

COURT Alberta Court of Justice (Civil)

COURT LOCATION **Calgary**  
Calgary Courts Centre, Suite 606-S, 601-5 Street SW  
Calgary AB T2P 5P7  
Phone: 403-297-7217 Fax: 403-297-7374

PLAINTIFF(S) Duong Yee

DEFENDANT(S) WestJet Airlines Ltd.



DOCUMENT **Civil Claim**

**NOTICE TO DEFENDANT(S)**

You are being sued. You are a Defendant. Failure to respond to this Civil Claim may result in a judgment being entered against you. Go to the end of this document to see what you can do and when you must do it.

The Claim arose at Calgary, Alberta on or about October 4, 2021.  
City/Town Date in Full

**1. The Plaintiff(s) claims from the Defendant(s):** (check applicable box(es))

- ☒ \$ 100,000.00 (Amount claimed, not including interest or costs)
- ☒ Interest from the date the claim arose to the date of judgment pursuant to: (check applicable box(es))
- ☐ an agreement between the Plaintiff(s) and the Defendant(s) at the rate of \_\_\_\_\_ % per year.
- ☒ the *Judgment Interest Act*
- ☐ Other (describe the basis for and amount of your interest claim):

- ☒ Costs
- ☐ filing fee and costs for service of the claim and any steps taken up to judgment
- ☒ Other (describe the basis for and amount of any other costs you are requesting):  
See attached Schedule

- ☒ Other (describe any other relief that you are requesting):  
See attached Schedule

**2. Abandonment of excess portion of claim**

(check the following box only if you are abandoning any claim that exceeds the financial jurisdiction of this Court).

- ☒ I abandon that part of the Civil Claim that exceeds the financial jurisdiction of this Court. I understand and agree that I cannot recover in this Court or any other Court the part of my Civil Claim that is abandoned.

3. I will be calling 1 witness(es) at the trial of this matter, including myself.

#### 4. Parties' Contact Information

**Plaintiff(s)** (provide the following information for each Plaintiff)

Last Name, or Name of Company (Corporation or Business/Trade Name) Yee		18 years old or over? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
First Name Duong		Middle Name	
Address for Service (Building, Street, Apt, Unit, PO Box Number) 203-304 Main St SE, Suite 224			
City/Town Airdrie		Province/Territory Alberta	Postal Code T4B 3C3
Daytime Phone Number 986-213-6321	Cellular Phone Number		Fax Number for Service
Email Address for Service james@jsmklaw.ca			Represented by: <input checked="" type="checkbox"/> Lawyer <input type="checkbox"/> Student-at-law <input type="checkbox"/> Agent <input type="checkbox"/> Self
Name of Lawyer / Student-at-law / Agent (if any) James S.M. Kitchen and Jody Wells			
Firm Name (if any)			

**Defendant(s)** (provide the following information for each Defendant)

Last Name, or Name of Company (Corporation or Business/Trade Name) WestJet Airlines Ltd.		18 years old or over? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
First Name		Middle Name	
Address of Most Usual Place of Residence or Registered Office or Place of Business (Building, Street, Apt, Unit, PO Box Number) 22 Acrial Place NE			
City/Town Calgary		Province/Territory Alberta	Postal Code T2E 3J1
Daytime Phone Number 403-444-2600	Cellular Phone Number		Fax Number
Email Address To be determined			

**WARNING** - It is YOUR responsibility to notify the Court office and all other parties in writing of any change in your contact information or address for service. Failure to do so may result in court appearances being held, or an order or judgment being issued against you, without your knowledge.

