

Date: 20241213

File: 566-02-44962

Citation: 2024 FPSLREB 175

*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

BETWEEN

MATHIEU LEMAY

Grievor

and

TREASURY BOARD

(Department of Public Safety and Emergency Preparedness)

Employer

Indexed as

Lemay v. Treasury Board (Department of Public Safety and Emergency Preparedness)

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

Decided on the basis of written submissions,
filed September 13 and October 9 and 25, 2024.

REASONS FOR DECISION

I. Overview

[1] This grievance is about whether Mathieu Lemay (“the grievor”) is entitled to an exemption from having to be vaccinated against COVID-19 for religious reasons. I have concluded that he is entitled to an exemption because he has a sincere religious belief that he should not receive the vaccine. Therefore, I have allowed the grievance. Since the parties asked that I bifurcate the issue of entitlement from that of remedy, I will simply order that I am allowing the grievance and that the Board retain jurisdiction to address any remedial issues that the parties are unable to resolve on their own.

II. General background to the grievance

[2] The background to this grievance involves the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“the Vaccine Policy”). Since the background is the same as the Federal Public Sector Labour Relations and Employment Board (“the Board”) already set out in *Bedirian v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2024 FPSLREB 58, I will simply reproduce paragraphs 5 to 8 of that decision:

[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.

III. Process followed to decide this grievance

[3] The parties in this grievance also followed the same process as in *Bedirian*, which is described in detail at paragraphs 9 to 22 of that decision. Unlike as set out in paragraph 16 of *Bedirian*, the Treasury Board (“the employer”) filed an affidavit as evidence in this grievance and the grievor cross-examined that affiant in writing. The employer did not cross-examine the grievor on his affidavit. Further, the authorities that the parties relied upon are different from, and fewer than, those listed at paragraphs 19 and 20 of *Bedirian*. Instead of listing them, I refer to the most important of them in the rest of this decision.

IV. Facts specific to the grievor

[4] This case comes down to a question of fact. The parties do not dispute the legal principles that apply to this case, which were set out in paragraphs 25 to 32 of *Bedirian*. In short, the parties agree that I should apply the legal test set out in paragraph 56 of *Syndicat Northcrest v. Amselem*, 2004 SCC 47:

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....

[5] The interference with the religious practice or belief must also be more than trivial or insubstantial (see *Amselem* at para. 59).

[6] On October 29, 2021, the grievor applied for an accommodation under the *Vaccine Policy* on the basis of his religious belief. The process by which the employer considered the grievor's application for accommodation was protracted, in part because the grievor had recently transferred from another department so his initial application was held by his previous department. The grievor and his managers met about his application for accommodation on November 15, 2021, and the next day he filed an affidavit (which was commissioned on November 15) attesting to his religious beliefs.

[7] The grievor provided evidence about the process of reviewing his application and the impact that it had on him. That evidence is not relevant to the issue before me at this time and was introduced largely to use in the event that I allow the grievance, to address the appropriate remedy.

[8] As I have just stated, the grievor sent an affidavit to the employer attesting to his religious belief using the form required under the *Vaccine Policy*. The text of that affidavit reads as follows (after some introductory remarks that are irrelevant to this grievance):

...

My name is Mathieu Lemay. This attestation is to request exemption from the Covid-19 vaccination based on proscribed religious discrimination as per the Canadian Human Rights Act Section 3(1). For my Christian beliefs, to not be diverging from God's plan for humanity, I request this exemption.

I cannot get vaccinated as it contradicts my belief in God's superiority over man made creations. My faith dictates that I cannot use medicine, in this case a vaccine, when it is not absolutely necessary to sustain my life, as it shows no faith in God's power to heal. The Bible is clear about obedience to the word of God (Acts 5:29, 1 Peter 2: 1-8, Romans 12:2, Psalm 14:1) going against my God given conscience (Genesis 1:27, Philippians 2:13) would be in direct contradiction of my beliefs.

I cannot let my spirit be guided by fear (Proverbs 17:22), rather, by God's command I trust the Lord's ability to heal (Exodus 15:26). It would contradict God's will to use unnatural means on my God given body (1 Corinthians 6:19), when God himself provides everything (Genesis 1:20-29, Genesis 9:2-4) that is needed to sustain his peoples' (Psalm 100:3) life (Exodus 23:25) on earth. I treat my body as God's temple (1 Corinthians 3:10) by making a steady habit of eating clean and exercising (Ephesians 5:29, 1 Corinthians 9:24), as my body is the vessel of my God given soul. Thus accepting this vaccine would be renouncing my faith in God.

