

CITATION: Krysac v. Chatham-Kent (Municipality), 2025 ONSC 5559
COURT FILE NO.: CV-23-1146 (Chatham)
DATE: 20251001

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
SUZANNE KRY SAC	)	
	)	James SM Kitchen, for the Plaintiff
Plaintiff	)	
	)	
– and –	)	
	)	
	)	
MUNICIPALITY OF CHATHAM-KENT	)	Emily S. Crawford, for the Defendant
	)	
Defendant	)	
	)	
	)	
	)	
	)	
	)	
	)	HEARD: February 10 to 14, 18 to 20, May 23, and September 11, 2025

REASONS FOR JUDGMENT

DUBÉ J.:

A. INTRODUCTION

- [1] The plaintiff, Suzanne Krysac, brings an action arising from her wrongful dismissal as an employee of the Municipality of Chatham-Kent (“Municipality” or “the defendant”) on the discriminatory ground of creed. This is a cause of action apart from the *Human Rights Code*, R.S.O. 1990, c. H.19 (the “Code”) and within the jurisdiction of the Court. More specifically, the plaintiff alleges wrongful dismissal arising from the defendant’s failure to accommodate her sincerely held religious belief in relation to the Municipality’s COVID-19 testing (“COVID-19 testing” or “testing” or “rapid antigen testing”) requirements.
- [2] The defendant submits that as an employee of the Municipality, the plaintiff was not discriminated against due to her religious beliefs against COVID-19 testing or, even if she was, they had just cause in the circumstances to do so as the plaintiff was unable to meet the essential elements of her job. According to the defendant, the plaintiff is therefore not

entitled to any notice, pay in lieu of termination, or any other amounts under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (“ESA”).

B. THE BACKGROUND FACTS

- [3] My review of the background evidence is limited to those facts that are admissible, are significant to the central issues, or provide necessary context to appreciate and determine the relevant issues.
- [4] The parties filed an Amended Agreed Statement of Facts (“ASF”). The parts of the ASF that I believe are most relevant to the central issues at hand are as follows:
- i. The plaintiff lives with her husband and her child.
 - ii. The plaintiff completed a one-year certificate in Bible and Theology and one year of a Bachelor of Arts and Social Science at Providence Bible College. After attending Providence Bible College, the plaintiff transferred to the University of Waterloo and completed her Bachelor of Arts in Sociology with Honours.
 - iii. The plaintiff commenced her employment with the Municipality in January 2005 on a temporary full-time basis as an Ontario Works Case Worker. She continued in another temporary full-time position as an Ontario Works Case Worker until June 2007. The plaintiff was ultimately hired as a full-time permanent Ontario Works Case Worker (later known as case manager) effective June 11, 2007.
 - iv. The plaintiff’s case manager position required her to split her time conducting eligibility reviews for employment income assistance as an Eligibility Review Officer (“ERO”) and enhanced verification process investigations as an Enhanced Verification Process Worker (“EVP”), reviewing specific Ontario Works recipients’ ongoing eligibility for financial assistance.
 - v. On October 1, 2021, the Municipality issued a policy entitled, “COVID-19 Vaccination Verification and Testing Policy” (the “Policy”).
 1. The Policy applied to the plaintiff in her employment position with the Municipality.
 2. The Policy applied to all Municipal employees with limited exceptions, including those working remotely.
 3. Unvaccinated employees without an approved exemption or negative test would not be permitted to access the Workplace.
 4. The Policy stated that non-compliance with the Policy was subject to possible discipline, up to and including termination.

- vi. The plaintiff was notified by the Municipality of the introduction of the Policy by email. She was aware from the onset that non-compliance could result in termination.
- vii. On October 18, 2021, the plaintiff contacted the Municipality's Human Resources Division via email to request accommodation under the Policy. She advised in her email that she was unable to comply with the Policy's vaccination or testing requirements due to her Christian beliefs.
- viii. On October 22, 2021, the plaintiff met virtually with Rafael Robinson, the Municipality's Manager of Health, Safety and Wellness, and Georgina Feys, the Manager of Labour Relations, to discuss the plaintiff's request for accommodation under the Policy. The purpose of the meeting was for the Municipality to gather additional information from the plaintiff to consider her request. The meeting proceeded as follows:
 - 1. Ms. Feys asked if the plaintiff belonged to a specific denomination.
 - 2. The plaintiff advised that she was a follower of Jesus Christ.
 - 3. Ms. Feys asked the plaintiff to explain how her beliefs called for her to refrain from the testing component of the Policy.
 - 4. The plaintiff responded that she was not able to comply with the testing requirements of the Policy as she belonged to God.
 - 5. The plaintiff also responded that there were no studies or information on materials or ingredients in testing materials, and that the mechanical agitation of the test may impact the blood-brain barrier.
 - 6. Ms. Feys asked if the plaintiff had received other vaccinations and if so, how the COVID-19 vaccinations differed.
 - 7. Ms. Feys explained that the Chatham-Kent Medical Officer of Health, Dr. David Colby, had specifically confirmed to the Municipality that no human tissues were used in the development of approved COVID-19 vaccines.
 - 8. The plaintiff advised that the accommodation she sought under the Policy was that she be permitted to continue in a 100% remote work arrangement.
 - 9. At the conclusion of the meeting, Ms. Feys told the plaintiff she would continue to work remotely while her request for accommodation was reviewed by the Municipality.
- ix. On October 25, 2021, the plaintiff emailed Ms. Feys and Mr. Robinson to advise that she had been expected to be in the office to perform her crisis worker shift on

November 15, 2021. As it was, sufficient staff had been scheduled for that date and the plaintiff would complete her work remotely.