#### 5. Reasons for Claim

The reasons for the claim by the Plaintiff(s) are set out in the attachment:  
(choose from the following types of claims)

- |  |  |
|--|--|
| <input type="checkbox"/> General Claim (A)                               | <input type="checkbox"/> Personal Injury (other than Motor Vehicle Accident) (G) |
| <input type="checkbox"/> Amount Owning for Goods and Services (B)        | <input type="checkbox"/> Payday Loan (H)   |
| <input type="checkbox"/> Debt Claim (C)                                  | <input type="checkbox"/> Breach of Contract (I)                                  |
| <input type="checkbox"/> Motor Vehicle Accident (D)                      | <input checked="" type="checkbox"/> Wrongful Dismissal (J)                       |
| <input type="checkbox"/> Return of Security Deposit (Damage Deposit) (E) | <input type="checkbox"/> Return of Personal Property (Replevin) (K)              |
| <input type="checkbox"/> Damages to Property (F)                         |  |

**NOTICE TO DEFENDANT(S)**

You only have a short time to respond to this Civil Claim:

- 20 days if you are served in Alberta, or
- 30 days if you are served outside Alberta.

You must either:

1. **Settle** the claim directly with the Plaintiff.

- or -

2. **Pay** the amount plus interest and costs as claimed in the Civil Claim to the Court of Justice office by cash, certified cheque, money order or debit card (if available) only. A court appearance **may** not be necessary if you choose this option.

- or -

3. **Dispute** the Civil Claim within the applicable time set out above, by doing the following:

- (a) Complete a Dispute Note (which may include a counterclaim) giving your reasons for disputing the Civil Claim. If there are parts of the Civil Claim you agree with, check the applicable box in section 2 in the Dispute Note.
- (b) File the Dispute Note and pay the applicable filing fee either in person at any Court of Justice office, or by mail to the Court of Justice location shown on the Civil Claim. The Court of Justice must receive a Dispute Note and the applicable filing fee within the time limit set out above.

**WARNING:**

If you do not pay the Civil Claim or file a Dispute Note within the time limit set out above, the Plaintiff(s) may obtain a judgment against you.

Forms and self-help materials are available at any Court of Justice location and on the Alberta Courts website at:

<https://www.albertacourts.ca/provincial-court/civil>

**Wrongful Dismissal**

The Plaintiff was employed by the Defendant(s) from May 17, 2010 to December 1, 2021, performing  
Date in Full Date in Full

the following work:

Accountant

The Defendant(s) wrongfully terminated the Plaintiff's employment on December 1, 2021.  
Date in Full

As of the date of termination of employment, the Plaintiff was receiving the following compensation:

(Describe the agreed rate of pay - hourly, weekly, salary, bonuses, benefits, etc.)

\$66,500 per annum plus benefits at approximately 18% of salary

The Plaintiff claims against the Defendant(s) the amount of \$ 100,000.00 calculated as follows:  
Amount

<input checked="" type="checkbox"/> severance pay	\$ <u>\$66500.00</u>
<input type="checkbox"/> vacation pay	\$ _____
<input type="checkbox"/> bonuses/commissions	\$ _____
<input checked="" type="checkbox"/> benefits	\$ <u>\$12000.00</u>
<input checked="" type="checkbox"/> other (describe)	\$ <u>\$21500.00</u>

Moral damages

Additional reasons for the claim by the Plaintiff(s) are:

(Briefly describe any additional reasons for your claim against the Defendant(s).)

See attached Schedule

## SCHEDULE

1. The Plaintiff, Duong Yee, claims against the Defendant, WestJet Airlines Ltd., the following relief:
  - a) A Declaration that the Plaintiff was wrongfully terminated by the Defendant;
  - b) General damages of \$78,500, representing twelve (12) months' pay in lieu of notice, including salary and benefits;
  - c) Moral damages in the amount of \$21,500 for mental distress caused by the manner in which the Plaintiff was terminated;
  - d) Pre- and post-judgment interest pursuant to the *Judgment Interest Act*;
  - e) Costs of this action on a substantial indemnity scale, together with Goods and Services Tax payable pursuant to the *Excise Act*; and
  - f) Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

### **The Parties**

2. The Plaintiff, Duong Yee ("Mrs. Yee"), resides in Calgary, Alberta and was previously employed by the Defendant, WestJet Airlines Ltd. ("WestJet").

