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*Federal Public Sector  
Labour Relations and  
Employment Board Act and  
Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

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BETWEEN

**ALAIN BEDIRIAN**

Grievor

and

**TREASURY BOARD**  
**(Department of Foreign Affairs, Trade and Development)**

Employer

Indexed as  
*Bedirian v. Treasury Board (Department of Foreign Affairs, Trade and Development)*

In the matter of an individual grievance referred to adjudication

**Before:** Christopher Rootham, a panel of the Federal Public Sector Labour  
Relations and Employment Board

**For the Grievor:** Meghan O'Halloran and Mathieu Delorme, Association of  
Canadian Financial Officers

**For the Employer:** Larissa Volinets Schieven, counsel

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Decided on the basis of written submissions,  
filed February 16 and March 14 and 28, 2024.

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## REASONS FOR DECISION

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### Overview

[1] In 2021, the Treasury Board (“the employer”) issued a policy requiring all employees to be vaccinated against COVID-19, subject to accommodation on medical or religious grounds. Alain Bedirian requested accommodation based on his religious beliefs. The employer denied his request. Mr. Bedirian grieved that denial and referred the grievance to adjudication.

[2] I have denied the grievance.

[3] Mr. Bedirian’s accommodation request raised four grounds that he states were connected with his religion. I have dismissed one of them because it is a conscientious objection to the COVID-19 vaccine without the required nexus with religion. The other three have a nexus with religion. However, I have concluded that those remaining claims are not sincere. He presented no evidence to show that his reluctance to get the COVID-19 vaccine was consistent with a comprehensive system of faith and worship in which he actively partook in 2021. His grounds also shifted considerably over time and were sometimes contradictory. Finally, he became vaccinated before being placed on leave without pay. While that last point is not dispositive, it is a relevant factor when assessing the sincerity of his beliefs.

### Outline of decision

[4] This decision is divided into nine parts:

- Part I: General background
- Part II: Process followed to decide this grievance
- Part III: General legal principles about discrimination on the basis of religion
- Part IV: Facts about the grievor
- Part V: Issues
- Part VI: Issue #1: What is the impact of the fact that Mr. Bedirian became vaccinated?
- Part VII: Issue #2: May I consider the points raised by Mr. Bedirian after November 12, 2021?

- Part VIII: Issue #3: Which of the timely points raised by Mr. Bedirian have a nexus with religion?
- Part IX: Issue #4: Has Mr. Bedirian demonstrated the sincerity of his religious beliefs?

### **Part I: General background**

[5] On October 6, 2021, the Treasury Board enacted the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“the *Vaccine Policy*”). The *Vaccine Policy* required all employees in the core public administration to be fully vaccinated against COVID-19. Employees who were not fully vaccinated were divided into three categories: partially vaccinated employees (i.e., employees who had received one dose of an authorized vaccine but who had not received a full vaccination series), employees unable to be fully vaccinated, and employees unwilling to be fully vaccinated. The *Vaccine Policy* defined an employee who was unable to be fully vaccinated as an employee who could not be fully vaccinated “... due to a certified medical contraindication, religion, or any other prohibited ground of discrimination as defined in the *Canadian Human Rights Act*.” Employees who were unable to be vaccinated were accommodated to the point of undue hardship by teleworking, being assigned alternative duties, mandatory testing for COVID-19, or a combination of those measures.

[6] Employees had until October 29, 2021, to either attest that they had been vaccinated or request accommodation. Employees were given a form to complete to indicate whether they were vaccinated or seeking accommodation. Those employees seeking accommodation on the basis of their religious belief were provided with a blank affidavit in which they could spell out why their religious belief prohibited them from receiving the COVID-19 vaccine. Management was responsible for reviewing the accommodation requests and deciding whether to grant accommodation to applicants on religious grounds. Management could request more information from employees requesting accommodation before making their decisions.

[7] Ultimately, if management decided that an employee had not justified their request for accommodation, the employee was placed on an unpaid leave of absence if they persisted in not being vaccinated.

[8] The employer suspended the *Vaccine Policy* on June 20, 2022.

**Part II: Process followed to decide this grievance**

[9] Many employees in the core public administration (and separate agencies, who implemented similar policies) applied for accommodation on religious grounds. Some applications were granted, and others were denied. Many of those employees whose applications were denied grieved the denial on the basis that it violated the no-discrimination clauses in their collective agreements. Some of those grievances were denied and therefore referred to adjudication under s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2).

[10] As I advised the parties at the outset of this case, there are over 350 religious accommodation grievances currently active with the Federal Public Sector Labour Relations and Employment Board (“the Board”). Arbitration hearings dealing with similar policies in the private or broader public sector have tended to last for 2 days, sometimes followed by written submissions. Therefore, scheduling an oral hearing for every religious accommodation case would amount to an impossible burden for the employer, for the bargaining agents, and for the Board.

[11] To address this concern, the Board designed a process by which religious accommodation cases could be addressed largely or exclusively in writing. This is the first case to follow that process.

[12] The Board began by selecting 11 grievances to follow this process. All the grievors were represented by the Association of Canadian Financial Officers (ACFO). The Board began by convening a case management conference between the ACFO and the employer to discuss a process to resolve these grievances largely in writing. After that discussion, the parties identified that one of the grievances had been withdrawn and that there were other grievors represented by ACFO missing from that list. Therefore, the parties and the Board jointly identified 13 grievances to proceed using the process I am describing.

[13] First, ACFO and the employer were asked to jointly identify two grievances that would be the first to be decided using this process. This grievance is one of them; the other did not proceed.

[14] Second, the parties were asked to jointly resolve any issues about the disclosure of documents before the exchange-of-evidence phase of this proceeding. They did so without needing the Board's assistance. They also agreed to file a joint book of documents containing the *Vaccine Policy* and several toolkits and related policies that might be relevant to this grievance.

[15] Third, the grievor was directed to file his evidence in writing. To assist with that, the Board designed a form for him to use to help him explain the nature of his case. He was invited to, and did, attach documents to that form. Finally, he affirmed an affidavit attesting that the information in that form was true.

[16] Fourth, the employer was to file any evidence it had in writing as well. As it turned out, it did not file any evidence in this case. Instead, the parties jointly requested that the Board bifurcate the question of remedy from the merits of the grievance. I agreed. In light of that decision, the employer decided not to file any evidence in this grievance, reserving its right to file evidence at the remedy stage of this grievance, if necessary.

[17] Fifth, the parties were given an opportunity to cross-examine each other's evidence in writing. The Board created a form for the parties to use that is similar to Form 99A used to implement Rule 99 of the *Federal Courts Rules* (SOR/98-106) which permits the written examination of a person. The form called for the party seeking examination to set out their questions in writing, and the person being examined would provide their answers in writing by affidavit. The employer decided not to cross-examine the grievor about the merits of this grievance, reserving its right to cross-examine the grievor about the appropriate remedy in this case. I agreed to permit the employer to do so.