[9] The employer sent a request for some further information to the grievor on December 15, 2021. That request confused the grievor and confused me too. The request appears to be a form letter given to managers with four “scenarios” that set out four different but common religious objections to the COVID-19 vaccine and then set out some questions that they could ask their employees who request accommodation based on those different religious grounds. Only one of those scenarios had any possible relevance to the grievor, yet his manager sent him a copy of the form with all four scenarios on it, along with speaking points and advice for managers. The grievor answered the questions most relevant to him — which were about an employee who states that they are unable to be vaccinated because their body is a temple of the Holy Spirit — as follows:

...

I am hereby answering follow-up questions on my affidavit to do my part to facilitate the employer’s Duty To Accommodate (DTA).

As none of the 4 scenarios provided in the document “Religious Exemption Requests - Questions to ask.docx” (copied in Appendix A for convenience) provided to facilitate the DTA, matches my affidavit, I used the closest possible one to do my part to facilitate the employer’s DTA.

...

Questions to be asked: Have you ever received any vaccines against any other diseases?

- *What is it about the vaccine that alters their higher being’s design?*

- ***Answer: As per my affidavit, by God’s command, I trust the Lord’s ability to heal (Exodus 15:26), thus accepting the vaccine is in contradiction of my beliefs and would be renouncing my faith in God.***

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

- ***Answer: As per my affidavit, same applies, I cannot use medicine, in this case a vaccine, when it is not absolutely necessary to sustain my life, as it shows no faith in God’s power to heal (Exodus 15:26), thus accepting the vaccine is in contradiction of my beliefs and would be renouncing my faith in God.***

- *If you do not have a religious objection to the use of all vaccines, please explain why your objection is limited to particular vaccines?*

- ***Answer: Not applicable as per my affidavit***

• *Why is your belief differ [sic] from the religious leaders of your faith who are in favour of vaccines?*

• *Answer: My beliefs are mine, others' are theirs. The Bible is clear about obedience to the word of God (Acts 5:29, 1 Peter 2:1-8, Romans 12:2, Psalm 14:1), not following the word of God would be in direct contradiction of my beliefs and would be renouncing my faith in God.*

...

[Emphasis in the original]

[10] On February 17, 2022, the employer advised the grievor that it had rejected his application for accommodation. The grievor corresponded further with the employer about asking for more clarity about its decision, but the employer did not change its mind. The grievor was placed on leave without pay effective March 18, 2022. He was taken off that status as of June 20, 2022. He took one week's annual leave and then returned to work.

[11] In the meantime, the grievor grieved the employer's decision. The employer denied his grievance, and he referred it to adjudication with the Board.

V. The employer's objection to grievor's second affidavit

[12] As part of the process followed to decide this grievance, the grievor had the opportunity to file another affidavit. He did so. Appendix A to that affidavit is a 29-page single-spaced polemic prepared by the grievor in which he comments about every item of correspondence between him and the employer and then makes a number of complaints about his employment and society in general that are too numerous to list here and irrelevant to the case at this time.

[13] The employer objects to this evidence on the grounds that it was presented after it made its decision and at the same time argues that this evidence shows the grievor's lack of sincerity because he has secular complaints about the *Vaccine Policy* (as well as just about every other aspect of his life) as well as religious objections.

[14] I do not find it necessary to resolve that objection, for two reasons.

[15] First, I did not need to rely on that evidence to resolve this grievance; the grievor's initial affidavit and follow-up answers were sufficient. Most of that evidence was clearly labelled as being about the impact of the employer's decision on the

grievor. That evidence may be relevant at the remedial stage of this grievance, but it is not necessary yet.

[16] Second, the grievor correctly argued that employees may have both religious and secular reasons for refusing to be vaccinated. As stated in *Wilfrid Laurier University v. United Food and Commercial Workers Union*, 2022 CanLII 120371 (ON LA) at para. 88:

88. That each of the Grievors has also voiced secular reasons for not getting vaccinated, does not, by itself, undermine their claim for a religious exemption based on creed. The authorities are clear that so long as one of the reasons for declining to get vaccinated is sincerely based on one's creed, as subjectively interpreted, an applicant is entitled to a [Ontario Human Rights] Code based exemption to the Policy.

