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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

**MARVIN CASTILLO**

Grievor

and

**TREASURY BOARD  
(Department of National Defence)**

Employer

Indexed as  
*Castillo v. Treasury Board (Department of National Defence)*

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:** Sogol Naserian, counsel

**For the Employer:** Alexandre Toso, Lauren Benoit, and Norman Chung, counsel

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Decided on the basis of written submissions,  
filed December 13, 2024, and February 21 and March 7, 2025.

### I. Overview

[1] This grievance is about whether Marvin Castillo (“the grievor”) was entitled to an exemption from having to be vaccinated against COVID-19 for religious reasons. I have concluded that he was 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 I 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 to the Vaccine Policy 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 a similar process to that used in *Bedirian*, which is described in detail at paragraphs 9 to 22 of that decision. In essence, the Board heard this case in writing. Both parties filed affidavits, and both cross-examined the affiants in writing. Further, the authorities that the parties relied upon are 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. Grievor's application for accommodation**

[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 26, 2021, the grievor applied for an accommodation under the *Vaccine Policy* on the basis of his religious belief. He sent an affidavit to the employer attesting to his religious belief, using the form required under the *Vaccine Policy*. The text of that affidavit is short and describes his religious belief as follows:

...

*a. That God Created men in his own Image (Genesis 1:27) and therefore I can't altered my body in any way as my body is the temple of the Holy Ghost (1 Corinthians 6:19) and by injecting Gene Therapy (as defined by Pfizer) I'm introducing genetic material that will alter/modify my cells own genome to produce the spike protene.*

*b. All injections used by Canada to deal with the SARS COVID-2 have been, developed, produced or tested using, at any point, cells, tissue or DNA from aborted fetuses. Although, the abortions might have taken place in the 60's and 70's, sin does not have an expiry date. God says all lives are precious expressing severe punishment for those who harm a life even in the womb. (Genesis 9:6; Psalm 36:9; Exodus 21:22, 23) and by receiving the vaccine I partake and become an accomplice of that sin.*

...

[Sic throughout]

[7] The grievor also included a cover letter to that affidavit. The grievor acknowledges that most of it was written by his spiritual advisor, who in turn received it from the Archdiocese of Ottawa. However, he wrote the first two paragraphs of that letter himself, which read as follows:

*I am writing this letter in furtherance to the enclosed affidavit. Allow me to start by saying that I have served both in the Canadian Forces and as Public Servant for almost 26 years and never thought it will come the day that I will have to justify my believes in order to be able to do what I love doing and what I was hired to do, such are the times. Throughout my career, as instructed, I have never discussed my deeply rooted believes and religion with anybody at work, neither have tried to instil my own believes on anybody that thought or acted on a manner different than my own. This needs to be clarified.*

*I am a baptized Catholic, but consider myself a Traditionalist Catholic, seeking an exemption from an immunization requirement. This letter explains how the Catholic Church's teachings may lead individual Catholics, including me, Marvin Castillo, to decline certain vaccines.*

...

[Sic throughout]

[8] Finally, in the email he used to send in his application, he stated:

...

*The fact that I am willing to risk my livelyhood, that of a family in Guatemala stricken by unenpolymment that depends solely on me and an orphange in Tansanya that counts on my monthly*

*contributions for food and shelter, should aid you dispel any doubts you might entertain about the sincerity of my belief.*

...

[Sic throughout]

[9] He included a number of links to websites that he said support his position; however, I did not view them, and neither party argued that it was necessary or helpful for me to do so.

[10] On October 28, 2021, the grievor's manager wrote to him to ask a number of questions about his application for accommodation. The grievor answered a few hours later that day. Those questions and answers read as follows:

...

*1) Can you explain how receiving a vaccine will alter your body? [castillo.mr] I never said a vaccine (as per the official definition of vaccines) can alter your body. As a retired MWO from the CAF I know firsthand the positive effects of properly tested vaccination as I served my country in very austere locations that required a lot of different vaccines.*

*2) If the Covid vaccine were not Gene Therapy (as you claim) would it change your position regarding receiving the vaccination? [castillo.mr] In my original e-mail I provided ample documentation stating as such, it is not my claim, I don't have the expertise to make such determination.*

*3) Can you explain how the vaccines used in Canada have been developed, produced or tested using fetuses? [castillo.mr] Again I never said using "fetuses", they used tissue, cells and fetuses' cell-lines to develop, test and produce the four vaccines currently use in Canada. I provided the supporting documentations on my original e-mail.*