[18] Sixth, the parties exchanged written submissions about the grievance. The Board provided the parties with a "List of Common Authorities" for this grievance. The parties were not required to provide copies of or links to these authorities and were put on notice that the Board would consider these authorities: *Syndicat Northcrest v. Amselem*, 2004 SCC 47; *Nova Scotia Union of Public & Private Employees, Local 13 v. Halifax Regional Municipality*, 2022 CanLII 129860 (NS LA) ("*Halifax*"); *Wilfrid Laurier University v. United Food and Commercial Workers Union*, 2022 CanLII 120371 (ON LA) ("*Wilfred Laurier*"); *Island Health v. United Food & Commercial Workers Local 1518*,

2022 CanLII 127683 (BC LA) (“*Island Health #1*”); *Island Health v. United Food & Commercial Workers Local 1518*, 2023 CanLII 2827 (BC LA) (“*Island Health #2*”); *Public Health Sudbury & Districts v. Ontario Nurses’ Association*, 2022 CanLII 48440 (ON LA) (“*Sudbury Health District*”); *The Worker v. The District Managers*, 2021 BCHRT 41; *British Columbia Rapid Transit Company Limited v. Canadian Union of Public Employees, Local 7000*, 2022 CanLII 100817 (BC LA) (“*BC Rapid Transit*”); *Nova Scotia Nurses’ Union v. IWK Health Centre*, 2022 CanLII 57410 (NS LA) (“*Nova Scotia Nurses*”); and *International Brotherhood of Electrical Workers (System Council No. 11) v. Canadian National Railway Company*, 2023 CanLII 44118 (CA LA) (“*CN Rail*”).

[19] In addition to those Common Authorities, the parties referred to additional authorities. They both referred to *Moore v. British Columbia (Education)*, 2012 SCC 61, and *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30. The grievor referred to *Kelsh v. Canadian Pacific Railway*, 2019 CHRT 51. The employer referred to *United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 5319 v. Securitas Transport Aviation Security Ltd.*, 2023 CanLII 91854 (NS LA) (“*Securitas*”); *Consumers’ Co-operative Refineries Ltd. v. Unifor, Local 594*, 2023 CanLII 88216 (SK LA); *B.C. General Employees’ Union v. BC Safety Authority (Technical Safety BC)*, 2023 CanLII 76193 (BC LA); *Raymond v. British Columbia Safety Authority*, 2024 BCLRB 6; *Corporation of The City Of Vaughan v. Canadian Union of Public Employees, Locals 905-20 (Hourly), 905-21 (F/t) And Local 905-22 (P/t)*, 2024 CanLII 8991 (ON LA) (“*Vaughan*”); *Pelletier v. 1226309 Alberta Ltd. o/a Community Natural Foods*, 2021 AHRC 192; *Brown v. Planet Fitness (Dundas)*, 2022 HRT0 1178; *Ortiz v. University of Toronto*, 2022 HRT0 1288; *Oulds v. Bluewater Health*, 2023 HRT0 1134 (reconsideration denied in 2024 HRT0 177); *Roberts v. Alpa Stairs Railing*, 2023 HRT0 1772; *R.W. v. Lambton (County)*, 2024 HRT0 151; *Haahr v. Canadian Natural Resources Ltd.*, 2024 AHRC 26; and *Kovacs v. University of Calgary*, 2024 AHRC 31.

[20] Finally, both parties provided me with copies of a series of unreported decisions by Arbitrator Brian McLean involving the City of Toronto and the City of Pickering, both in Ontario. The parties in those cases adopted a similar process to the one used in this case, except that the cross-examinations of the witnesses and the submissions took place in front of Arbitrator McLean instead of in writing. The parties in those cases also bifurcated the issue of remedy from the merits, so that (as in this case) the only issue before Arbitrator McLean was whether there was a *prima facie* case of

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discrimination on the basis of religion. Those unreported decisions of Arbitrator McLean are *Canadian Union of Public Employees, Local 79 v. The City of Toronto*, dated March 23, 2023 (“*Toronto/Pushman*”); *Canadian Union of Public Employees, Local 79 v. The City of Toronto*, dated April 11, 2023 (“*Toronto/De Castro*”); *Canadian Union of Public Employees, Local 79 v. The City of Toronto*, dated May 3, 2023 (“*Toronto/Mounsey*”); *Canadian Union of Public Employees, Local 129 v. The City of Pickering*, dated May 23, 2023 (“*Pickering/Hepp*”); *Canadian Union of Public Employees, Local 129 v. The City of Pickering*, dated May 23, 2023 (“*Pickering/Flowers*”); *Canadian Union of Public Employees, Local 129 v. The City of Pickering*, dated June 6, 2023 (“*Pickering/Posteraro*”); and *Canadian Union of Public Employees, Local 129 v. The City of Pickering*, dated June 6, 2023 (“*Pickering/PG*”).

[21] The parties are following the same process for the remaining grievances involving employees represented by ACFO. The submissions in those cases are due shortly after the date of this decision in a series of rolling deadlines for groups of two or three grievors.

[22] The Board is empowered to decide a grievance in writing because of its power to decide “... any matter before it without holding an oral hearing”, in accordance with s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365); see also *Andrews v. Public Service Alliance of Canada*, 2021 FPSLREB 141 at para. 3 (upheld in 2022 FCA 159 at para. 10).

[23] After reviewing the evidence of the grievor and the parties’ submissions, I remain convinced that this grievance can be decided in writing. The grievor was given a fair opportunity to present his evidence in writing, and the employer was given the opportunity to cross-examine the grievor in writing but elected not to. The parties have not identified any evidentiary gaps that must be filled with oral evidence; nor have I.

[24] I conclude this procedural overview by thanking the parties for cooperating with this process. While the parties were understandably sceptical about proceeding in writing in a case in which (as described later) a grievor’s sincerity is one of the core issues, both parties understood the benefits of proceeding in writing. To repeat what I said earlier, unless some cases are dealt with in writing, the Board would have to schedule approximately 350 cases (with, on average, 2 days of hearings) contesting an employer’s refusal to accept that an employee has a religious reason for refusing to be

vaccinated. This would overwhelm the resources of bargaining agents, the employer, and the Board. I thank and commend the parties for their willingness to participate in resolving this grievance — and other similar grievances — in this way.

### **Part III: General legal principles about discrimination on the basis of religion**

[25] The parties generally agreed on the basic legal principles that the Board must apply when resolving cases like this — namely, how to resolve whether the grievor has demonstrated a *prima facie* case of discrimination on the basis of religious belief.

[26] To begin, the parties agree that the proper test for *prima facie* discrimination is that set out by the Supreme Court of Canada in *Moore*, at para. 33, as follows:

*[33] ... [T]o demonstrate prima facie discrimination, complainants are required to show that they have a characteristic protected from discrimination under the [Human Rights] Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact....*

[27] The parties also agree that this test applies to both the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) and to the no-discrimination clause in the collective agreement between the ACFO and the employer, which gives the Board the jurisdiction to hear this grievance.

[28] The *Canadian Human Rights Act* prohibits discrimination on the basis of religion, while the applicable collective agreement protects against discrimination by reason of creed and religious affiliation. The leading authority setting out the principles for establishing a *prima facie* case of discrimination on the basis of religion remains *Amselem*. Those principles (and the paragraphs in *Amselem* in which they are found) are:

- It is only beliefs, convictions, and practices that are rooted in religion that are protected, not those that are secular, socially based, or conscientiously held (at paragraph 39).
- Religion is about “... deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to one’s self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith” (at paragraph 39).
- The emphasis is on the personal choice of religious beliefs, which in turn means that freedom of religion does not protect only those aspects of



religious belief that are objectively recognized by religious experts as being obligatory tenets or precepts of a particular religion (at paragraph 43).

- Freedom of religion requires a “nexus” between the belief or practice and the person’s religion (at paragraph 46).

[29] The majority of the Supreme Court in *Amselem* then set out a two-stage test at paragraph 56 as follows:

*56 ... [A]n individual advancing an issue premised upon a freedom of religion claim must show the court that (1) he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief....*

[30] The sincerity of a belief is a question of fact based on non-exhaustive criteria, including the credibility of a claimant’s testimony and whether the alleged belief is consistent with their current religious practices. However, beliefs can change over time, so the assessment of sincerity should not focus on past practice or belief but, instead, on a person’s belief at the time of the alleged interference with their religious freedom (see *Amselem*, at paragraph 53).