[17] This is not a case like *B.C. General Employees' Union v. BC Safety Authority (Technical Safety BC)*, 2023 CanLII 76193 (BC LA), in which an employee pivoted to a religious claim after having first fought strenuously against being vaccinated for secular reasons. The grievor's first and only argument to the employer was that he should be exempted for religious reasons; the fact that he also dislikes the *Vaccine Policy* for secular reasons does not detract from the sincerity of his religious beliefs.

VI. Analysis of the merits of grievance

[18] As set out in *Amselem*, my task is two-fold: to decide whether the grievor's belief has a nexus to religion and whether he is sincere in that belief. I have concluded that he meets both elements of the test.

A. Nexus to religion

[19] The grievor's belief is as follows: "My faith dictates that I cannot use medicine, in this case a vaccine, when it is not absolutely necessary to sustain my life, as it shows no faith in God's power to heal", and that "I treat my body as God's temple ...". Arbitrators have already concluded that there is a nexus between this belief and religion (see *Wilfrid Laurier University*, at paras. 83 and 87, and *Canadian Union of Public Employees, Local 129 v. The City of Pickering (Re: The Grievance of Dan Flowers)*, dated May 23, 2023, at para. 50), and I have been given no compelling reason not to follow that line of authority. The grievor's beliefs have a nexus with religion.

[20] The employer makes two arguments that I feel compelled to address, largely for the benefit of the employer and the grievor's bargaining agent going forward.

[21] First, the employer expresses concern that the grievor only claimed to be Christian without identifying his denomination. He does not have to. The grievor went on to explain in his second affidavit that he is non-denominational (and why), but he did not have to. The Supreme Court of Canada was very clear in *Amselem* that I cannot, and should not, inquire into the objective basis of the grievor's belief. Requiring the grievor to identify his denomination (especially since the employer never asked him to) is tantamount to asking me to determine whether there is an objective basis for the grievor's belief. This would send me down the road of assessing whether the grievor's belief (which is Christian) is consistent with whatever denomination he is part of, or instead, consistent with a different denomination. For example, if an employee says that they are Presbyterian, it is not my role to decide whether they are expressing Catholic beliefs instead. The law does not distinguish between religions; nor does it distinguish between denominations of religion. What matters is that there is a nexus to religion, not to the objectively verifiable precepts of a denomination of that religion.

[22] Second, the employer complains that the grievor did not elaborate sufficiently about his religious belief by, for example, not listing other medication that he has not taken. As the grievor pointed out in reply, if the employer wanted to know that, it could and should have asked him. Additionally, the grievor states that he does not take any medication. This means that providing a long list of the medication that he does not take would be unhelpful — his evidence is that he does not take any medication unless necessary to save his life. Also, the employer's submission contradicts its position that the grievor's later elaboration should be ignored; the employer cannot submit on one hand that I should ignore any elaboration by the grievor in the affidavit filed with the Board while on the other hand criticize the grievor for not elaborating further on his beliefs in that affidavit.

[23] Most importantly, the employer's submission places too high a burden on a grievor. I will not question a grievor's beliefs simply because they are not articulated with the clarity and precision of a legal professional (see *Passarella v. Aspirus*, 108 F.4th 1005 (7th Cir 2024) at 1011).

[24] Therefore, I have concluded that the grievor has demonstrated a nexus between his belief and religion.

B. The grievor is sincere

[25] In *Bedirian*, the Board cited paragraph 53 of *Amselem* for the proposition that sincerity is a question of fact that is based on several non-exhaustive criteria, most importantly credibility and consistency with a comprehensive system of faith and worship. The employer has not cross-examined the grievor; nor does it question his credibility in its written submissions. Its case is based on the second element.

[26] I have concluded that the grievor's belief is consistent with his current religious practices involving a particular and comprehensive system of faith and worship. The grievor is a non-denominational Christian. He believes that among other things, he should have faith in God and that faith in God means not ingesting medicine unless absolutely necessary to sustain his life. Not every Christian shares that belief — other Christians see no impediment to taking medication, possibly in light of James 1:17 ("Every good and perfect gift is from above, coming down from the Father of the heavenly lights ..."). But it is not my role to debate theology with the parties. My role is to assess whether the grievor's belief is sincere.

[27] Sincerity is a low threshold for a claimant to meet. My role is to determine whether the grievor's "presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice" (from *Amselem* at para. 52). The grievor swears that he never takes medication unless his life depends on it, as part of his non-denominational Christian faith. I have seen nothing in the record to suggest that the grievor is untruthful or that this claim is a mere artifice. In addition, the employer has not cross-examined him and has provided no evidence to contradict his statement of religious belief.

