

**Has the Crown really demonstrated that the limitation on the *Right to Decline Medical Treatment* was reasonable and demonstrably justified?**



### **Part 5: Were Other More 'Rights Compliant' Options Adequately Assessed by the Court?**

The vaccine mandate coerced healthcare and education workers to either take the vaccine or ruin their careers.

BUT ... if the government had a **more 'rights-compliant' means** to accomplish their goal of reducing transmission, then the **vaccine mandate was unlawful**.

This is due to the legal 'minimal impairment' principle that applies to any law that restricts rights:

*"If the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law may fail."* (RJR MacDonald Inc v Canada [1995])

In other words, if there was a reasonable alternative that had less impairment on rights, the **onus was on the government** to demonstrate why that alternative could not have achieved its goal. More rights compliant options that the court was duty bound to assess included the use of RAT tests, natural immunity, and remote working.

Rapid Antigen Tests (RATs) are discussed in more detail below.

To put it simply, if the answer is 'Yes' to each of these questions, then the mandate should have been deemed unlawful.

1. Were RATs more 'rights compliant'?
2. Were RATs available to the government?
3. Would RATs have a similar or better level of effectiveness to vaccination in reducing transmission?

#### **1. Were RATs more 'rights compliant'?**

There is no argument here. Vaccination is an invasive medical treatment that permanently modifies the immune response in a way that cannot be reversed, and carries with it the risk of serious injury including death. By comparison, RATs are non-invasive, do not modify the body in any way, and carry no risk. Despite attempts by some to obscure the risks of vaccination with sweeping statements such as 'All medicines have side effects', after hundreds of millions of RATs having been used in New Zealand over the last 1½ years, not a single adverse event has been recorded by CARM.

'YES' – RATs are definitely more rights compliant.

#### **2. Were RATs available to government?**

In his first affidavit (18 Feb 2022) Dr Bloomfield states, *"Testing resources are limited and have to be deployed in the most effective way."* (para 96.1) In his second affidavit (1 March 2022) he continues

the theme stating, “As global supplies increase, we are seeking to increase their availability in New Zealand.” (para 50).

The pesky facts, however, belie these vague statements that imply limited availability. By 7th October 2021, RATs were being used at Middlemore Hospital, and were due to be used at both Auckland City and North Shore hospitals within a few days. A week later on the 14th October 2021, minutes from the ‘COVID-19 Testing Technical Advisory Group’ state:

*“Testing and Supply noted 600k RAT kits have been ordered and are available for supply, but these are for the public health response and healthcare. Businesses will be responsible for their own supply. Business and health are separate pools.”*

By 1st February 2022, (for education workers the school year started 1<sup>st</sup> week in Feb) there were already 5.1 million RATs available in New Zealand, 16.9 million were confirmed for delivery in February, and an additional 36 million had been purchased for delivery over the next two months. The COVID-19 Response minister, Hon Dr Ayesha Verrall, proudly boasted, “A total of 123 million rapid antigen tests have been ordered through to June, which will allow for regular and widespread testing to occur.”

‘YES’ – there were definitely sufficient RATs available.

### **3. Would RATs have a similar level of effectiveness to vaccination in reducing transmission?**

This is the only question where there’s any possibility of debate. The comparison is between the effectiveness of RATs in preventing transmission, and a vaccine that had a peak effectiveness of somewhere around 50% followed by rapid waning. Also, the onus was on the government to demonstrate why RATs would not have been as effective as the vaccine.

Here’s the evidence our chief scientist proffered in his affidavit to the court about RATs:

1. *RATs are not suitable to use in an ‘elimination strategy’.* (Dr Town, p109)
  - This was irrelevant as the ‘elimination strategy’ had already ended on 18 October 2021.
2. *RATs are not as sensitive as PCR tests* (Dr Town, p109)
  - This was also totally irrelevant – the comparison was not between RATs and PCR but rather between RATs and the Pfizer vaccine.
3. *RATs produce high numbers of ‘false positives’* (Dr Town, p109)
  - Which is worse? A RAT that may cause ‘false positives’, or a vaccine that only works some of the time and then wanes rapidly?
4. *There are questions re sensitivity in asymptomatic/pre-symptomatic cases* (Dr Town, p109)
  - There are also ‘questions’ with the vaccine re effectiveness against asymptomatic infection and transmission.

Dr Town makes no attempt to compare the effectiveness of RATs with the vaccine. There is no modelling presented. There are no studies or data showing ineffectiveness of RATs.

These statements are all the more dubious, considering that the minutes for the ‘COVID-19 Independent Continuous Review, Improvement and Advice Group’ on 18 November 2021 record:

*“Philip shared that people are highly infectious during their pre-symptomatic period and that we need something at the gate of vulnerable populations, citing the use of RATs in hospitals as an appropriate use.” “Dale provided examples of RAT use in hospitals stating that a good use for them*

*has been to test staff daily who are potentially exposed in wards and where the hospital cannot afford to stand them down. He noted that this is a higher prevalence situation and they have picked up two or three infections in the previous week through RAT testing.”*

The Government surely knew from this advice that RATs were effective in detecting infections, and the bottom line is that RATs didn't need to be very effective to still be better than the Pfizer vaccine.

Justice Cooke acknowledged that there were alternatives to vaccination that were more rights-compliant, but sadly failed to assess them with any rigor. This failure is disturbing, and suggests a reluctance to make an appraisal that might have compelled him to conclude that the vaccine mandate was not demonstrably justified.

**Everyone now knows the vaccine mandate didn't work. The irony is that RATs likely would have!**