### **Mrs. Yee's Christian Identity**

3. Mrs. Yee is a Christian, that is, a follower of Jesus Christ. The Holy Bible is the authoritative holy text of Mrs. Yee's religion, being Christianity. Mrs. Yee believes in the inerrancy of the Bible and is duty-bound out of love for Jesus, her God and King, to abide by all of His commands to the best of her ability. As a Christian, Mrs. Yee's religious and spiritual loyalty is to Christ and Christ alone—not to any particular Christian leader or his/her teachings. Accordingly, that some Christian leaders or teachers have endorsed COVID vaccines is religiously irrelevant to the question of whether Mrs. Yee is able to receive the COVID vaccines.

4. Based on her sincerely-held, Bible-based, conduct-governing religious beliefs, Mrs. Yee is religiously unable to receive into her body the COVID vaccines, as this act would constitute a betrayal of her faith in Christ. Christ is not only Mrs. Yee's Lord and Saviour, but also her Healer. Mrs. Yee cannot and does not rely on artificially created vaccines or medicines to prevent sickness, because Jesus speaks of seeking out a doctor when one is sick, not well. Mrs. Yee's sincere religious belief is that she has no need of vaccines in order to maintain her health.
5. The Bible instructs Mrs. Yee to present her body as a living sacrifice, holy and acceptable unto God (Romans 12:1); that the appropriate response to illness is to seek the elders, because the prayers of the righteous will heal the sick (James 5:14); and that the Lord is her refuge and fortress and no pestilence, plague or evil can come near her dwelling (Psalm 91).
6. Mrs. Yee's body is the temple of the Holy Spirit and not her own; she is responsible to honour God with her body (I Corinthians 6:19), which necessarily includes what she permits to enter it. Mrs. Yee's sincere religious belief is that she is commanded to abstain from injecting this foreign substance into her temple. Neither does Mrs. Yee inject any other foreign substances into her body. Mrs. Yee's sincere religious belief is that vaccine ingredients corrupt the sanctity of the blood.
7. Mrs. Yee believes that she will one day stand before God and give an account of her life, including that which she has done with her body and allowed to enter her body; she accordingly seeks God's wisdom in all such decisions (II Corinthians 5:10; Romans 12:2).
8. Mrs. Yee sincerely believes in the doctrine of Christian liberty to decide how best to live her life, including decisions about how she controls her body, in order to keep her conscience clean before God, to Whom she is ultimately accountable.
9. Mrs. Yee has been a follower of Christ for over 5 years. She attends online worship services and weekly Bible studies with her church group to continue understanding God's Word, and communes with her Heavenly Father daily through prayer, worship and Bible reading. Since accepting Christ, Mrs. Yee has received no vaccines of any kind, which she conveyed in her request to WestJet for religious accommodation.

## **Mrs. Yee's Employment History**

10. Mrs. Yee was employed by WestJet for 11 years, from May 17, 2010 to December 1, 2021, during which time she held a number of positions with the airline before occupying the position of Accountant beginning November 14, 2016.
11. Mrs. Yee remained in the accounting position until WestJet terminated her employment on December 1, 2021.
12. Mrs. Yee was never disciplined over the tenure of her employment with WestJet.
13. On May 13, 2021, Mrs. Yee began working exclusively from home. While WestJet's Mobile Workforce Classification Policy stated that she would work from home more than 50% of the time, in reality she worked 100% from home.
14. On August 17, 2021, WestJet advised employees it was developing a COVID vaccination policy. At this time, Mrs. Yee communicated with her Director, Michelle Chan, concerning the steps she must follow to request accommodation on religious grounds.
15. On August 26, 2021, Mrs. Yee received a communication from Michelle Chan detailing the requirements of the "People Delivery team", which included the requirement that Mrs. Yee provide "documentation from her place of worship" that was "signed by the leader of the place of worship" and confirmed that Mrs. Yee was an "active member" and "regularly attended".
16. On September 8, 2021, WestJet announced a mandatory vaccination policy (the "Policy") in the workplace as a condition of employment, but invited accommodation requests from employees who were unable to vaccinate on human rights grounds.
17. Mrs. Yee completed WestJet's required COVID-19 Vaccine Accommodation Request Form (the "Questionnaire"), which she submitted as required on September 20, 2021, along with "documentation from her place of worship". The former included a mix of religiously-focused questions and politically-focused or opinion questions. Mrs. Yee answered all questions of both types candidly and truthfully, whether they concerned her religious beliefs and religious participation or her thoughts, opinions, and political activities.