[31] In addition to this two-part test (the belief must have a nexus to religion and be sincere), a claimant must show that the impugned rule interferes with their religious belief “... in a manner that is more than trivial or insubstantial” (*Amselem*, at paragraph 59). The Supreme Court cited its earlier decision in *R. v. Edwards Books and Art Ltd.*, [1986] 2 SCR 713, for an example of a trivial or insubstantial interference with religion: a sales tax that extends to all products, including those used in the course of religious worship.

[32] *Amselem* was decided under the Quebec *Charter of Human Rights and Freedoms* (R.S.Q. c. C-12); it also referred to the *Canadian Charter of Rights and Freedoms* (Part I of the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982, 1982, c. 11* (UK)). Nevertheless, *Amselem* applies to the interpretation of human rights legislation more generally; see *Wilfred Laurier*, at paras. 13 to 15, and the cases cited in those paragraphs. The parties agreed that *Amselem* should also apply in this case

concerning the interpretation of the no-discrimination clause of the collective agreement. I also agree. The no-discrimination clause of the collective agreement is similar to the wording of the *Canadian Human Rights Act* and protects against discrimination on the basis of creed and religious affiliation; therefore, it should also be interpreted following the *Amselem* framework.

#### **Part IV: Facts about the grievor**

[33] Mr. Bedirian began working for the employer in 2009. He is currently in a position classified at the CT-FIN-02 group and level. He states that he has been working from home full-time since the onset of the COVID-19 pandemic in March 2020.

[34] On October 29, 2021 (the deadline set out in the *Vaccine Policy*), Mr. Bedirian applied for accommodation on the basis of religious belief. His application was two pages long. The relevant portions of it are as follows:

...

*I was baptized as a Catholic and attended Catholic school throughout all my primary and secondary schooling. I attended weekly Sunday mass with my parents and brothers until the age of 18. I was also an altar assistant as a young boy at Eglise de Saint-Claude in Ottawa's east end. Although I had stopped going on a regular basis, I still attended for special religious celebrations such as Christmas and Easter. Why did I stop attending? I suppose when you are at that age and have been taken care of by your parents for your entire life, you don't have much to worry about. At a young age and without much life experience, I didn't see a reason to have Christ in my life.*

*In the last several years, even before this pandemic, I have noticed on a personal and on a societal level the consequences of an absence of God or religion. There has been such rapid change in the world that I could only explain it the aftermath of the rejection of God and religion.*

...

*As a Catholic, I am told to follow my conscience to be moral. My Catholic upbringing through the Church, the Bible and God taught me about moral conscience and how believers are required to act accordingly to their conscience.*

*The following passages stood out the most in my prayers with God as it relates to conscience through communicating with God and explains why I am unable to take the vaccines:*

1 Corinthians 10

27 If an unbeliever invites you and you want to go, eat whatever is placed before you, without raising questions on grounds of conscience.

28 But if someone says to you, “This was offered in sacrifice,” do not eat it on account of the one who called attention to it and on account of conscience;

29 I mean not your own conscience, but the other’s. For why should my freedom be determined by someone else’s conscience?

*I must obey my own conscience through communication with God and not follow someone else’s conscience. Not only would I be disregarding my own conscience but disobeying Christ.*

1 Timothy 1:19

keeping faith and a good conscience, which some have rejected and suffered shipwreck in regard to their faith.

*I am condemning myself and my relationship to my faith with God by letting others decide, influence, or coerce me into taking the vaccine, rather than following my conscience.*

*I must make an informed judgment by balancing the medical benefits versus the mental and spiritual benefits. I am unable to take the vaccines because to do so would be a defilement of my body. I must make the assessment towards vaccination based my own circumstances and not by others who may come up with a different conclusion. It is not limited to public health.*

*Vaccination is not morally obligated and must be done so voluntarily.*

“At the same time, practical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary.” Congregation for the Doctrine of the Faith (CDF), “Note on the Morality of Using Some Anti-COVID-19 Vaccines,” December 17, 2020, n.5:

*I must follow my conscience to be moral.*

“A human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself. Yet it can happen that moral conscience remains in ignorance and makes erroneous judgments about acts to be performed or already committed.” Catechism of the Catholic Church (Vatican City: Libreria Editrice Vaticana, 1993

*In conclusion, I am unable to get vaccinated because the COVID-19 vaccine infringes on my conscience rooted in religious teachings. The Policy on Covid-19 Vaccination for Core Public Administration infringes on my ability to freely practice my religion. These are my sincerely held religious beliefs as required in the Supreme Court of Canada decision Syndicat Northcrest v. Anselem in 2004. I would ask you to review my request and grant me this accommodation on religious grounds.*

...

[35] On November 10, 2021 the employer asked Mr. Bedirian four questions about his application. He responded on November 12, 2021, at the same time as his ACFO representative objected to him being asked some of those questions. These are the questions and his answers:

***How is it different from getting other vaccines or taking other medications?***

*As mentioned in the opening of my affidavit, I have never been placed under duress or coercion to take medication under the threat of termination of employment or leave without pay. I don't take the annual flu vaccine because I am not at risk and therefore deem it to be unnecessary. Since I have decided to take better care of my diet, I rarely get sick. Any vaccine I have received as a child was not my decision. I don't recall when was the last time I had taken a vaccine as an adult or what it protected against. My thoughts have changed over time and my relation to God has been strengthened. The letter by the Archbishop's outlines the Catholic's view of outweighing the pros and the cons of medical intervention:*

*"A Catholic might refuse a vaccine based on the Church's teachings concerning therapeutic proportionality. Therapeutic proportionality is an assessment of whether the benefits of a medical intervention outweigh the undesirable side-effects and burdens in light of the integral good of the person, including spiritual, psychological, and bodily goods.*

*It can also extend to the good of others and the common good, which likewise entail spiritual and moral dimensions and are not reducible to public health. The judgment of therapeutic proportionality must be made by the person who is the potential recipient of the intervention in the concrete circumstances, not by public health authorities or by other individuals who might judge differently in their own situations."*

***Can you give other examples of actions that would go against your conscience and religious beliefs? How is receiving this vaccine similar to those examples?***

*I avoid illegal or harmful substances out of fear that would harm my body, specifically my heart. I don't consume energy drinks or products high in caffeine due to past negative experiences.*

*Taking these substances would be a defilement of my body. Through prayer to God and reading scriptures, taking the vaccine would be similar to taking those substances. Here are two examples from scripture regarding how I must treat my body as God's temple of the Holy Spirit:*

*"Or do you not know that your body is a temple of the Holy Spirit within you, whom you have from God? You are not your own, for you were bought with a price. So glorify God in your body." 1 Corinthians 6:16-17*

“Do you not know that you are God’s temple and that God’s Spirit dwells in you? If anyone destroys God’s temple, God will destroy him. For God’s temple is holy, and you are that temple.” 1 Corinthians 3:16-17

***How does this vaccine conflicts with your religious belief?***

*As stated in my affidavit, vaccination is not morally obligated and must be done so voluntarily.*

*Here is an End Note taken from the Archbishop’s letter:*

*Congregation for the Doctrine of the Faith (CDF), “Note on the Morality of Using Some Anti-COVID-19 Vaccines,” December 17, 2020, n. 5: “At the same time, practical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary.”*

*Also stated in my affidavit’s conclusion, I am unable to get vaccinated because the COVID-19 vaccine infringes or conflicts on my conscience rooted in religious teachings. “The Policy” infringes or conflicts with my ability to freely practice my religious belief.*