*4) How is this different from getting other vaccines or taking other medication? (It is our understanding that vaccines made out of cell lines are fairly common) [castillo.mr] none of the current Covid-19 Vaccines meets the definition of vaccine. If a medication is ethically produced and the information (production, composition etc) is made available in a timely fashion for us the user, to make an informed decision, don't see a problem using that medication.*

*5) How is this different from getting a virus? [castillo.mr] Don't really understand the question but I assume getting vaccinated from getting the Virus? In the first your body receives an injection of computer generated genetic coding that stimulates your cells into producing a foreign substance (call it spike protein) then your immune system destroys that foreign substance. On the other the virus enters your body, immune systems detects the virus and destroys it. Again, I'm not a SME on the subject but provided ample supporting documentation on my original e-mail. I don't know*

*where the assumption that I'm anti-vaccine came from but I'm not anti-vaccination (as per definition of vaccines), just need to put that to rest.*

*6) How do you reconcile the fact that Pope Francis has received the vaccine and encourages all to get vaccinated, with your own religious beliefs? [castillo.mr] This excerpt is from the Archdioceses of Ottawa [he then quoted from the letter he provided earlier] ....*

...

[Sic throughout]

[11] On November 3, 2021, the grievor was instructed to work from home pending the employer's decision. On November 23, 2021, the employer denied the grievor's application for accommodation.

[12] The employer informed the grievor that he would be placed on unpaid administrative leave effective December 7, 2021. However, the grievor had already been approved for paid leave for part of this period; therefore, he was not placed on administrative leave. On January 5, 2022, the grievor provided a medical certificate in support of a request for sick leave. The grievor went on sick leave with pay on January 10 and then sick leave without pay on February 10. He never returned to the workplace and ultimately retired. He attributes not returning to the workplace to the employer's decision not to support his decision not to be vaccinated.

## **V. Analysis of the merits of the grievance**

[13] 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. In addition to this two-part test, a claimant must show that the impugned rule interferes with their religious belief in a manner that is more than trivial or insubstantial. I have concluded that he meets that element too.

### **A. The grievor's belief is sincere and has a nexus with religion**

[14] The grievor states that he cannot take COVID-19 vaccines because they involve gene therapy and were developed using fetal cell lines, both of which are contrary to his religious beliefs. I will be setting aside gene therapy for the moment and focus on the use of fetal cell lines.

[15] In many other cases, arbitrators have accepted that opposition to COVID-19 vaccines because of the use of fetal cell lines in the development of the vaccines is

religious in nature; see *Canadian Union of Public Employees, Local 129 v. The City of Pickering*, dated June 6, 2023, at para. 49; *Public Health Sudbury & Districts v. Ontario Nurses' Association*, 2022 CanLII 48440 (ON LA) at paras. 48 and 50 ("*Sudbury Public Health*"); *Island Health v. United Food & Commercial Workers Local 1518*, 2022 CanLII 127683 (BC LA) at para. 84; *Island Health v. United Food & Commercial Workers Local 1518*, 2023 CanLII 2827 (BC LA) at para. 84; *Wilfrid Laurier University v. United Food and Commercial Workers Union*, 2022 CanLII 120371 (ON LA) at para. 82; *Canadian Union of Public Employees, Local 79 v. The City of Toronto*, dated April 11, 2023, at para. 64; and *Canadian Union of Public Employees, Local 129 v. The City of Pickering*, dated May 23, 2023, at para. 49. The Board recently came to the same conclusion in *Harrison and others v. National Research Council of Canada*, 2025 FPSLRB 57 at para. 49.

[16] The grievor's case is similar to that in *Sudbury Public Health*. In that case, the employee was Catholic and a member of the Latin Mass — a particularly orthodox and traditional approach to Roman Catholicism. The grievor also refused to be vaccinated because of the use of fetal cell lines in the development of the vaccine. The arbitrator concluded that the employer was required to accommodate that employee's religious beliefs and allowed the grievance.

[17] In this case, the grievor told the employer that he is a Traditionalist Catholic. In the affidavit he filed in support of this adjudication, he explained what it means to be a Traditionalist Catholic (including regular attendance at mass, prayer, use of the Rosary, and regular fasting). Importantly for this case, being a Traditionalist Catholic (according to the grievor) means opposing abortion. This seems almost exactly the same as the case in *Sudbury Public Health*.

[18] In short, the grievor's concerns about fetal cell lines have a nexus with his religion and I have been given no reason to doubt his sincerity.

[19] The employer provides three main arguments for why I should not allow this grievance. I reject all three.

