

How COVID-19 vaccine side effects impact liability risk

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Some people could suffer side effects from a COVID-19 immunization, but the vaccine manufacturers have a number of protections that minimize their liability risk, Canadian lawyers suggest.

Prime Minister Justin Trudeau was quoted last week by *The Canadian Press* as saying more than 124,000 doses of the Pfizer-BioNTech vaccine were delivered to 68 sites across the country the week ending Jan. 8. About 200,000 more doses of the Pfizer-BioNTech vaccine are to be delivered weekly for the rest of this month and more than 171,000 Moderna vaccine doses are expected to be delivered this week to the provinces and territories, CP reports.

COVID-19 was declared a pandemic March 11, 2020 by the World Health Organization. It has taken months for the vaccines to be approved. Canada will receive a total of 80 million doses of COVID-19 vaccines this year, Trudeau said Tuesday, as quoted by CP.

“When you roll out a vaccine like you have with the COVID vaccine, it comes out fast, it’s going into a lot of arms and before you are able to detect a problem, a lot of arms are immunized and you have serious side effects that could arise from it,” said litigation expert Michael Mestinsek, a Calgary-based partner with Stikeman Elliott. “When it happens in multiple jurisdictions, the obvious concern is class actions or multiple actions alleging product liability type negligence.”

That said, manufacturers providing COVID-19 vaccines in Canada have a number of legal protections. Some pharmaceutical vendors have indemnity agreements with the governments that have purchased the COVID-19 vaccines, Mestinsek said.

With the COVID-19 vaccines, clinical trials were done very quickly, said Jane Wang, co-founder and CEO of technology company Optimity.



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“It is really important for government and health agencies to have a plan to communicate to consumers on what are the differences between this type of vaccine and some of the common flu vaccines and also it is important to have follow-ups,” Wang said in an interview with *Canadian Underwriter*.

Optimity released the results of a survey of 30,054 Canadian Optimity users about their views on COVID-19 vaccines on Dec. 30. More than half (59%) of respondents had concerns about possible long-term and short-term side effects from the vaccine while 26% had no concerns.

Some jurisdictions have a no-fault compensation system, where the government will pay out to people who are hurt or sick due to adverse side effects from an approved vaccine, Mestinsek said.

On Dec. 10, 2020, the Public Health Agency of Canada announced it is implementing a no-fault vaccine injury support program for all COVID-19 vaccines approved by Health Canada.

“That really takes the sting out of the potential liability for a lot of manufacturers of vaccines and that is one of the reasons they were able to [get COVID-19 vaccines] approved so quickly,” Mestinsek said.

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