***Why is your belief differs from the religious leaders of your faith who are in favour of vaccines?***

*According to the “Managers’ Toolkit for the Implementation of the Policy on COVID-19 Vaccination for the Core Public Administration including the Royal Canadian Mounted Police” Version 2.0, page 48 Section E.13*

*“The requirement is to focus on the sincerity of the individual belief rooted in religion, not whether it is recognized by other members of the same religion.”*

*My belief is through God and the Holy Spirit not another man’s belief or those of religious leaders. They have their own conscience and judgment in front of God. I cannot speculate on their beliefs. I can only provide mine. Here are two examples from scripture:*

*“Conscience, I say, not thine own, but of the other: for why is my liberty judged of another man’s conscience?” 1 Corinthians 10:29*

*“You, then, why do you judge your brother or sister? Or why do you treat them with contempt? For we will all stand before God’s judgment seat.” Romans 14:10*

*The religious leaders’ belief on vaccination is mixed as illustrated in the Archbishop’s letter:*

*“Vaccination is not a universal obligation and a person must obey the judgment of his or her own informed and certain conscience. In fact, the Catechism of the Catholic Church instructs that following one’s conscience is following Christ Himself:*

*In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of the divine law: “Conscience is a law of the mind; yet [Christians] would not grant that it is nothing*

more; ... [Conscience] is a messenger of him, who, both in nature and in grace, speaks to us behind a veil, and teaches and rules us by his representatives. Conscience is the aboriginal Vicar of Christ.

Therefore, if a Catholic comes to an informed and sure judgment in conscience that he or she should not receive a vaccine, then the Catholic Church requires that the person follow this certain judgment of conscience and refuse the vaccine. The Catechism is clear: "Man has the right to act in conscience and in freedom so as personally to make moral decisions. 'He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.'"

[Sic throughout]

[36] The employer denied Mr. Bedirian's application on November 29, 2021, on the basis that he had failed to demonstrate how the alleged ground of discrimination prevented him from being vaccinated.

[37] Mr. Bedirian responded to that denial by sending an email to the employer asking it to reconsider its decision on December 1, 2021. For the first time, Mr. Bedirian raised concerns about fetal cell lines being used in the development of the COVID-19 vaccine, stating:

...

*There is a general moral duty to refuse the use of medical products, including certain vaccines, that are produced using human cells lines derived from direct abortions. It is permissible to use such vaccines only under certain case-specific conditions, based on a judgment of conscience.*

*See Pontifical Academy for Life, "Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Foetuses," June 9, 2005; Congregation for the Doctrine of the Faith, Instruction Dignitas personae, 2008, nn. 34-35; Congregation for the Doctrine of the Faith, "Note on the Morality of Using Some Anti-COVID-19 Vaccines," nn. 1-3. When there is a sufficiently serious reason to use the product and there is no reasonable alternative available, the Catholic Church teaches that it may be permissible to use the immorally sourced product under protest. In any case, whether the product is used or not, the Catholic Church teaches that all must make their disagreement known and request the development of equal or better products using biological material that does not come from abortions.*

*The difference between common medication and the COVID vaccine is that for common medications like aspirin aborted fetal cell lines were never needed for their initial development. It is only*

*later that they started using them for quality control testing. There is no moral equivalency.*

*To subject my body to such impure substances would be a defilement of my body. I would like to keep my blood pure and conscience clean as per religious teachings. A vaccine I have deemed to be unnecessary based on the Church's teachings of morality, therapeutic proportionality and how it was produced, researched or tested from aborted fetal cell lines. Abortion is wrong according to religious beliefs. The risks of the vaccine far outweigh the benefit in my personal circumstances and that is why I am unable to be vaccinated.*

...

[38] Mr. Bedirian attached two documents to that email. The first is a letter dated October 6, 2021. While the letter has Mr. Bedirian's name at the bottom and begins by stating that it discusses why Catholics "including me" may decline certain vaccines, he refers to it in his email as an "Archbishop's letter". The letter is a copy of a template letter available online through an organization called the National Catholic Bioethics Centre. The second attachment was a letter from a pastor stating that Mr. Bedirian is a baptized Catholic and that his request, which is a religious exemption to the *Vaccine Policy* on the basis of fetal cell lines derived from abortion, is "... consistent with the teachings of the Catholic religion with regard to such moral dilemmas."

[39] On December 2, 2021, a manager responded to Mr. Bedirian's email, to say that this new information was submitted to "the committee" for its review. That reference to a committee was to a committee of senior managers (and one lawyer) at Global Affairs Canada responsible for reviewing requests like this one called the "COVID-19 Immunization Policy Main Review and Audit Committee".

[40] On December 3, 2021, Mr. Bedirian filed his grievance against the decision denying his accommodation request.

[41] On December 10, 2021, the employer responded to Mr. Bedirian's December 1, 2021, email, denying his accommodation request. Mr. Bedirian asked for a detailed explanation. The employer responded with the identities of the committee members but with no further explanation for its decision.

[42] On December 22, 2021, Mr. Bedirian sent another email to a manager at Global Affairs Canada, stating that all vaccines are in conflict with his religious beliefs because, "Vaccines are an attempt by man/woman to correct God's mistakes. It

suggests that God is flawed but he is not flawed, as God is perfect.” The employer advised Mr. Bedirian that the committee would not consider this new information but that he could use it in the grievance process instead.

[43] In all his correspondence, Mr. Bedirian never states that he is a practicing Catholic. He never states that he attends church at the parish from which he obtained the letter he attached to his email of December 1, 2021, and that letter does not state that Mr. Bedirian is a parishioner or that he has ever attended that church. Mr. Bedirian’s original accommodation request states that he attended church as a child and for special occasions but that he stopped attending. His so-called “Archbishop’s Letter” states that he is a **baptized** Catholic — not a **practicing** Catholic. Mr. Bedirian has presented no evidence about any way in which religion has touched his life aside from that, through prayer, he freed his guilty conscience of something he did in his life that he was not proud of.

[44] Finally, Mr. Bedirian became fully vaccinated before he was placed on leave without pay. He explains that he has “... experienced immense regret and guilt about being vaccinated.” He also states that he became vaccinated because he could not afford to be on leave without pay because he had lost deposits in 2020 on a wedding that was cancelled due to COVID-19. He also states that he bought a house during the pandemic that was costing money and that he was financially supporting his wife’s parents.

## **Part V: Issues**

[45] Having read Mr. Bedirian’s application for accommodation carefully, it raises four reasons for initially refusing to take the vaccine. The first is that he is religiously required to follow his conscience and that therefore it would be against his religion to take a vaccine if he did not want to (what I will call the “conscience” point). The second is that he must treat his body as God’s temple of the Holy Spirit (what I will call the “temple” point). The third is about the use of fetal cell lines in the development of the COVID-19 vaccine (what I will call the “fetal cell lines” point). The fourth is that all vaccines violate his religion because they suggest that God is imperfect (what I will call the “imperfection” point).

[46] Having read the submissions of the parties alongside Mr. Bedirian’s evidence, this grievance raises the following issues:



- 1) What is the impact of the fact that Mr. Bedirian became vaccinated?
- 2) May I consider the points raised by Mr. Bedirian after November 12, 2021?
- 3) Which of the timely points raised by Mr. Bedirian have a nexus with religion?
- 4) For those timely points that have a nexus with religion, has Mr. Bedirian demonstrated the sincerity of his religious belief?

[47] I will address each issue in turn. As I have discussed earlier, the parties selected this grievance from the larger group of grievances to obtain some guidance from the Board about religious-accommodation cases more generally. Therefore, I will answer each of those issues despite the fact that my answer to some may make the others moot.

**Part VI: Issue #1: What is the impact of the fact that Mr. Bedirian became vaccinated?**

[48] The fact that Mr. Bedirian became vaccinated does not dispose of this grievance, but it is relevant when assessing the sincerity of his claimed beliefs.