18. On October 4, 2021, WestJet denied Mrs. Yee religious accommodation by claiming to have known her mind and that her religious beliefs were merely a cover for her “personal preferences” and her view the vaccine was unsafe. WestJet alleged that Mrs. Yee was “philosophically/personally opposed to mandatory vaccination” and therefore actually seeking accommodation for “secular reasons”, not religious ones.
19. On November 1, 2021, Mrs. Yee was placed on an involuntary unpaid leave of absence for one month, which WestJet framed as an opportunity for her to vaccinate. As Mrs. Yee’s religion did not change during the intervening period, and she was accordingly unable to vaccinate, WestJet terminated Mrs. Yee’s employment, purportedly with cause, on December 1, 2021.
20. WestJet recalled union employees once the mandates were lifted, but not non-union employees, despite the fact WestJet is federally regulated and the law dictates that non-union employees of federally regulated companies are entitled at law to similar job protections as union employees, pursuant to the Canada Labour Code and *Wilson v Atomic Energy of Canada Ltd.*, 2016 SCC 29.

## **The Law Versus WestJet’s Position**

### ***The Questionnaire***

21. WestJet’s religious accommodation Questionnaire for employees seeking religious accommodation was designed not to elicit, in good faith, information pertinent to Mrs. Yee’s sincerely-held religious beliefs, but rather to frustrate that process. This is first revealed in a series of questions aimed at eliciting opinions and information about the safety of the vaccines and political activities, such as asking if the employee belonged to any group that protested, denounced, or criticized government public health restrictions.
22. WestJet then proceeded to use the information elicited from Mrs. Yee’s responses to declare, without support for the conclusion, that Mrs. Yee’s request for accommodation was based on a “secular” position derived “philosophically”—that it was an “opinion” and a “personal preference”.



23. WestJet's analysis runs aground in several respects. First, as a matter of both logic and law, religious beliefs do not evaporate in the presence of thoughts and opinions. To say otherwise is to say that Christians and other religious people are not permitted to be whole persons, or are not capable of being whole persons, or both—which is itself discriminatory.
24. If WestJet's conception of the watertight compartments between religious and all other belief were correct, a person would not be capable of believing excessive liquor consumption should be avoided based both on Scripture and on cirrhosis of the liver without invalidating the former belief. A person would not be capable of believing that pornography is both a scourge on society and a scourge on the soul without the latter belief automatically falling away. This is, of course, a logical absurdity.

### ***The Religious Is the Personal***

25. The larger point is that the law specifically rejects WestJet's conception of the religious as extricable from the personal. *Syndicat Northcrest v Amselem*, 2004 SCC 47 does not require the religious claimant to have no thoughts or opinions. *Amselem* could not possibly be more clear on the point that personal beliefs cannot be severed from the religious beliefs of the religious person, characterizing religion as inherently involving “personal convictions or beliefs”, “personal choice and individual autonomy”, “personal or subjective conception”, “personal autonomy”, “personal sincerity”, “personal choice of religious beliefs”, “personal notions of religious belief”, “voluntary expressions of faith”, “profoundly personal beliefs”, “intensely personal” beliefs and “personal religious ‘obligations’”. *Amselem* confirms that religious belief *is* personal belief.
26. The next problem is that it is unclear by what method WestJet reliably separated the sacred from the profane in Mrs. Yee's case, particularly since the way in which she articulated her answers to even the ostensibly secular questions clearly intersects with her religious beliefs. For example, asked about her political activities, Mrs. Yee explained that as a matter of Christian liberty, she participates in groups “peacefully seeking a community to support our freedoms; ie. conscience, religion, beliefs, choice – Jesus came to set the captives free and that we are not to live in bondage”. Mrs. Yee also specified that her purpose for participating

in these groups is not to criticize COVID measures: “This **can...include those** being critical of the covid measures, but **that is not my purpose** for belonging to these groups”.