- x. On October 29, 2021, Ms. Feys emailed the plaintiff to advise that the plaintiff's request for accommodation was being reviewed.
- xi. On November 19, 2021, the plaintiff met virtually with Mr. Robinson and Ms. Feys for a second time to discuss her accommodation request.
 - 1. Ms. Feys suggested that the COVID-19 testing procedure under the Policy was a reasonable accommodation strategy for the plaintiff which did not require vaccination.
 - 2. Ms. Feys asked the plaintiff why testing was not acceptable to her.
 - 3. The plaintiff responded that it came back to her faith. She stated she could not place money before God and that if she submitted to testing, she would be renouncing God.
- xii. On March 15, 2022, the Municipality sent a letter to the plaintiff advising that the Municipality did not require the plaintiff to obtain the COVID-19 vaccination, but that there was insufficient information to exempt the plaintiff from COVID-19 testing requirements based on her religious beliefs. The Municipality also stated that it was prepared to consider any further information she could provide to demonstrate that abstention from testing was a requirement of the plaintiff's faith.
- xiii. On March 22, 2022, the plaintiff emailed the Municipality a copy of a letter from Reverend Tom LaBonte supporting the plaintiff's request for accommodation under the Policy because of Christian beliefs. The document was in Word Document format. Reverend LaBonte was a member of the plaintiff's church.
- xiv. A letter sent to the plaintiff dated May 4, 2022, advised that if the plaintiff elected not to be vaccinated, the plaintiff was expected to upload negative test results to the Municipality's online platform beginning on May 23, 2022. The letter went on to advise that non-compliance with the Policy may result in discipline, up to and including termination.
- xv. On June 20, 2022, the Government of Canada rescinded its COVID vaccine requirement for the federal workforce.
- xvi. A letter sent to the plaintiff dated July 13, 2022, stated that the plaintiff must comply with the Policy by no later than July 25, 2022.

- xvii. On July 22, 2022, a series of exchanges took place between the plaintiff and the new Manager of Health, Safety and Wellness, Jennifer Brisco:
1. The plaintiff wrote an email to Ms. Brisco to inform her she was unable to comply with the Policy without violating her religious beliefs.
 2. The plaintiff sought clarification regarding the impact on her employment if she remained non-compliant with the Policy by July 25, 2022.
 3. Ms. Brisco wrote an email to the plaintiff to advise that if the plaintiff was non-compliant with the Policy by July 25, 2022, her employment would be deemed terminated.
 4. The plaintiff wrote an email to Ms. Brisco to ask whether her termination would be with cause.
 5. Ms. Brisco wrote a responding email to the plaintiff advising that the termination would be with cause.
- xviii. On July 25, 2022, the plaintiff wrote an email to Ms. Brisco to confirm that she did not have a vaccination status or test results to upload. She wrote that she understood her employment had been terminated.
- xix. On July 28, 2022, Dr. April Rietdyk, General Manager of Community Human Services, sent a formal letter to the plaintiff confirming termination of her employment, effective immediately, due to the plaintiff's failure to comply with the Policy.
- xx. At the time of the plaintiff's termination in July 2022, the plaintiff was in the position of case manager. This was a non-unionized position and there was no written employment contract outlining the terms of the plaintiff's employment.
- xxi. The plaintiff's working relationships with her direct supervisor and co-workers were positive throughout her employment tenure.
- xxii. The plaintiff did not seek or receive any medical or mental health treatment for health or mental health concerns arising from her termination.
- xxiii. Dr. Rietdyk was, at all material times, the General Manager of Community Human Services for the Municipality of Chatham-Kent. Her portfolio included her having acted as the senior administrator for the Chatham-Kent Public Health Unit. As the senior administrator for the Health Unit, Dr. Rietdyk worked with Dr. Colby, who was the senior medical professional for the Health Unit and was the "Medical Officer of Health" under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7.

- [5] The facts specific to Mrs. Krysac's religious beliefs are also relevant to the proper determination of this case.
- [6] In her October 18, 2021 email to the Municipality, Mrs. Krysac outlined several reasons for her opposition to vaccination and testing:
- Her sincerely held religious beliefs as a follower of Jesus Christ.
 - It is the inherent right grounded in Scripture that every person be able to assert their freedom to decline any unwanted medical treatment or procedure.
 - Christians are instructed by Scripture to view their bodies as temples of the Holy Spirit and to steward their bodies accordingly as being ultimately accountable to God, whose image they bear.
 - She could not forsake her God and cede his rightful authority over her body to the Municipality to make medical decisions for her body or undergo medical testing. She states this violates her religion.
 - She is convicted in her conscience and religious belief that this testing was unnecessary and harmful, and that it cedes ownership of her body to the Municipality.
 - The Bible is clear that she cannot serve two masters, in this case God and money. She believes an individual opposed to being vaccinated or tested, as informed by knowledge and conscience, was bound by the Lord Jesus to not be vaccinated or tested. This is recognized as God's will. To do contrary to conscience is sin.
- [7] The plaintiff's notes regarding discussions held with Ms. Feys and Mr. Robinson on October 22, 2021, and November 19, 2022, are summarized as follows:
- With regards to testing, God created the world and people. People are made in his image. She bears the image of God. She has God's image and inscription. Jesus died on the cross. His blood purchased her. She belongs to him and rest under his authority.
 - Her body is a temple of the Holy Spirit, and she is required to be a good steward of this. If she were to allow an employer or the government to make decisions on her body, she would be making money an idol and supplanting God. She is under God and belongs to him.
 - She would be replacing God with money and renouncing him if she submits to testing. She cannot serve both God and money.
- [8] Upon learning that compliance with the Policy allowed for rapid antigen testing as an alternative to vaccination, Mrs. Krysac sent an email to Ms. Brisco on March 22, 2022,

outlining her reasons for refusing to comply. The key points from that email are summarized as follows:

