinated is very low. If panellists had expressed concerns about Covid exposure, I would have excused them in any event.
- [4] The proposed question as to vaccination status trenches on a private and personal sphere. Panellists might well have reasons to wish not to discuss their vaccination status in public in the intimidating environment of a courtroom. Some might be intimidated by the question itself. Offering an assurance that they need not reply would mitigate, but not eliminate, the pressure. This is not in itself a reason not to put the question - participants in the justice system are sometimes required to disclose personal and private information in open court - but the question is one that should only be required if circumstances demand it.

- [5] I am not persuaded that the question would provide information that I could properly make use of in deciding whether to stand aside or excuse a juror. The power to stand aside a juror is granted under s. 633 of the Code "for reasons of personal hardship, maintaining public confidence in the administration of justice or any other reasonable cause". The participation of an unvaccinated juror - or one who will not say that he or she has been fully vaccinated - does not engage a question of personal hardship of the juror in question. Given our experience to date of jury trials with unvaccinated jurors, as I have described, I do not think the participation of unvaccinated jurors risks public confidence in the administration of justice. Nor am I persuaded that a failure to provide an assurance of fully vaccinated status constitutes "other reasonable cause", at least at this time under the health and social conditions now prevailing.
- [6] The power to excuse jurors granted under s. 632(c) of the Code similarly refers to "personal hardship or any other reasonable cause that, in the opinion of the court warrants that the juror be excused". For present purposes, the analysis is the same. Nor are subsections (a) and (b) of s. 632 engaged.
- [7] Accordingly, I do not think that the question, if asked, would provide information that I could act upon to excuse or stand-aside panellists under ss. 632 and 633. There is no good reason to ask the question and I therefore declined to put it to panellists. "Gomery J."

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