27. Even Mrs. Yee’s response to the question of whether she has safety concerns about COVID vaccines is inherently bound up in her faith. Her body is the temple of the Holy Spirit and not her own. This religious belief demands that if she does have such concerns, she is religiously bound to abstain from vaccination, not only because she is responsible for how she treats her body, which is to say God’s temple, but also because she must abstain from anything that even appears potentially harmful (1 Thessalonians 5:22) and she is religiously bound to follow the dictates of her conscience, which is God’s Spirit in her—and to do otherwise is sin (James 4:17).
28. The crux of Mrs. Yee’s responses to both the religiously relevant and the ostensibly religiously irrelevant questions **was her religious faith**.

***The Appropriate Inquiry Is Sincerity***

29. The next problem with WestJet’s low-resolution analysis is that *Amselem* makes plain the only appropriate focus is whether Mrs. Yee’s religious beliefs are sincerely held. Having established the undeniably Biblical basis for Mrs. Yee’s beliefs—that is, the nexus to religion—the inquiry moves into one of sincerity of belief. As the SCC states in *Amselem*, all that is necessary to establish religious belief is a person

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

**is sincere in his or her belief.**

30. Religious belief governs conduct, *supra*, and religious infringement is established when a policy interferes with conduct-governing sincerely-held religious beliefs in a way that is

beyond trivial or insubstantial. Such infringement triggers the duty to accommodate to the point of undue hardship.

31. *Amselem* is clear that no confirmation of the belief or practice by a religious leader is necessary; no proof of the established practices of a religion is necessary; no mandatory doctrine of faith supporting the belief is necessary; neither a government body nor a court is in a position to interpret the content of an individual's subjective understanding of his or her religious obligations; the role of a court is to assess mere sincerity of belief, not validity of belief; and sincerity of belief simply implies an honesty of belief.
32. *Amselem* also declines to endorse an objective standard and speaks to the appropriate nature of the inquiry: "[C]laimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively recognized as valid by other members of the same religion, nor is such an inquiry appropriate". Accordingly, when counsel for WestJet states that Mrs. Yee "must establish with **objective** evidence that [her] particular belief or practice is a religious tenet, and a fundamental part of [her] faith", citing to a paragraph of *Amselem* which says nothing about evidence at all and in fact specifically states, "[T]his freedom encompasses objective **as well as personal** notions of religious belief, "obligation", precept, "commandment", custom or ritual. Consequently, both obligatory **as well as voluntary** expressions of faith **should be protected**", WestJet's counsel is offside the law.

### ***Religion Is Not Optional for the Religious***

33. The SCC states in *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, 173 DLR (4th) 1 that religion is "constructively immutable" because it is "changeable only at unacceptable cost to personal identity"—a principle it again affirms in *Quebec (Attorney General) v A*, 2013 SCC 5. Accordingly, sending Mrs. Yee home without pay for a month to facilitate an opportunity for her to vaccinate was tantamount to sending her home without pay for a month to facilitate her changing an immutable characteristic: her religious beliefs. For Mrs. Yee, vaccinating and forsaking her religion are one and the same, rendering WestJet's condition on Mrs. Yee's return to gainful employment discriminatory in effect if not also intent.

34. The law has long rejected arguments that a person can avoid discrimination or intolerance by modifying her behaviours or beliefs and making different choices, basing its position on Supreme Court of Canada jurisprudence. WestJet's condition that Mrs. Yee abandon her religious beliefs on pain of dismissal is unsupportable at law and outrageous.