[28] Sincerity also involves testing whether a claimant follows their belief consistently as part of a comprehensive system of faith and worship. Again, the grievor swears that he does, and that his decision never to take medication is part of a comprehensive non-denominational Christian faith. Therefore, I conclude that he is sincere.

[29] The employer relies on *Bedirian*. In that case, the Board concluded that the grievor was insincere for three reasons, all of which are absent here. First, the grievor in *Bedirian* said that he was Catholic but presented no evidence to support that claim by showing that religion has touched his life in any way. By contrast, the grievor in this case was clear that he always trusts in God to heal him. He gave an example in his second affidavit, from 2019, when he relied on faith-based healing instead of medication.

[30] I acknowledge that I said earlier that I did not need to rely on that second affidavit. However, my point is that there is no inconsistency between the second affidavit and what the grievor told the employer when he applied for accommodation. He is simply giving an example of a time in his life when he trusted God to heal him, which is the same thing he said in his initial application.

[31] Second, the grievor in *Bedirian* made a series of contradictory claims about his religion. He contradicted himself about whether he ever took vaccines, he changed the nature of his religious beliefs every time he submitted new evidence in support of his application for accommodation, and he was deliberately vague about which beliefs were his versus those held by others who purportedly shared his religion. By contrast, the grievor has been consistent throughout about the basis of his religious claim.

[32] Third, the grievor in *Bedirian* took the vaccine. The grievor in this case did not. The fact that he chose not to be vaccinated is not a significant factor in favour of his sincerity (otherwise, the Board would allow every grievance involving a leave without pay), but being vaccinated was a significant factor against the grievor in *Bedirian*.

C. The interference is more than trivial or insubstantial

[33] The employer also submits that the *Vaccine Policy* did not interfere with the grievor's beliefs in a more than trivial or insubstantial way. The employer argues that there was no evidence that COVID-19 vaccines were not necessary to sustain life, and that therefore the grievor did not demonstrate that the *Vaccine Policy* interfered with his religious beliefs in a more than trivial or insubstantial way. In reply, the grievor submits that he is alive today, demonstrating the vaccine was not necessary to sustain his life.

[34] With respect, both parties' focus on the health benefits of vaccines miss the point somewhat.

[35] In *Amselem*, the Supreme Court stated at paragraph 59 that a claimant must show that the impugned provision (in this case, the *Vaccine Policy*) interferes with their ability to act in accordance with their religious beliefs "in a manner that is more than trivial or insubstantial." This is a low threshold. The Supreme Court described the threshold in *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713 at paragraph 97 [*Edwards Books*] as that a claimant's "religious beliefs or conduct might reasonably or actually be threatened" by the policy. Two examples of a trivial or insubstantial interference are a sales tax that includes religious merchandise (see *Edwards Books* at para. 97) and the inability to attend a secular restaurant (see *Harjee v. Ontario*, 2022 ONSC 7033 at para. 64).

[36] The issue is whether the consequences or impact on the grievor's religious belief are non-trivial. In *Bedirian*, the Board wrote:

... 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.

[37] The grievor here faced the same choice as in *Bedirian*: get vaccinated or be held out of your job. He chose not to get vaccinated, and was held out of his job as a result. This was a more than trivial interference with his sincere religious beliefs.

[38] The parties' submissions about the health benefits of vaccines are misplaced. The issue is not whether vaccines save lives; the issue is whether the grievor has a sincere religious belief that prevents him from being vaccinated. I have concluded that the grievor sincerely believes that he can only take medication when necessary to save his life, that he sincerely believes that this vaccine is not necessary, and that his belief has a nexus with religion. Whether he is right in so believing is not the point, and diving into that issue would require me to assess the objective truth of his religious belief. This is precisely what the Supreme Court of Canada warned against, and it was very clear that a claimant "should not need to prove the objective validity of their beliefs" (see *Amselem* at para. 43).

VII. Conclusion

[39] For these reasons, I have decided to allow the grievance. The grievor has shown a nexus between his belief and religion and that he is sincere in his belief. The interference with his religious belief is non-trivial. As I discussed earlier, the parties asked to bifurcate this grievance so that the issue of remedy will be addressed later, and I will issue an order to that effect.

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

(The Order appears on the next page)

VIII. Order

[41] The grievance is allowed.

[42] The Board retains jurisdiction over this grievance for the purpose of deciding the appropriate remedy.

December 13, 2024

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