- She is a member of the Christian church, which was established over 2000 years ago. Her faith is based on being a follower of Jesus Christ, who lived, died, and was resurrected. He saves us from our sins and gives us eternal life.
- This religious establishment is not confined by language, race, nationality, geography, or buildings. She regularly engages with a community of believers as they worship Jesus Christ, a custom of her fellow believers for thousands of years, and throughout the world. The Bible is the Word of God and the ultimate authority.
- Her religious faith requires that she have no other gods before the God of the Bible. In putting God first in her life and loving Him with all of her, she diligently seeks His will and His direction in her decisions. This involves praying, searching the Bible, and seeking wise counsel from fellow believers. She has done this and continues to do this regarding the Municipality's Vaccine and Testing Policy.
- In placing this decision before God, she has continually been led to see that to give the Municipality authority over her body (vaccine or testing) would be to supplant God and to serve or worship money.
- Through God's commands, she is convinced that to follow the Municipality's Vaccine and Testing policy would be to break faith with her God. These sincere and deeply held convictions are central to her faith.
- To engage in testing at the Municipality's command would be to engage in perpetual and intentional sin and elevate money as an idol. If she believes something to be wrong and chooses to do it, she sins.
- There is forgiveness of sin through repentance and faith in Jesus Christ, but this is not a license to sin.

[9] Finally, following notice of her deemed termination by registered letter dated July 13, 2022, the plaintiff sent an email to Ms. Brisco and Ms. Feys on July 22, 2022, in which she stated the following:

- As a follower of Jesus Christ, her whole person, including her body, belongs to Jesus. She is created in God's image and must render to God the things that are God's. She has been bought at a price – the price of Jesus' blood. She is no longer her own.
- Her body is a holy temple of God and is under God's authority. It would be idolatry to give the Municipality authority over her body. It would be sin and would violate her faith.

- She does not worship a vaccine manufacturer, Health Canada, or the Municipality. She continues to pray for God's leading in her life and she will submit to his authority.
- She is not resigning, nor does she wish to be placed on leave.

C. LEGAL ISSUES

[10] The issues to be determined are:

- i. Issue one: Was the plaintiff discriminated against in her employment on the basis of creed under the *Code* in respect to the defendant's COVID-19 testing policy?
- ii. Issue two: Was the plaintiff wrongfully terminated from her employment with the defendant?

D. LEGAL ANALYSIS

Issue One: Was the plaintiff discriminated against in her employment on the basis of creed under the *Code* in respect to the defendant's COVID-19 testing policy?

[11] Sections 5 and s. 11(1) of the *Code* reads:

Employment

5. Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Constructive discrimination

11(1). A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

[12] The Supreme Court of Canada stated in *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360, at para. 33 that to establish a *prima facie* case of discrimination, the plaintiff must prove, on a balance of probabilities:

1. that they have a characteristic protected from discrimination under the *Code*;
2. that they experienced an adverse impact in their employment; and
3. that the protected characteristic was a factor in the adverse impact.

[13] In *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551, at para. 56, the Supreme Court of Canada set out the test for discharging the burden of demonstrating a *Code* protected characteristic of religion:

[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.

[14] The interference with the religious practice must be more than trivial or insubstantial: *Amselem*, at para. 59.

[15] The Superior Court of Justice in *Jazairi v. Ontario Human Rights Commission*, 146 D.L.R. (4th) 297 (Div. Ct.), at p. 308, *aff'd* 175 D.L.R. (4th) 302 (O.C.A.), found that a religious belief is a component of the term "creed."

[16] The plaintiff argues that a claimant need not satisfy any objective test in demonstrating a sincere, conduct-governing religious belief under the *Amselem* test. Mrs. Krysac submits that the court in *Amselem* couches the language of religious belief not only in subjectivity, but also individuality. *Amselem* is clear that no confirmation of belief or practice from a religious leader is required, at para. 69; no proof of the established practices of a religion is necessary, at para. 67; no mandatory doctrine of faith supporting the belief is necessary, at para. 47; neither a government body nor a tribunal is in a position to interpret the content of an individual's subjective understanding of his or her religious obligations, at para. 50; and the role of a tribunal is to assess mere sincerity of belief, not validity of belief, at para. 51.

- [17] According to the plaintiff, *Amselem* declines to endorse an objective standard and speaks to the appropriate nature of the inquiry, at para. 43:

[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 for courts to make.