#### **B. The grievor's belief is religious, not just conscientious**

[20] First, the employer argues that the grievor's belief is linked to his conscience, not his religion. I disagree. The employer has latched on to the grievor's letter of October 26, 2021, in which he copied a statement prepared by the Ottawa Archdiocese. That statement explains why some Catholics received the COVID-19 vaccine while

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others did not. That statement says specifically: “The Roman Catholic Church teaches that a person may be required to refuse a medical intervention, including a vaccination, if his or her informed conscience comes to this sure judgment.”

[21] In *Bedirian* and other cases, the Board and arbitrators have concluded that there is a difference between a conscientious objection to the vaccine and a religious objection. In essence, the Board and other arbitrators have rejected an argument that 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” (see *Bedirian* at para. 70).

[22] But that is not what the grievor (or the statement by the Ottawa Archdiocese) is saying. The Ottawa Archdiocese is giving each Catholic the scope to decide for themselves whether being vaccinated is consistent with their faith. I agree with the arbitrator in *Sudbury Public Health* when he stated this:

...

*48. Although the Roman Catholic Church leadership urges members to get vaccinated and has concluded that doing so would not be condonation of, cooperation with, or participation in abortion, as the Court stated in Amselem, the issue initially to be determined does not depend upon what religious leaders suggest or whether an individual's actions are in conformity with the position of religious officials. What is required is a nexus with the religion or creed, a relationship with an overarching system of beliefs of the religion or creed. That is present here, for Latin Mass is opposed to abortion and contraception. The fact that the Latin Mass community takes the position that each member must as a matter of their own conscience determine whether getting vaccinated is condoning, cooperating with, or participating in abortion does not render the decision merely a preference or a singular belief, separate and apart from the overarching doctrine of the Latin Mass community. The individual decision about what one's faith requires of a member to avoid condoning, cooperating with, or participating in abortion remains a decision about how a member interprets and applies their faith, and has a nexus to the individual's creed.*

...

[23] Similarly in this case, the fact that the Ottawa Archdiocese takes the position that each member must as a matter of their own conscience determine whether getting vaccinated is contrary to their faith does not render the grievor's decision separate and apart from his faith. Therefore, grievor's belief has a nexus with religion.



**C. The grievor provided enough information about his religious beliefs**

[24] Second, the employer argues that the grievor did not demonstrate the sincerity of his objection to the COVID-19 vaccine based on his religion when he filed his initial application. The employer says that the grievor did not provide it with any information about his comprehensive system of faith and worship. I disagree. The grievor stated clearly this: “I consider myself a Traditionalist Catholic”, and this: “God says all lives are precious expressing severe punishment for those who harm a life even in the womb. (Genesis 9:6; Psalm 36:9; Exodus 21:22, 23) and by receiving the vaccine I partake and become an accomplice of that sin.”

[25] Similarly, the employer argues that the information that the grievor has provided demonstrates only that he is a religious person in general and does not demonstrate the sincerity of the specific religious beliefs that he relied on in his accommodation request. I disagree. The grievor (in his affidavit filed in this adjudication) describes one of the features of his personal faith as follows: “I participate in the Rosary before mass and one of the main intentions of this Rosary is [an] end to abortion.” The link between his religious practices and the basis of his original application seems obvious. In his original application, he was also clear, stating: “... by receiving the vaccine I partake and become an accomplice of that sin [of abortion].” This is also clear that the grievor considers abortion to be a sin.

[26] As the Board said in *Lemay v. Treasury Board (Department of Public Safety and Emergency Preparedness)*, 2024 FPSLRB 175 at para. 23: “I will not question a grievor’s beliefs simply because they are not articulated with the clarity and precision of a legal professional ...”. The level of detail provided by the grievor was sufficient to demonstrate both his sincerity and the nexus between his belief and his religion.

**D. The grievor’s vaccination history does not undermine his sincerity**

[27] Third, the employer points out that the grievor was a member of the Canadian Armed Forces before becoming a public servant. Members of the Canadian Armed Forces must receive a number of vaccines, both as a condition of service and when they deploy to different locations overseas. The grievor does not deny receiving many vaccines and does not oppose vaccination generally. As I set out earlier, after he applied for accommodation, the employer asked him why he thought that vaccines would change his body. The grievor responded by pointing out that he never claimed that vaccines would change his body, adding, “As a retired MWO from the CAF I know firsthand the positive effects of properly tested vaccination as I served my country in

very austere locations that required a lot of different vaccines.” The employer cross-examined him on this point, as follows:

...