***Mrs. Yee Complied with WestJet's Policy***

35. Contrary to WestJet's assertion it dismissed Mrs. Yee with cause for failing to comply with its Policy, Mrs. Yee did comply with its Policy, the only way she could, by submitting a *bona fide* request for religious accommodation. Mrs. Yee met her onus pursuant to *Amselem*, documenting evidence of her sincerely-held religious beliefs, with specific references to the Holy Bible, the authoritative text of her religion, being Christianity. It would be otherwise had Mrs. Yee simply ignored the Policy, which contemplated religious accommodation, by refusing to submit a meritorious request; however, that is not what occurred. Mrs. Yee submitted her meritorious request, on time, complete with even the components for which there is no basis in the law to demand, that is, documentation from a religious leader—all in a good faith effort to assist WestJet to the most fulsome understanding of her sincerely-held religious beliefs she could possibly provide.

***Accommodation Was Demonstrably Possible***

36. WestJet could easily have accommodated Mrs. Yee, because Mrs. Yee had already been working **exclusively** from home for 6 months—notwithstanding a technicality in the language of WestJet's Mobile Workforce Classification Policy. For further certainty, Mrs. Yee *in fact* never once set foot on WestJet property for the duration of the work-from-home arrangement, nor was she required to, contrary to WestJet counsel's untrue statement that "she was occasionally required to attend a WestJet office in the usual course of her work duties". Mrs. Yee was **never** required to attend at a WestJet office during her remote work arrangement. Accordingly, WestJet counsel's further arguments around "the highly transmissible nature of Covid-19, the nature of air travel, and the large number of WestJet employees that regularly attend aerodromes and aircraft as well as WestJet offices, such as Pilots, Cabin Crew Members, Customer Service Agents, and Airport Managers" are irrelevant.

37. In this light, it is doubtful accommodating Mrs. Yee would have created any hardship to WestJet, let alone undue hardship—the latter of which is an onerous threshold to meet, particularly in the face of demonstrable evidence that an employee can be easily accommodated by way of practices or procedures which the employer has applied previously. Mrs. Yee occupied a position performable on a remote basis, and for a time, did work remotely. Given that Mrs. Yee’s position was conducive to working from home and the fact she had successfully worked from home, accommodating Mrs. Yee to work from home until the vaccination and testing mandates were lifted would in no way have constituted undue hardship. While an employee is never entitled to her preferred accommodation, the preference of WestJet to once again gather employees in the office, a mere hardship **at best**, is insufficient to ground the claim of undue hardship and deny Mrs. Yee a perfectly workable accommodation. An organization must first identify the most appropriate or ideal accommodation in the circumstances before considering whether it would cause undue hardship. If an accommodation is then shown to cause undue hardship, the next-best accommodation short of undue hardship must be sought and put in place.
38. Other options were similarly available to WestJet, such as requiring Mrs. Yee to self-screen for symptoms, placing her in a private office with appropriate protection such as a Plexiglas barrier, or any other number of creative and flexible solutions. The point is that meaningful procedural and substantive steps must be taken in a genuine effort to accommodate the person seeking accommodation.
39. Even a *bona fide* occupational requirement does not shield WestJet from its obligation to accommodate Mrs. Yee **unless and until** it has meaningfully canvassed **all possible accommodation options** and any risk to safety arising from the accommodation has been “unequivocally established”, as *Canadian National Railway Company v Teamsters Canada Rail Conference*, 2018 ABQB 405, *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3 and *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 make plain. While occupational health and safety figure into the accommodation equation, WestJet is not at liberty to discriminate against Mrs. Yee on an *Act*-protected ground which was easily accommodated in a way that protects health and safety.