- [18] The defendant argues that a singular held belief, meaning a belief held by one individual on one particular issue, lacks the necessary connection to a particular and comprehensive system of faith and worship to attract the protection of “creed” under the *Code*. In other words, the plaintiff’s refusal to participate in rapid antigen testing must be rooted in a particular and comprehensive system of faith.
- [19] The defendant asserts that the plaintiff’s evidence at trial is that she prayed regarding the testing requirements, was guided individually by her dialogue with God, and concluded in her conscience that she could not engage in testing. The plaintiff then explained that because she determined in her conscience she cannot test, testing by extension becomes a sin because “to do so contrary to conscience is to sin.”
- [20] The defendant also argues that the plaintiff’s belief in the need to abstain from COVID-19 testing is not a practice recognized by the Christian faith. Rather, it is a broadly held belief that the plaintiff must follow her conscience as informed by God in all things. In other words, the plaintiff is asking this Court to accept that individual, conscience-based decision-making, when espoused by a person who identifies with a particular religion, attracts protection on the basis of “creed” under the *Code*.
- [21] The defendant further referenced an additional aspect of the plaintiff’s religious opposition to testing, as set out in paras. 51 and 54 of their “Closing Submissions”:

“The other broadly held belief the Plaintiff describes is a belief that she cannot do anything for money that is contrary to her beliefs, as to do so would be to idolize money over God. Again, this belief goes back to the Plaintiff’s conscience-based decision on the singular issue of testing requirements, with the result that once she determined that she was opposed to testing, to do otherwise was to sin – in this respect, by way of idolizing money over God. Again, the Plaintiff’s beliefs on this issue do not reveal a belief that rapid-antigen testing is prohibited by the Plaintiff’s religion. Rather, the Plaintiff’s belief is that because she has determined it is contrary to her beliefs, to comply would be to sin in the form of idolatry.

...

...the Plaintiff’s evidence is that her religion requires her to follow her own conscience, that her body is a temple created by God and that compliance with the Policy is to put money over God.”

- [22] The defendant relies on several tribunal cases to support its position including *Oxford County v. CUPE Local 1146*, 2024 CanLII 105213 (Ont. L.A.); *Griffin v. West Lincoln (Township)*, 2024 HRT0 1403; *DiRenzo v. Toronto (City)*, 2024 HRT0 395; *Brunet v. Ottawa (City)*, 2024 HRT0 1747; *Splitt v. Nature's Corner Bakery and Café*, 2023 HRT0 1692; *Oulds v. Bluewater Health*, 2023 HRT0 1134; aff'd 2025 ONSC 2763; *Lee v. Dollarama*, 2023 HRT0 1429; *Barker v. St. Elizabeth Health Care*, 2016 HRT0 94.

Analysis

- [23] To start, I note that the plaintiff expressed both religious and secular reasons for refusing to take the COVID-19 test. The fact that she also opposed testing for secular reasons does not detract from her *Code* based claim, particularly since the sincerity of her faith is not an issue: *Lemay v. Treasury Board (Department of Public Safety and Emergency Preparedness)*, 2024 FPSLRB 175, at paras. 16-17; *Wilfred Laurier University v. United Food and Commercial Workers Union*, 2022 Can LII 120371 (Ont. L.A.), at para. 88; *Public Health Sudbury & Districts v. Ontario Nurses' Association*, 2022 CanLII 48440 (Ont. L.A.), at para. 50.
- [24] A significant part of this trial focused on examining Mrs. Kryzac's religious beliefs and whether they amounted to a *Code* based exemption. The evidence establishes that the plaintiff articulated her faith to the Municipality in a consistent and sincere manner, and that her opposition to testing was firmly rooted in her religious beliefs.
- [25] In this respect, and unlike some cases cited by the defendant, such as the *Oxford County* decision, the defendant and those employees who testified readily conceded that the plaintiff's religious belief against COVID-19 testing was genuine and unshakeable. I am satisfied, based on the evidence, that the plaintiff's conscience-based decision-making as informed by God gave rise to an honest and deeply held belief that undergoing testing would contravene her religious convictions and constitute a sin. Accordingly, the sincerity of that religious belief is not an issue: *Amselem*, at para. 51.
- [26] While not strictly necessary given my findings regarding the sincerity of the plaintiff's religious beliefs, I nevertheless have an email from Rev. LaBonte dated March 16, 2022. This email was submitted in support of the plaintiff's exemption request, and it confirms that, as a Christian, acting against one's conscience is considered sinful.
- [27] The plaintiff contends that several of the tribunal decisions cited above, including those referencing the non-binding Ontario Human Rights Commission's Policy on Creed, conflict with the Supreme Court of Canada's interpretation of religious freedom in *Amselem*. In essence, the plaintiff's position is that any sincerely held belief, genuinely rooted in religion, qualifies as a creed protected under the law.
- [28] The Policy on Creed is set out in the recent and binding Divisional Court decision of *Oulds v. Attorney General of Ontario et al.*, 2025 ONSC 2763, at para. 57, as follows:
- The belief system is sincerely, freely, and deeply held.

- The belief system is integrally linked to a person's self-definition and spiritual fulfilment.
- The belief system is a particular, comprehensive, and overarching system of belief that governs one's conduct and practices.
- The belief system addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence.
- The belief system has some "nexus" or connection to an organization or community that professes a shared system of belief.

[29] In *Oulds*, the Divisional Court upheld the adjudicator's reliance on the Policy on Creed as reasonable on judicial review. It was noted that while the *Code* does not define "creed", the characteristics outlined in the Policy on Creed are relevant when determining whether a belief system qualifies as a *Code* protected creed. The Divisional Court also found that the Policy on Creed "incorporates *Amselem*," which is "a case followed by the Tribunal in other decisions" (at para. 58).