[49] Mr. Bedirian became vaccinated before having to go on leave without pay. Therefore, he does not seek the reimbursement of any income loss but, instead, seeks reimbursement for some psychological treatments he underwent to deal with the stress caused by this situation, along with damages under ss. 53(2)(e) and (3) of the *Canadian Human Rights Act*.

[50] The parties have provided no cases in which an employee claimed a religious exemption to taking a vaccine and then took the vaccine anyway. As far as I am aware, this is the first time a tribunal has been asked to decide a case in which an employee claimed an exemption to a rule on religious grounds but followed the rule anyway.

[51] The closest that any decision has come to dealing with this issue is *Pickering/Flowers*. In that case, the grievor stated that in addition to a religious objection to being vaccinated, he had a religious objection to wearing a mask. However, to preserve his employment, he wore a mask anyway. The arbitrator in that case concluded that the fact that the grievor wore a mask was relevant "... for the narrow purpose of assessing sincerity" but that ultimately it did "... not cast serious doubt on the sincerity of his beliefs" about the vaccine (at paragraph 64).

[52] The employer did not argue that the fact that Mr. Bedirian became vaccinated fully disposes of this case. In my opinion, it was right not to. I draw a similar conclusion to that in *BC Rapid Transit*, in which an arbitrator refused to base his decision on the fact that the employee had violated the tenets of his religious beliefs in the past, stating this at paragraph 82:

*82. By following the line of inquiry that it did, the Employer effectively asked what other religious beliefs the Grievor held and then sought extensive evidence to find that he had once breached another tenet of his belief. Counsel for the Union suggested an apt analogy. She said that the Employer's line of inquiry was similar to asking a Catholic if they had ever sinned and then concluding that if they had, they must not be Catholic.*

[53] My conclusion in this case is similar. The fact that Mr. Bedirian became vaccinated does not fully dispose of this grievance. Becoming vaccinated may mean only that he acted contrary to his sincere religious beliefs, not that he never had those beliefs in the first place.

[54] In addition to establishing that a belief has a nexus to religion and is sincere, the grievor must show that the impugned rule interferes with his religious beliefs in a manner that is more than trivial or insubstantial. I have also considered whether the fact that Mr. Bedirian became vaccinated means that the *Vaccine Policy* was a trivial or insubstantial interference with his religious beliefs. I have concluded that it was not. As the arbitrator stated in *BC Rapid Transit*, the interference may still be substantial because “[t]he Employer’s policy requires him to either violate his sincerely held religious beliefs by being vaccinated or being held out of his job and suffering the consequences that accompany that.” Having to make that choice is a non-trivial interference with religious beliefs, regardless of the choice made.

[55] Nevertheless, the fact that he became vaccinated is relevant when assessing his sincerity, as was the case for mask-wearing in *Pickering/Flowers*. Additionally, in *Toronto/Mounsey*, the arbitrator stated that “... my conclusion about the Grievor’s sincerity is bolstered by the fact that ultimately, he decided to have his employment terminated, with all of the negative consequences that flow from that, rather than take the vaccine.” The converse is also true: the fact that an employee chooses vaccination ahead of going on leave without pay (a lesser consequence than a termination of employment) weakens their claim that their belief is sincerely held.

[56] The grievor explained that he became vaccinated because he did not want to be unpaid. The grievor's evidence about this does not disclose any unique financial circumstances that led him to this decision. His evidence is that he lost a deposit on a wedding in 2020 — roughly two years before he would have had to go on leave without pay. He also bought a new house — but most employees have accommodation expenses (either rent or mortgage payments). He also says that he was supporting his wife's parents — but does not say how much or why, and most employees have some financial responsibility toward a family member. A period of leave without pay is significant for any employee; I have no evidence that it was more significant for Mr. Bedirian than for the hundreds of employees who went on leave without pay rather than become vaccinated.

[57] Mr. Bedirian argues that his situation is analogous to an employer refusing to provide equipment to an employee as an accommodation, yet the employee secures their own equipment, and that this "... does not detract from the relevant question — whether the denial was discriminatory." Respectfully, the analogy is inapt. In that hypothetical circumstance, the equipment is needed to accommodate a disability. The question is not whether depriving the employee of equipment is discriminatory. The question is threefold: does the employee have a disability, does the way the workplace is set up have an adverse effect on the employee because of that disability, and did the employer accommodate the employee to the point of undue hardship given that it did not provide the equipment? The equipment is relevant only at the duty-to-accommodate stage of the case. In this grievance, I am concerned only with the first stage — whether there is a *prima facie* case of discrimination on the basis of religion.

[58] In conclusion, the fact that Mr. Bedirian chose to become vaccinated instead of going on leave without pay does not fully dispose of this grievance. However, it is a factor I considered when assessing the sincerity of his belief later in this decision.

**Part VII: Issue #2: May I consider the points raised by Mr. Bedirian after November 12, 2021?**

[59] All of the religious points made by Mr. Bedirian up to and including December 22, 2021 were timely.

[60] The sincerity of an employee's belief must be assessed at the time they made their request and not on the basis of additional information provided at a hearing; see

*Wilfred Laurier*, at para. 84; and *Halifax*, at para. 134. Both parties agree with this principle; however, they disagree about when to draw the evidentiary cutoff line. The employer argues that the evidence should be cut off on November 12, 2021, when Mr. Bedirian responded to the questions posed by management about his initial accommodation application. Mr. Bedirian submits that I may consider all the evidence in this case, up to and including his December 22, 2021, email.

[61] I agree with Mr. Bedirian that I may consider all the information that he provided to management, up to and including his December 22, 2021, email.

[62] *Wilfred Laurier* involved two grievors. They both applied for a religious exemption from a COVID-19 vaccination policy. One grievor (named Pinksen) applied on September 10, 2021, and her employer denied her application on September 22, 2021. She then submitted a further request, and provided further information, on October 21, 2021. Her request was denied again. She was then invited to meet with management on November 12, 2021, to provide more information, and she did so. Finally, at arbitration, she provided a letter dated May 10, 2022, from the principal of the Christian school that her children attended. The second grievor (named Lemon) applied on October 28, 2021, and her employer denied her application on November 12, 2021. On the morning of the arbitration hearing, she sent an eight-page document to her union explaining her religious beliefs, which was filed in evidence at the hearing.

[63] The arbitrator in *Wilfred Laurier* accepted all the grievors' evidence except the evidence prepared in 2022, stating this at para. 84:

*84. In characterizing the Grievors' religious reasons for declining to be vaccinated I have relied only on the information the Grievors provided to the University prior to their religious exemption applications being denied, and their respective testimony with respect to that information. Apart from some biographical details, I have not relied on Lemon's email from July 27, 2022, or the testimony associated with it to support her application for an exemption, as it was filed too late. Similarly, I have not relied on the May 10, 2022, letter that Pinksen provided from the Principal of the Christian school her children attend.*

[64] The arbitrator in *Halifax* applied a similar approach. In that case, the grievor applied for an accommodation on November 10, 2021, and the employer denied the request on November 15, 2021. The grievor provided more information on November 18, 2021, and the employer denied the request again on December 7, 2021. The grievor

provided more information after being placed on leave without pay on January 4, 2022, and the employer wrote on January 28, 2022, to confirm that the additional information did not change its mind. The arbitrator accepted all that evidence, stating this at paragraph 134:

*[134] In considering whether the Employer improperly applied the Policy by refusing the grievor's request for an exemption on the ground of freedom of religion, I accept that the relevant time on which to base this assessment is the moment the Employer decided to refuse the request, which was in November 2021, and then in January 2022, when the grievor was provided with a further opportunity to substantiate her request.*

[65] The arbitrator made similar rulings in *Pickering/Posteraro*, at para. 32 and *Pickering/Hepp*, at paras. 51 and 58. The arbitrator refused to admit new documents provided for the first time in a will-say statement for use at arbitration.