*[Question] 12. In response to question 1) in the email dated October 28, 2021 at 11:55 AM, you stated: “As a retired MWO from the CAF I know firsthand the positive effects of properly tested vaccination as I served my country in very austere locations that required a lot of different vaccines.” Please provide a list of all vaccines you have received, along with the dates on which you have received them.*

*[Answer] I have received various vaccines in my life, and I do not recall the dates for them. Once again I would like to make it abundantly clear, I am not in opposition of Vaccination!! My objection is relating [sic] to gene therapy and aborted foetus cells used for testing and/or producing these vaccines, which violates my religious beliefs.*

...

[28] The grievor’s explanation is clear and makes sense: he is not concerned about previous vaccinations but is concerned about the COVID-19 vaccines because of the use of fetal cell lines in their development (among other things). Contrary to the employer’s submission, this does not indicate a purely secular opposition to the COVID-19 vaccine.

[29] The employer argues that the grievor has not explained how the COVID-19 vaccine is different from the previous vaccines that he received. The employer seems to be arguing that the grievor should go through his previous vaccine history from when he was a member of the Canadian Armed Forces and explain how each vaccine was different from the COVID-19 vaccine. However, the grievor explained in cross-examination that he does not recall all the vaccines he has received or the dates on which he was vaccinated. That is fair enough; I do not believe that many people remember every vaccine they have received in their life. I also noted that the employer filed an affidavit from Yves Gauthier, who was also a former member of the Canadian Armed Forces turned public servant. He wrote:

...

*8. Upon enrolment, as well as in anticipation of being deployed internationally, Canadian Armed Forces members have their immunization records reviewed and are given vaccines to protect them against the following conditions, among others: hepatitis A, hepatitis B, influenza, diphtheria, polio, tetanus, varicella, measles, mumps, pertussis, and meningococcal disease. I estimate that I*

*received upwards of ten doses of the above vaccines during my enrolment.*

...

[30] The employer's witness seems to know what vaccines the grievor likely received and could have identified which of them (if any) used fetal cell lines in their development. The employer could have then asked the grievor why he received those vaccines. It did not.

[31] In conclusion, the fact that the grievor received other vaccines does not lead me to doubt his sincerity. He has credibly explained why he received other vaccines but was unwilling to receive this one.

**E. The employer has interfered with the grievor's beliefs in a way that is more than trivial or insubstantial**

[32] In addition to showing that his belief has a nexus to religion and is sincere, the grievor must show that the impugned rule interferes with his religious belief "... in a manner that is more than trivial or insubstantial" (see *Amselem*, at paragraph 59). The employer also argues that it did not interfere with the grievor's beliefs in a way that is more than trivial or insubstantial because he went on medical leave instead of administrative leave.

[33] The grievor states that his medical condition was caused by or at least related to the employer's decision not to grant him accommodation on religious grounds. I have decided that it is not necessary to assess that claim at this time. Instead, I rely on the Board's decision in *Bedirian*, which stated as follows:

...

*[54] ... 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.*

...

[34] In addition, I rely on the Federal Court of Appeal's recent decision in *Matos v. Canada (Attorney General)*, 2025 FCA 109. The Court of Appeal reiterated the important role that work plays in the lives of individuals (at paragraphs 37-43), and then went on to conclude at paragraph 49 that "a complainant does not have to

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establish that they were fired, demoted or lost income” to show that they were treated in an adverse differential manner.

[35] That the grievor became medically unwell does not mean he suffered no adverse impact in this case or that the impact was trivial or insubstantial. The non-trivial interference was the grievor being forced to choose between violating his religious beliefs or being held out of the workplace. I do not need to decide whether being put to this choice caused his medical condition because being put to the choice was a non-trivial adverse impact.

#### **F. Do not need to consider “gene therapy”**

[36] As set out earlier, the grievor had two reasons for not being vaccinated: gene therapy and fetal cell lines. I have concluded that the fetal cell lines point is sufficient to decide this case, regardless of whether the gene therapy belief has a nexus to religion. As the Board said in *Bedirian* at para. 111: “... 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.” Therefore, even if I were to conclude that the gene therapy point was secular instead of religious, the nexus between the fetal cell line belief and religion is sufficient to decide this case. This means that I do not need to consider whether the gene therapy point has a nexus with religion, and I leave that issue to another case.

#### **VI. Conclusion**

[37] For these reasons, I have concluded that the grievor’s belief has a nexus with religion and is sincere. I have also concluded that the employer interfered with his belief in a non-trivial fashion. Therefore, I will allow the grievance. 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.

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

*(The Order appears on the next page)*

**VII. Order**

[39] The grievance is allowed.

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

June 12, 2025.

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