[30] The defendant ultimately focused primarily on the third characteristic in the Policy on Creed and argues that *Amselem* requires that a religious belief system reflect a particular, comprehensive, and overarching system of beliefs that governs an individual's conduct and practices. The defendant contends that Mrs. Kryzac's religious opposition to testing lacks this critical characteristic, as it is singular in nature.

[31] Support for the defendant's position is found in *Amselem* where the court defined religion as follows, at para. 39:

In order to define religious freedom, we must first ask ourselves what we mean by "religion." While it is perhaps not possible to define religion precisely, some outer definition is useful since only beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held, are protected by the guarantee of freedom of religion. Defined broadly, religion typically involves a particular and comprehensive system of faith and worship.

[32] The Supreme Court's decision in *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, [2006] 1 S.C.R. 256, provides further guidance on *Amselem*. While addressing the sincerity of a religious belief, the court nevertheless emphasised the importance of determining whether there is "consistency of the belief with his or her other current practices." In *Multani*, the concern was whether the claimant sincerely believed his faith required him to wear a metal kirpan at all times: *Multani*, at paras. 35-36.

[33] The plaintiff testified that her belief system holds that if God instructs her not to engage in a particular act – whether it involves introducing substances into her body or engaging in

conduct that she would not otherwise consider to be sinful – and if she does so regardless, she commits a sin. She further stated that these decisions govern all aspects of her life, including her choice of television programs, dietary habits, and decisions regarding alcohol consumption, smoking, and medical treatments such as COVID-19 vaccination. In the instant case, the plaintiff testified that, through prayer, she was instructed by God that submitting to the Municipality’s policy by placing a swab inside her body, would amount to relinquishing ownership of her body – viewed as the temple of the Holy Spirit – to her employer – and that such compliance would amount to prioritizing financial gain over divine instruction – or putting money over God – and acting contrary to God’s will.

- [34] In *Oulds*, the grievor was dismissed for failing to comply with a mandatory COVID-19 vaccination policy and alleged discrimination on the basis of creed. The evidence included Ms. Oulds’ assertion that her conscience was given to her by her Creator, that she accessed her conscience through prayer and meditation, and that it served as her connection to the Creator. Upon engaging in this process, she was told by her Creator “no” with respect to receiving the vaccine.
- [35] The plaintiff submits that *Oulds* is distinguishable on its facts, arguing that, unlike Mrs. Krysac, Ms. Oulds failed to present sufficient evidence to satisfy the third criterion in the Ontario Human Rights Commission’s *Policy on Creed* – namely, the existence of an “overarching systemic component” – as well as the sixth criterion. – and I agree, but only in part. While I find that Mrs. Krysac established a clear nexus between her belief system and religion, both cases share a common problem: a conscience-based decision-making process that is not governed by a particular, comprehensive, and overarching system of religious beliefs.
- [36] I find that as in *Oulds*, the plaintiff’s opposition to testing, in accordance with God’s will, is grounded in her belief that to do so would be a sin. However, I share the defendant’s concern that the plaintiff’s decisions, including her opposition to testing, appear to be issue-specific, and conscience driven. While the extensive trial evidence clearly demonstrates the basis for the plaintiff seeking to follow her conscience as informed by God in all aspects of her life, I find the evidence insufficient to establish that these conscience-based decisions were ultimately guided by a large comprehensive set of religious convictions. In other words, in the absence of further evidence – such as specific examples of other conscience-based decisions – it is not possible to determine whether the plaintiff’s opposition to testing reflects an adherence to a broad overarching set of religious beliefs – rather than a singular belief focused on a specific issue. As affirmed in *Amselem* and explained further in *Multani*, this evidence is essential to support a creed-based exemption under the *Code*.
- [37] Returning to *Oulds*, the Divisional Court upheld the adjudicator’s decision not to reconsider a prior Tribunal ruling that it lacked jurisdiction to hear the HRTO application, finding that the exercise of discretion was not unreasonable. With respect to whether Ms.

Oulds' conscience-based opposition to the vaccination policy constituted discrimination on the basis of creed, the court addressed the issue at paras. 59-60.

...the adjudicator accepted that Oulds' belief may be sincerely, freely, and deeply held and accepting that it may even be linked to Oulds' identity and self-definition" but that it lacked an "overarching systemic component" and, applied the HRTO policy in concluding that Oulds had failed to establish that her refusal to accept the Covid-19 vaccine was creed-based.

The adjudicator's conclusion that Oulds' submissions were "focused on a singular belief around the lack of efficacy of the Covid-19 vaccine and some perception that the vaccine could alter DNA, and the need for autonomy to make this specific vaccine choice" was supported by the evidence. As submitted by Bluewater, the HRTO has repeatedly found that a "singular belief", such as opposing the Covid-19 vaccination, has not met the threshold for the definition of creed: see, for example, *Zammit v. Georgian Radiology*, 2025 HRTO 371 (CanLII).