[66] Following a similar approach in this case means that I accept all the 2021 evidence. In the period up to December 22, 2021, the possibility of accommodation was still in play. Management said explicitly that it provided Mr. Bedirian's December 1, 2021, email to the committee for its review and that the committee in fact reviewed this information before making its decision on December 10, 2021. As for the email of December 22, 2021, he was told explicitly that he could use this information in the grievance process and that the committee "**may** no longer be available" [emphasis added] and that he was not to contact committee members personally — not that the committee had stopped considering his request entirely.

[67] The grievor did not attempt to add to or supplement this information when he filed his affidavit at adjudication. Had he done so, I would not have considered any fresh information.

[68] Finally, even though the information is admissible and I will consider it, I may still consider whether the changing nature of his request affects its sincerity.

**Part VIII: Issue #3: Which of the points raised by Mr. Bedirian have a nexus with religion?****A. The claim based on a conscientious objection to the vaccine does not have a nexus with religion**

[69] In his first application for religious accommodation under the *Vaccine Policy* and his follow-up email on November 10, 2021, Mr. Bedirian stated that he could not be vaccinated because he had a moral objection to being vaccinated. He stated this: “As a Catholic, I am told to follow my conscience to be moral”, “... I am unable to get vaccinated because the COVID-19 vaccine infringes on my conscience rooted in religious teachings”, and “My Catholic upbringing through the Church, the Bible and God taught me about moral conscience and how believers are required to act accordingly to their conscience.” Mr. Bedirian also cited some Bible verses about conscience.

[70] I have concluded that Mr. Bedirian’s conscientious objection to the COVID-19 vaccine does not have a nexus with religion. His argument amounts to this: I conscientiously object to the vaccine (for reasons that I do not explain) and Catholics are expected to follow their conscience; therefore, my objection is religious.

[71] Arbitrators have routinely rejected similar claims by other employees. The arbitrator in *Pickering/Flowers* found that:

...

*14. ... [I]f the Grievor's conscience were accepted as a creed-based belief, it could result in a potential “religious” exemption request for anything the City requires of him as his employer without any real challenge for the City, except on undue hardship grounds. For example, if the Grievor claimed that his conscience would not allow him to work overtime, he could claim that a requirement to work overtime violates his creed and the Employer would be in a difficult position....*

...

[72] In that case, the arbitrator ultimately upheld the grievance because the grievor had other religious grounds to refuse to be vaccinated.

[73] The grievor in *Halifax* made a similar claim, using the phrase “peace of mind” instead of “conscience” and stating that once she made up her mind about something,

she was religiously required to maintain that belief. The arbitrator rejected that argument and denied the grievance, stating:

...

*[184] I do not accept that the objection to the vaccine based on the failure of it to give the grievor peace of mind is a protected belief ... A review of the grievor's testimony about her decision-making about her health can be summarized this way: the grievor avoids taking medication or vaccines that she considers unsafe, ineffective, or experimental, based on the available science, because she would not be at peace taking such medications or vaccines. Once she has made up her mind about such decisions, it becomes a sin to act against them. Because she believes that she has a complex immune system which is protected by the Holy Spirit, she also believes that the vaccine would be unnecessary to protect her from COVID 19. This evidence does not convince me that her beliefs mean that she cannot take the vaccine as required by the Policy.*

*[185] The belief that is allegedly infringed by the Policy must be rooted in religion, as defined by the Supreme Court of Canada. In this instance, the grievor's belief about the vaccine is rooted in secular and social beliefs....*

...

*[187] ... Her belief is personal and based on secular factors. If the grievor decided that the available science justified her decision to get vaccinated, that decision would also be protected, according her beliefs. Indeed, based on the evidence before me, anything the grievor sees fit to make a decision about would be protected by her freedom of religion, provided she is at peace about it.*

...

[74] The grievor in *Halifax* cited one of the same Bible verses as Mr. Bedirian did in this case, but the arbitrator still found the objection secular and not religious.

[75] The arbitrator in *Vaughan* rejected a similar claim as well, stating:

...

*27. ... The grievor's belief is essentially a belief that God supports whatever actions she considers important and warranted. If this were sufficient to justify an exemption claim, then a grievor would be entitled to an exemption based on creed for everything a grievor was opposed to doing, since her God would not want her to do anything she was opposed to doing, provided she sincerely believed in her actions. Such a belief alone is not sufficient to entitle the grievor to an exemption. There must also be a*

*connection or nexus with an overarching set of beliefs. A mere belief that God supports one's actions is not sufficient.*

...

[76] I agree with those cases that this sort of circular argument is not sufficient. Mr. Bedirian's initial application does not demonstrate a nexus between his religion and the reason he did not want to take the vaccine. His application stated only that his conscience did not permit him to take the vaccine and that his religion told him to follow his conscience. That is not sufficient. Mr. Bedirian would have to demonstrate that his religious beliefs did not permit him to take the vaccine — not that his "conscience" told him not to.

[77] Mr. Bedirian argued in his reply submissions that by "conscience", he meant "religious conscience". I cannot agree. His statement that taking the vaccine "... infringes or conflicts on my conscience rooted in religious teachings" (which he made on November 12, 2021), when read in context with the rest of his statements, is clearly about the fact that his religion tells him to follow his conscience. Mr. Bedirian may have secular or other personal reasons not to be vaccinated; the fact that he has a religious belief that he should follow his conscience is not sufficient to create a nexus between his reasons for not being vaccinated and his religion.

[78] To that end, I also relied upon the decision in *Oulds*. In that case, an employee stated that she did not want to be vaccinated and that her conscience forms part of her connection to the Creator. The Human Rights Tribunal of Ontario concluded that this was not sufficient to create a nexus to a religious belief. At paragraph 18, it concluded that a nexus between a belief and religion requires an "overarching systemic component" and that simply stating that having reached a decision through prayer or meditation does not have the requisite systemic component to create a nexus between a decision and religious belief. Mr. Bedirian's claim in this grievance has the same defect: he failed to draw any link between his conscientious reason for not wanting to be vaccinated and a comprehensive religion.

**B. Fetal cell lines, the body as a temple, and the perfection of creation have a nexus with religion**

[79] In his November 12, 2021, email, Mr. Bedirian stated that his body is a temple of the Holy Spirit. While he does not state specifically that taking the vaccine would violate that belief, I believe that it is fairly implied by his email of that date. To the



extent that this is just another way of expressing the conscience point, there is no nexus with religion; however, to the extent that this is a different point, other arbitrators have accepted that there is a nexus between this belief and religion (see *Pickering/Flowers*, at para. 50; and *Wilfred Laurier*, at paras. 83 and 87).

[80] In his December 2, 2021, email, Mr. Bedirian stated that he objected to being vaccinated because of the use of aborted fetal cell lines in the production, testing, or research of those vaccines.

[81] There is a broad consensus that an employee's concern about fetal cell involvement in the development of vaccines can amount to a belief or practice that has a nexus with religion when the employee's religious belief also prohibits abortion; see *Pickering/Posterano*, at para. 49; *Sudbury Health District*, at para. 48; *Island Health #1*, at para. 84; *Island Health #2*, at para. 84; *Wilfred Laurier*, at para. 82; *Toronto/De Castro*, at para. 64; and *Pickering/Flowers*, at para. 49. The employer does not dispute that in this case. Instead, the employer says that Mr. Bedirian's fetal cell point was late and insincere. As I stated earlier, it was not late; I will address its sincerity later.