40. Mrs. Yee discharged her obligation to demonstrate her sincerely-held religious beliefs with which WestJet's Policy interfered in a manner that is more than trivial or insubstantial. Accordingly, WestJet's failure to seek accommodation solutions for Mrs. Yee in favour of terminating her employment constitutes wrongful termination.
41. The "condition" placed on Mrs. Yee's return to work as expressed in WestJet's letters and its failure to seek ways to meaningfully accommodate Mrs. Yee run afoul of the Supreme Court of Canada's decision in *Amselem*, other SCC jurisprudence, and the *Act*. Accordingly, the termination of Mrs. Yee's employment was without cause, and the common law severance/notice period applies.

### **General Damages: Notice Period**

42. WestJet had no justification for terminating Mrs. Yee for cause because it failed to adhere to its duty at law to reasonably accommodate Mrs. Yee, either by permitting her to continue working remotely, as she had successfully done since May 2021, or by some other method.
43. Among other factors, Mrs. Yee's knowledge, skills, qualifications, experience, record of employment and responsibilities entitle her to general damages equal to a common law notice period of twelve (12) months in the circumstances. At the date of termination, Mrs. Yee was earning an annual salary of approximately \$66,500 and benefits valued at approximately 18% of her salary.

### **Moral Damages**

44. Mrs. Yee pleads that WestJet failed to abide by its duty to act honestly and in good faith, and to deal fairly with her, and further pleads WestJet refused or failed to be open, candid, honest and informative regarding the reasons and circumstances surrounding its refusal to grant her request for accommodation, such refusals or failures constituting actionable independent wrongs.
45. The decision by WestJet to deny Mrs. Yee's reasonable request for accommodation—accommodation easily granted, given that her job in no way required her to attend at the office—was effectively a decision to terminate her employment.

46. The dismissal was allegedly for cause, stemming from alleged non-compliance with the Policy, but in reality, the “non-compliance” was on the part of WestJet, which failed or refused to abide by its own Policy to provide accommodation, and in fact frustrated the accommodation process.
47. WestJet did not assess Mrs. Yee’s request for accommodation in good faith, as evidenced by the framing of WestJet’s accommodation assessment Questionnaire, the unlawful demands WestJet placed on Mrs. Yee’s request for accommodation, i.e. the requirement for a spiritual leader to weigh in on what Mrs. Yee believes, WestJet’s impoverished analysis of Mrs. Yee’s Questionnaire responses, and WestJet counsel’s misrepresentations of the law concerning religious infringement and accommodation.
48. WestJet’s Questionnaire had a built-in snare for any Christian making a good faith attempt to respond to its questions. This is because Christians believe their bodies are temples of God’s Spirit, and not their own. Mrs. Yee must therefore abstain from placing anything harmful or even potentially harmful in her body, while necessarily answering the question of whether she opines the COVID vaccines may be harmful in the affirmative. WestJet’s tactic of eliciting the latter opinion to negate Mrs. Yee’s religious objection was a bad faith move to frustrate the accommodation application from the start, by placing a question in the accommodation application which specifically serves to stymie the authentication of a religious belief on which a policy trenches. This alone signals a lack of intention to consider the request in good faith.
49. Similarly, the questions framed as political questions frustrated the accommodation process because religious people often participate in peaceful protest for religious reasons. For example, a pro-life rally could be seen as a political activity, but the overwhelming majority of religious participants would be in attendance for **religious**, as distinct from political, reasons. Accordingly, WestJet’s use of questions concerning ostensibly politically-focused activities around vaccine mandates creates a similar quagmire for the authentically religious person, ostensibly political activities attracting religious objectors who are opposed to certain policies for **religious** reasons. WestJet’s procedure, then, of using Mrs. Yee’s religious answers to questions it had framed as political in order to defeat her religious accommodation request is strategic and bears indicia of a bad faith process.