- [38] I also distinguish the findings of Arbitrator Christopher Rootham in the decision of *Castillo v. Treasury Board (Department of National Defence)*, 2025 FPSLRB 73, at paras. 22 and 23, provided by the plaintiff. In that case, relying on *Sudbury Public Health* at para. 48, the arbitrator found that a grievor's conscience-based refusal to receive a vaccine believed to have been "developed, produced or tested using, at any point, cells, tissues or DNA from aborted fetuses" had a sufficient nexus to religion and relationship with an overarching set of religious beliefs.
- [39] As noted in *Sudbury Public Health* and many of the authorities cited therein, the overarching belief of Catholics – shared by many, though not all adherents, as in *Multani*, is that abortion and the use of aborted fetuses for any purpose including vaccinations is morally prohibited. Therefore, it is entirely understandable that, in both the above cases, the Catholic Church would defer the decision to be vaccinated to the individual conscience of its members, given the need to balance the significant public health benefits of vaccination against the deeply divisive nature of the alleged use of aborted fetal cells in vaccine development.
- [40] In the instant case, there was no suggestion that aborted fetuses played any part in Mrs. Krysac's conscience-based decision to oppose testing. There is also no indication in *Oulds* that the grievor opposed vaccination on the basis of a belief that it was developed using cells derived from aborted fetuses.
- [41] The plaintiff also relies on *Yee v. WestJet*, 2025 ABCJ 87, a decision of Argento J. of the Alberta Court of Justice, which is not binding on this Court. In that case, the plaintiff was terminated for failing to comply with the defendant's COVID-19 vaccination policy after her request for a religious exemption was denied. Although Argento J. found that the defendant lacked a valid basis for refusing the exemption, particularly given that the sincerity of the plaintiff's religious beliefs was not in dispute, he expressly declined to

determine whether the refusal constituted discrimination, noting that such a finding would not affect the outcome: *Yee*, at paras. 81-82. Accordingly, I do not find this decision to be of assistance.

- [42] As in *Oulds*, Mrs. Kryzac's singular belief opposing rapid antigen testing does not, on the evidence, meet the threshold for a creed under the *Code*. While her religious beliefs are sincerely held, there is insufficient evidence to establish the connection to a comprehensive and overarching system of belief as required by the principles set out in *Amselem* and *Multani*.
- [43] In conclusion, based on the evidence, I find that the plaintiff failed to establish, on a balance of probabilities, that she was discriminated against on the basis of creed.
- [44] In light of this finding, it is unnecessary to address the subsequent question, namely, whether the Policy interfered with the plaintiff's ability to act in accordance with her religious beliefs in a manner that is more than trivial or insubstantial: *Amselem*, at para. 59.

Section 11 Analysis under the Code

- [45] Since the plaintiff failed to make out a *prima facie* case of discrimination, the Municipality is not obliged to demonstrate that the Policy's mandatory COVID testing was a *bona fide* occupational requirement in the circumstances and justified under s. 11 of the *Code*.
- [46] In other words, the Municipality need not establish that the Policy was reasonable and *bona fide* in the circumstances. This would have required the Municipality to demonstrate that the plaintiff's religious beliefs could not be accommodated without imposing undue hardship.
- [47] As there is no free-standing right of accommodation under the *Code*, to trigger the duty to accommodate, an applicant must show that there has been direct or indirect discrimination on the basis of one of the *Code* grounds – which the plaintiff failed to do in this case: *R.D. v. County of Wellington*, 2025 HRTO 712, at para. 16.

Issue Two: Was the plaintiff wrongfully terminated from her employment with the defendant?

- [48] In *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161, the Supreme Court of Canada established a two-step factual inquiry for assessing whether an employer has just cause for dismissal without notice, at para. 49:
- i. The court must first determine whether the conduct relied on as the basis for dismissal has been established on a balance of probabilities.
 - ii. The court must then assess whether the nature and degree of such conduct warrants dismissal in the specific context of the case, having regard to all the circumstances.

[49] Regarding the second step of the analysis, the Ontario Court of Appeal has recently reaffirmed that a contextual analysis is required to determine if an employee's misconduct justified summary dismissal. In this analysis, the court must:

- i. determine the nature and extent of the misconduct;
- ii. consider the surrounding circumstances, being the circumstances of both the employee and the employer; and
- iii. decide whether dismissal was warranted and therefore a proportional response, considering the nature and extent of misconduct and surrounding circumstances.

See *Hucsko v. A.O. Smith Enterprises Limited*, 2021 ONCA 728, at paras 30-35.

[50] In *Dowling v. Ontario (Workplace Safety & Insurance Board)*, [2004] 246 D.L.R. (4th) 65 (C.A.), the Court of Appeal elaborated on the three steps of the just cause for dismissal test. The court stated, at paras. 51-53:

The first step is largely self-explanatory but it bears noting that an employer is entitled to rely on after discovered wrongdoing, so long as the later discovered acts occurred pre-termination. See *Lake Ontario Portland Cement Co. v. Groner*, [1961] S.C.R. 553 (S.C.C.).

The second step, in my view, is intended to be a consideration of the employee within the employment relationship. Thus, the particular circumstances of both the employee and the employer must be considered. In relation to the employee, one would consider factors such as age, employment history, seniority, role and responsibilities. In relation to the employer, one would consider such things as the type of business or activity in which the employer is engaged, any relevant employer policies or practices, the employee's position within the organization, and the degree of trust reposed in the employee.

The third step is an assessment of whether the misconduct is reconcilable with sustaining the employment relationship. This requires a consideration of the proved dishonest acts, within the employment context, to determine whether the misconduct is sufficiently serious that it would give rise to a breakdown in the employment relationship.