[82] In his December 22, 2021, email, Mr. Bedirian stated that he could not become vaccinated because vaccines intrude on his body, which is God's creation. Arbitrators have accepted that this sort of claim could have a sufficient nexus with religion in *Nova Scotia Nurses*, at para. 67; *Toronto/Mounsey*, at para. 81; and *Wilfred Laurier*, at paras. 83 and 101. The employer does not dispute that. Instead, the employer states that Mr. Bedirian's point about vaccines interfering with the perfection of God's creation was late and insincere. As I stated earlier, it was not late; I will address its sincerity later.

#### **Part IX: Issue #4: Has Mr. Bedirian demonstrated the sincerity of his religious beliefs?**

##### **A. How to assess sincerity**

[83] As stated earlier, after a claimant has demonstrated a nexus between religion and the conduct in question, they must also demonstrate that they hold the religious belief sincerely. The majority of the Supreme Court of Canada in *Amselem* described the sincerity of religious belief as follows:

...

*53 Assessment of sincerity is a question of fact that can be based on several non-exhaustive criteria, including the credibility of a claimant's testimony (see Woehrling, supra, at p. 394), as well as an analysis of whether the alleged belief is consistent with his or her other current religious practices....*

...

[84] In this case, I have focussed on the second aspect — namely, whether the alleged belief is consistent with Mr. Bedirian's other current religious practices.

[85] Consistency between the alleged belief and other current religious practices is a required element of the test because of the nature of religion. As the majority of the Supreme Court of Canada explained at paragraph 39 of *Amselem*, "... religion typically involves a particular and **comprehensive** system of faith and worship" [emphasis added]. To give an example from this case, opposition to the use of fetal cell lines in the research or development of medication is part of several comprehensive systems of faith and worship. But it is not enough for Mr. Bedirian to show that; he also must show that he believes in a comprehensive system of faith and worship that includes opposition to the use of fetal cell lines in the research or development of medication.

[86] A number of the arbitral decisions cited earlier have spelled out the sort of evidence that meets (or does not meet) that second criteria.

[87] In *CN Rail*, the arbitrator concluded that the employee did not have a sincere religious belief for two reasons. First, the employee's initial position did not mention religion and, instead, focussed on secular reasons for refusing to be vaccinated (including contesting the existence of a public health emergency and that the vaccine was untested). Second, the employee provided no information about his current religious practices aside from a suggestion in the union's brief that he attended church as frequently as possible. The employee provided evidence that he attended church as a youth but had no evidence of current religious activity. As the arbitrator noted at paragraph 111, "The requirement of sincerity ensures that someone cannot merely say they are religious and then put forward grounds which other cases have accepted when granting a religious exemption."

[88] The most striking similarity between this case and *CN Rail* is the letter from a pastor. Like Mr. Bedirian, the employee in *CN Rail* provided a letter from a pastor stating that he should receive an exemption. The arbitrator concluded at paragraph

118 that this letter did not provide information about the employee's current religious beliefs. The pastor's letter in *CN Rail* at least stated that it was from the employee's pastor; as I pointed out earlier, the letter that Mr. Bedirian included in his accommodation application is from a pastor, but neither the pastor nor Mr. Bedirian state that it is from **his** pastor. I appreciate that Mr. Bedirian's written submissions state that the letter was from **his** pastor, but that is the first time that he says so. I do not know whether his submissions were saying so deliberately or carelessly, and by saying so for the first time in written submissions the claim was immunized from being cross-examined by the employer. Additionally, even if I were to accept his written submissions as evidence (which I do not), it would be too late to say so now in light of what I stated earlier about the requirement that a grievor's evidence be limited to that provided to the employer contemporaneously with the employer processing his application for accommodation.

[89] In *Halifax*, the arbitrator also concluded that the grievor did not have a sincere religious belief. Most of the arbitrator's reasons focussed on the lack of a nexus between her belief and religion, as discussed earlier. Additionally, though, the grievor in that case stated (similar to what Mr. Bedirian did on December 22, 2021) that she did not need to take vaccines for religious reasons (in her case, because she has everlasting life). The arbitrator in that case concluded that her belief was not sincere in part because she had taken the flu vaccine in the past but would only refuse to do so again because it was ineffective — not because taking it was a sin. The grievor in that case also intertwined secular with purportedly religious reasons for not taking the vaccine.

[90] In *BC Safety Authority*, the arbitrator concluded that the grievor was insincere, for two reasons. First, the grievor asked for a religious exemption only after being denied one for secular reasons and then trying to "... probe for something specific he could provide" to justify an exemption (at paragraph 367). Second, the arbitrator contrasted that grievor's case with another employee who was granted an exemption because that employee "... had demonstrated that a pre-pandemic religious practice in his life corroborated his statements about his religious belief" (at paragraph 366).

[91] In *Sudbury Health District*, the arbitrator concluded that the grievor was sincere because she provided evidence that (at paragraph 57) "... her faith has formed a major part of her life and motivated and guided her beliefs and her conduct for many years

in many aspects of her life”, including that she was an active member of the Latin Mass community (a more traditional and orthodox subset of the Catholic Church).

[92] In *Nova Scotia Nurses*, the arbitrator concluded that the grievor sincerely believed that an injection of the vaccine would be used as the platform for what is termed the “Mark of the Beast”. The arbitrator concluded that this belief was sincere in part because the grievor raised her religious objections immediately and expanded upon them at her first opportunity (which in that case was at a step 1 grievance meeting). The grievor in that case also provided evidence about her lifelong involvement in her church and how she has “... lived her life in accordance to what her faith calls her to do ...” (at paragraph 66). While the arbitrator allowed the grievance on that basis, he rejected the grievor’s alternative claim that she could not be vaccinated because of a religious belief about a “body is a temple” because the manner in which she had made other health decisions did not support that conclusion (at paragraph 67).

[93] In *BC Rapid Transit*, the arbitrator found that the grievor’s religious belief was sincere in part because the grievor had never been vaccinated or inoculated and that his religious beliefs were the driving force as to how he lived much of his life (at paragraph 68).

[94] Finally, in *Securitas*, the arbitrator concluded that the grievor did not have a sincere religious belief preventing him from taking the vaccine. The grievor in that case was baptized into the Romanian Orthodox Church and considered himself a member. However, the grievor provided no evidence that he was an active member of the church, what the beliefs or tenets of that church were, or whether he accepted those beliefs or tenets.

[95] I have decided to give no weight to *Securitas* in this grievance, for two reasons. First, the evidence in this case is different. Mr. Bedirian provided evidence about the beliefs or tenets of the Roman Catholic religion. From paragraph 51 of *Securitas*, it is unclear how much weight the arbitrator gave to the lack of evidence about the tenets of the Romanian Orthodox Church. Second, the arbitrator in *Securitas* cited both the majority and the dissenting judgments in *Amselem*. The dissenting judgment set out a higher burden for claimants to prove their religious beliefs. The arbitrator in *Securitas* did so most concerningly at paragraph 68 of that decision when concluding that the

grievor was insincere (in the second passage quoted from *Amselem* in that paragraph). It is not clear whether the arbitrator did so based on the majority (sincere belief) or dissenting (reasonable belief) test in *Amselem*; therefore, I have decided to give no weight to that decision.

## B. Assessment of sincerity in this case

[96] I have concluded that Mr. Bedirian has not demonstrated that he holds a sincere religious belief that prevented him from being vaccinated. I say this for three reasons.