50. It is noteworthy that Mrs. Yee responded to such questions with clearly religious answers, which WestJet ignored, stating that her reasons for objecting to the COVID vaccines were secular. This thinly-veiled abuse of the Questionnaire to reach WestJet's desired outcome would cause a reasonable person, properly apprised of the circumstances, including the applicable law flowing from *Amselem*, to apprehend WestJet's lack of intention to consider the request in good faith.
51. WestJet was further not at liberty to demand Mrs. Yee suppress her immutable characteristic on pain of dismissal, and the suggestion it gave her thirty days to do something the SCC has plainly stated is not possible is not only callous; it is unsupportable at law.
52. It is trite law that employers must accommodate employees to the point of undue hardship if employees trigger an employer's duty to accommodate by demonstrating a protected ground is engaged by the employer's conduct or policies. Applied to the circumstances of the case at bar, WestJet had a duty to accommodate employees such as Mrs. Yee who are unable to comply with a policy requirement to receive either COVID vaccines or COVID testing as a result of their religion, religion being a protected ground pursuant to the *Canadian Human Rights Act*.
53. Mrs. Yee submitted a detailed request for accommodation to WestJet that comprehensively articulated her sincere religious beliefs, supported with reference to Scripture from the Holy Bible, the authoritative text of Mrs. Yee's religion. In this way, Mrs. Yee discharged her onus to establish that her beliefs are sincerely-held, have a nexus to religion, being Christianity, and with which WestJet's Policy would interfere in a manner that is more than trivial or insubstantial. Mrs. Yee's protected ground established, WestJet's duty to accommodate was triggered. WestJet failed in both its procedural and substantive duty to accommodate.
54. Mrs. Yee's religious beliefs are so sincerely held, she could not violate them, even on pain of unjust dismissal from her employment. WestJet knew very well that Mrs. Yee had complied with the requirement of the Policy to request accommodation on the basis of her religion and was only "non-compliant" with the Policy because of WestJet's refusal to adhere to the Policy and its obligation at law to either provide reasonable accommodation or demonstrate that doing so would amount to undue hardship.



55. The manner of discrimination against Mrs. Yee—the callous disregard for her beliefs, her need for accommodation, and her dignity—inflicted mental distress, anguish, humiliation, and damage to her self-respect, self-esteem and self-worth. These consequences Mrs. Yee suffered and continues to suffer were reasonably foreseeable by WestJet when it elected to treat Mrs. Yee in an “untruthful, misleading or unduly insensitive” manner, including “misrepresenting the reason for its decision”.
56. The actions of WestJet involve more than mere discrimination in the form of denying accommodation. The unlawful demand WestJet made of Mrs. Yee, that is, its requirement she discard the most crucial component of her identity—what the SCC has described as immutable—on pain of termination, was unconscionable. The Questionnaire, designed to frustrate rather than aid Mrs. Yee in her effort to demonstrate her need for religious accommodation by posing religiously irrelevant questions, the answers to which could then be misinterpreted to subvert her protected characteristic, crystalizes WestJet’s bad faith. WestJet’s thinly veiled denial procedure signals contempt for Mrs. Yee’s religious beliefs, disdain for her statutory human rights, and indifference for her dignity as a person with a protected characteristic.
57. Mrs. Yee accordingly claims moral damages pursuant to *Keays v Honda Canada Inc.*, 2008 SCC 39 in the amount of \$21,500.
58. Contrary to WestJet counsel’s assertion, COVID vaccination/testing was not a *bona fide* occupational requirement such that an inability to receive the COVID vaccines or undergo testing could be a ground for termination for cause. Aside from the issue of its discriminatory behaviour toward Mrs. Yee, it was not open to WestJet to terminate Mrs. Yee without pay in lieu of notice for not receiving the COVID vaccines and declining to undergo testing.
59. At the time of Mrs. Yee’s termination, she had been with WestJet for 11 years. She was good at her job, enjoyed it, and had the respect of her colleagues and managers. She had no plans to leave WestJet.

## **Statutes and Regulations**

*Alberta Rules of Court*, Alta Reg 124/2010

*Excise Tax Act*, RSC 1985, c E-15

*Judgment Interest Act*, RSA 2000, c J-1

## **Appropriate Venue**

The Plaintiff proposes this matter be tried virtually, or, in the alternative, in Calgary, Alberta.

August 15, 2023

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