[51] The underlying principles in relation to misconduct that result in summary dismissal is more fully explained by de Sa J. in *Paul v. Sensient Colors*, 2025 ONSC 3127, who says the following, at paras. 57-64:

The law of employment in Canada requires employers to provide adequate notice before dismissing an employee. Where the employer wishes to

dismiss an employee summarily, on the basis of misconduct, the onus is on the employer to show just cause. As the Supreme Court has explained:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

The unique vulnerability of employees in the context of dismissal was also addressed by the Supreme Court of Canada in *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161 where Iacobucci J. explained at para. 54:

Given this recognition of the integral nature of work to the lives and identities of individuals in our society, care must be taken in fashioning rules and principles of law which would enable the employment relationship to be terminated without notice. The importance of this is underscored by the power imbalance that this Court has recognized as ingrained in most facets of the employment relationship. In *Wallace*, both the majority and dissenting opinions recognized that such relationships are typically characterized by unequal bargaining power, which places employees in a vulnerable position vis-à-vis their employers. It was further acknowledged that such vulnerability remains in place, and becomes especially acute, at the time of dismissal.

Ontario courts have framed just cause as the “capital punishment” of employment law, requiring an analysis of not only whether the employee is guilty of misconduct but whether the nature and degree of the alleged misconduct warrants dismissal.

In *McKinley v. BC Tel*, the Supreme Court mandated a contextual approach that considers all the surrounding circumstances. Inherent in the contextual approach is the principle of proportionality: alternatives to summary dismissal without notice must be considered by the employer before terminating an employee for just cause. As the Court explained at para. 53:

Underlying the approach I propose is the principle of proportionality. An effective balance must be struck between the severity of an employee's misconduct and the sanction imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment...

...

What determines and constitutes serious misconduct warranting dismissal depends upon the facts in each particular case.

Dismissal is warranted when the misconduct is sufficiently serious that it strikes at the heart of the employment relationship. This requires a consideration of the misconduct within the employment context, to determine whether the misconduct is sufficiently serious that it would give rise to a breakdown in the employment relationship.

An employer has just cause for dismissal at common law if an employee's misconduct violates an essential condition of the employment contract, breaches the faith inherent in the employment relationship, or is fundamentally or directly inconsistent with an employee's obligations to his or her employer. [Footnotes omitted.]

McKinley Test

1st Step – *Whether the conduct relied on as the basis for dismissal has been established on a balance of probabilities.*

- [52] There is no doubt that the first step of the *McKinley* test, that conduct relied upon as the basis for termination, namely, non-compliance with the COVID-19 policy, is met. I will explain more fully below.

2nd Step – *The court must then assess whether the nature and degree of such conduct warrants dismissal in the specific context of the case, having regard to all the circumstances.*

- [53] The Municipality is a large organization with a substantial workforce, providing a broad range of services to the residents of Chatham-Kent. The plaintiff was an 18-year employee with no prior disciplinary history. At the time of her termination, she held the position of case manager, with her responsibilities divided equally between conducting eligibility reviews for employment income assistance and performing enhanced verification investigations into the ongoing eligibility of specific Ontario Works recipients.
- [54] As recently as March 2020, she was an acting supervisor for a team of case managers before transitioning to her current role. This role was non-unionized and there was no written employment contract outlining the terms of the plaintiff's employment. Her income at the time of termination was \$77,000 per year. She fully intended to retire from the Municipality and was 12 years from a full pension. By all accounts, she was a good worker and well-liked by her co-workers and direct supervisor. The plaintiff testified that she was emotionally devastated following her termination.
- [55] The defendant concedes that the plaintiff was a long-standing employee with no record of prior misconduct. The Municipality however argues that seniority, past competency, and good work behaviour have little relevance when it comes to determining grounds for termination, especially in circumstances when employee misconduct is non-compliance with a mandatory workplace health policy. Additional factors giving rise to grounds for

dismissal include an employee's persistent breaches of employer policy, where warnings and opportunities to correct have been given. These components are all present in this case.

- [56] The defendant asserts that analysing the employment relationship in this case necessarily includes assessing the nature of the plaintiff's work and the occupational health risks arising in the context of the pandemic. In this respect, the plaintiff's work in a social services role required in-person work, albeit at a reduced level, due to pandemic measures. At no point were the essential duties of Mrs. Krysac's position compatible with always working remotely from home. Further, by May 2022, province mandated in-person duties were increasing. Throughout the period when Mrs. Krysac was temporarily permitted to work entirely from home while her request for accommodation was being reviewed, other staff were required to cover her in-office duties.
- [57] The defendant also submits that the public health context within which the termination occurred is highly relevant in assessing the reasonableness of the workplace requirement for testing, and the proportionality of the employer's response of termination for an employee's failure to comply. Employee compliance with the Policy's requirements was especially important considering the breadth and nature of the services provided by this large government organization and the need to protect its employees and the public it served.
- [58] Furthermore, the Medical Officer of Health had issued a formal recommendation that all employers in Chatham-Kent issue policies mandating vaccination. According to General Manager of Corporate Services and Chief Human Resources Officer, Cathy Hoffman, the Municipality had done a risk assessment and relied on expert advice about the health and safety risks of COVID-19 in the workplace and the efficacy of vaccination and testing at reducing those risks. The adopted policy provided an alternative to vaccination in the form of mandatory testing, as a means of providing options for staff who were concerned about the vaccine. The Municipality had suffered outbreaks in its workplaces in the past and its workplace COVID-19 policy was enacted with a view to keep staff in all workplaces, as well as the community, safe.
- [59] Regarding proportionality of the termination, the Municipality submits that the plaintiff's conduct is sufficiently serious to warrant termination. The defendant argues that the vast majority of reported case law considering similar misconduct aligns with this perspective as there is no reported case of an employee successfully claiming wrongful dismissal further to a refusal to test for COVID-19.
- [60] The defendant relies on the following cases to support their position: *Ontario Power Generation and the Power Workers Union Re: OPG-P-185*, November 8, 2021, unreported, at pp. 7 and 11; *Finnegan v. Lower Lakes Towing Ltd., Re.*, 2024 CIRB 1140, at paras. 101-105; *Lakeridge Health v. OPSEU, Local 348*, 2023 CanLII 61431 (Ont. L.A.), at para. 29; *OPSEU (Titley) v. Ontario (Public and Service Delivery)*, 2024 CanLII 52279 (Ont. G.S.B.), at para. 67; and *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 (Ont. L.A.), at paras. 2, 27, and 29.