[97] First and most importantly, Mr. Bedirian has provided no evidence about how religion has been a part of his life aside from not wanting to be vaccinated. There is no evidence that he has attended church since he was a child aside from special occasions. He has provided no evidence of any other decision he has made in his life that was influenced by religion. He stated in his November 12, 2021, email that his “relation to God has been strengthened” over time but provides no evidence or even a hint about how or in what way that relationship with God has manifested itself in the way he has lived his life.

[98] I appreciate that, as the arbitrator pointed out in *Pickering/Posteraro*, at paragraph. 55:

*55. Implicit in the Supreme Court's determination is the idea that proving sincerity of religious belief should be a relatively straight forward matter and challenging sincerity will usually be difficult. This is because religious beliefs are intensely personal. The complainant must simply describe their beliefs in an honest manner, **preferably with details about when the belief started and how consistent it has been followed.** And, as the Court stated, relying on the American jurisprudence, **any inquiry into the sincerity of belief should be “minimal” and not based on past beliefs...***

[Emphasis added]

[99] However, even using this “minimal” inquiry, Mr. Bedirian has not described when his belief started aside from a vague reference to relying on faith to get over his guilt from some event in his personal life or how consistently it has been followed. To repeat what I said earlier, Mr. Bedirian never stated that he is a practicing Catholic. He never stated that he attends church at the parish from which he obtained the pastor’s letter, and that letter does not state that Mr. Bedirian is a parishioner or that he has

ever attended that church. Mr. Bedirian's original accommodation request states that he attended church as a child and for special occasions but that he stopped attending. His so-called "Archbishop's Letter" states that he is a **baptized** Catholic — not a **practicing** Catholic. Mr. Bedirian has presented no evidence about any way in which religion has touched his life aside from that, through prayer, he freed his guilty conscience of something he did in his life that he was not proud of.

[100] Second, his evidence has been inconsistent about his religious beliefs. On November 12, 2021, Mr. Bedirian wrote this: "I don't take the annual flu vaccine because I am not at risk and therefore deem it to be unnecessary." However, on December 22, 2021, after his application for accommodation had been denied, he changed his evidence and stated that **all** vaccines conflict with his religious beliefs. This was more than a minor change in how he described his religious beliefs; this was an entirely different justification.

[101] Additionally, he referred to fetal cell lines only once (on December 1, 2021) and only after having had his initial accommodation application rejected. As I stated earlier, the timing of that reference is not dispositive in the sense that it was too late for me to consider, but its timing is a factor in assessing the sincerity of Mr. Bedirian's belief. In his written submissions, Mr. Bedirian placed considerable weight on that aspect of his application for an accommodation, yet it formed a small part of his application. Additionally, even that email of December 1, 2021, states things like "[a]bortion is wrong according to religious beliefs", without stating how that belief is his belief or consistent with any of his other religious beliefs or current religious practices. Mr. Bedirian's reply submissions state that his earlier statements were his personal religious beliefs; however, that is not consistent with those earlier statements or with the lack of evidence about any other religious beliefs or practices. When it comes to his own beliefs, he states only that he believes that the vaccine is unnecessary.

[102] Third, Mr. Bedirian chose to become vaccinated before being placed on leave without pay. As I discussed earlier, this is a factor that leans against the sincerity of his belief.

[103] The employer submits as follows:

...

... *The grievors in these cases [in which arbitrators allowed grievances] are all unlike the Grievor in this case. He provided no details of his current religious beliefs or practices, referred to fetal stem cells only after his request was denied, with no elaboration on the link to his own sincerely held religious beliefs, and did not accept any negative consequences rather than take the vaccine.*

...

[104] I agree, except that I consider the guilt the grievor feels about having taken the vaccine to be a negative consequence of having done so. With that caveat, the employer's submission sums up why I have concluded that the grievor has not demonstrated the sincerity of his religious belief.

[105] Mr. Bedirian argues that the employer never asked him about these issues, and therefore, the employer should not be able to rely on any information gaps in this case. I disagree, for two reasons.

[106] First, Mr. Bedirian, like all grievors, bears the burden to prove a *prima facie* case of discrimination on the basis of religion; see *Amselem*, at paragraph 56 (the "... individual advancing an issue premised upon a freedom of religion claim must show ... he or she is sincere in his or her belief"); *Wilfred Laurier*, at paragraph 8; and *CN Rail*, at paragraph 91 (which quotes paragraph 56 of *Amselem*). This is consistent with the principle that complainants are required to demonstrate a *prima facie* case of discrimination on the basis of other grounds of discrimination too; see *Moore* at paragraph 33. It is not up to the employer to disprove Mr. Bedirian's sincerity; it is up to him to prove it.

[107] Second, the employer did ask him about those issues. On November 10, 2021, management asked him directly to give other examples of actions that would go against his conscience and religious beliefs. As I set out earlier, he did not answer that question — instead, he talked about not consuming things because they harmed him physically and then cited some Bible verses about a body being a temple of the Holy Spirit. He was asked the question and did not answer.

[108] I note as well that Mr. Bedirian had the benefit of advice from his union while answering those questions and that his union was also corresponding with management on his behalf. If he thought that the question was unclear, he could have asked management or his union for help. This is not a case in which the employer

rushed to judgment or did not ask questions when it should have; Mr. Bedirian had four chances to explain himself, including by answering questions posed by management to address its concerns with his application for accommodation.

[109] Had the employer argued only that Mr. Bedirian's written evidence was not credible, I would have rejected that argument in large part because of its decision not to cross-examine him. But that is not the employer's case. The employer does not say that Mr. Bedirian's evidence was not credible; it says that he is not sincere in claiming that he could not be vaccinated because of his religious beliefs. As explained in *Amselem*, those are different things, and credibility of testimony (in this case, in writing) is only one aspect of sincerity. This case is about the second aspect of sincerity — whether there is consistency between the conduct and the claimant's religious beliefs.

[110] Mr. Bedirian was telling the truth. He never stated that his reluctance to be vaccinated is part of an overarching religious belief system that he adheres to as part of his daily life. I do not believe that he was being careless or that he just could not find the right words to express himself. I believe that he was being careful to say nothing but the truth.

[111] Finally, I have given some weight to the fact that there is no evidence that Mr. Bedirian has used his application for accommodation purely as a pretext to disguise his opposition to vaccination or public-health measures generally. In many of the other cases cited earlier in this decision, the grievors expressed several secular objections to vaccinations. In those cases, the employers often argued that the real reason for not being vaccinated was secular and not religious. The arbitrators concluded that an employee may have more than one reason for deciding not to be vaccinated, and the fact that they expressed secular opposition to vaccination did not mean that they could not also have religious reasons not to be vaccinated. I agree, although I also agree that expressing a strong objection to the vaccine on secular grounds can explain why arbitrators may question the sincerity of a religious belief (as occurred in *Vaughan*, for example). Mr. Bedirian, by contrast, did not do that. I have given some weight to the fact that he has been consistent throughout the process in stating that his objection is religious, not political or scientific.



[112] Nevertheless, I have concluded that Mr. Bedirian has not met his burden of proving the sincerity of his religious belief for the three reasons that were set out. Most importantly, he has provided no evidence that his reluctance to be vaccinated is sincerely part of any comprehensive system of faith. He has latched on to a set of religious pronouncements without showing that he sincerely believes any underlying and comprehensive system of faith linked to those pronouncements.

[113] As indicated at the outset of this decision, to demonstrate *prima facie* discrimination, Mr. Bedirian was required, in accordance with *Moore*, to show that he had a characteristic protected from discrimination; that he experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact. Mr. Bedirian has not shown that he has a sincere religious belief that prevented him from being vaccinated. Therefore, he has not demonstrated a *prima facie* case of discrimination.

[114] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**Order**

[115] The grievance is denied.

April 24, 2024.

**Christopher Rootham,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**