- [61] The plaintiff, on the other hand, argues that the line of “just cause” cases beginning with *McKinley* are entirely distinguishable because, in the words of the Supreme Court, “the evidence does not establish that [the claimant] was the victim of discrimination”: *McKinley*, at para. 52.
- [62] According to the plaintiff, the analysis changes significantly where a protected characteristic is engaged. Accordingly, it is argued that any authorities relied on by the defendant without that defining element cannot assist in these circumstances as the protected characteristic is the central feature of the dispute.
- [63] In this respect, the plaintiff submits that she was wrongfully dismissed as no employer can dismiss an employee on the basis of a protected and constructively immutable characteristic and pass it off as termination with cause. She claims the defendant has offered no case law that might suggest otherwise.

Analysis

- [64] The plaintiff failed to establish a *prima facie* case of discrimination based on creed under the *Code*.
- [65] Mrs. Krysac was informed of the Policy’s implementation on October 1, 2021, and understood that non-compliance could result in disciplinary action, including termination. On October 18, 2021, she submitted a request for a creed-based exemption from the Policy, including from testing. While her request was under review, the Municipality temporarily allowed her to work remotely from home.
- [66] During Skype meetings on October 22 and November 19, 2021, with Mr. Robinson and Ms. Feys, Mrs. Krysac requested permission, by way of an “accommodation dialogue” between the parties, to continue in a 100 percent remote work arrangement.
- [67] On March 15, 2022, Ms. Brisco, who had replaced Mr. Robinson as the plaintiff’s direct supervisor, sent a registered letter on behalf of the Municipality requesting additional information to clarify the plaintiff’s creed-based exemption application. The letter advised that the plaintiff would be required to both begin rapid antigen testing by March 28, 2022, and be available to report to the workplace.
- [68] On March 22, 2022, the plaintiff responded to the defendant’s letter from March 15, 2022, by attempting to explain the religious basis for her opposition to the Policy (both vaccination and rapid antigen testing). She did not undergo testing by the March 28 deadline.
- [69] A registered letter was sent to Mrs. Krysac on May 4, 2022. This letter stated that if she elected not to vaccinate, she was expected to upload negative test results beginning on May 23, 2022, otherwise non-compliance may result in discipline up to and including termination. The plaintiff did not upload test results by that date.

- [70] The Municipality sent Mrs. Krysac another registered letter on July 13, 2022, advising that she must comply with the Policy no later than July 25, 2022. On July 22, 2022, Mrs. Krysac sent an email to Ms. Brisco advising that she was not able to comply with the Policy due to her religious beliefs and sought clarification of the outcome for her employment if she was non-compliant with the Policy. The plaintiff stated further that she was not resigning, nor did she wish to be placed on leave.
- [71] Ms. Brisco advised by email that if the plaintiff was non-compliant with the Policy by July 25, 2022, her employment would be deemed terminated with cause.
- [72] On July 25, 2022, the plaintiff wrote an email to Ms. Brisco to confirm that she did not have a vaccination status or test results to upload and understood that her employment had been terminated.
- [73] On July 28, 2022, Dr. Rietdyk, sent a formal letter to the plaintiff confirming termination of her employment, effective immediately, due to her failure to comply with the Policy.
- [74] The Municipality issued three registered letters and one email to Mrs. Krysac advising her to comply with the Policy or face disciplinary action, including possible termination. She refused to comply on each occasion and as warned, was ultimately terminated.
- [75] The defendant characterizes the plaintiff's repeated refusal to comply with the vaccination and testing components of the Policy as insubordination. I do not entirely agree. While Mrs. Krysac did not comply with the Policy, her sole motivation for refusing was rooted in a genuine and deeply held religious belief – placing her in a difficult position: see *Humber River Hospital v. Teamsters Local Union No. 419*, 2024 CanLII 19827 (Ont. L.A.), at para. 47. In these circumstances, I find that her religious convictions mitigate the gravity of her non-compliance.
- [76] That said, I do not accept the plaintiff's assertion that her religious beliefs constitute an immutable characteristic that insulates her from termination for cause. While Mrs. Krysac may regard her beliefs as absolute, any right, even when sincerely held, must at times yield to other compelling interests, including those of co-workers and the broader public.
- [77] As previously noted, I found that the Policy did not discriminate against Mrs. Krysac on the basis of creed. Accordingly, the inquiry into the nature and circumstances of the misconduct centers not on her religiously motivated non-compliance, but on the potential adverse impact of that non-compliance on the Municipality, her colleagues, and the public they serve.
- [78] In *United Food and Commercial Workers Canada Local 175 v. Highbury Canco Corporation*, 2023 CanLII 55400 (Ont. L.A.), Arbitrator Kugler held that the employer could not accommodate the grievor's disability without incurring undue hardship, and that the requirement to wear a face mask under the employer's policy constituted a reasonable and *bona fide* occupational requirement. More importantly, the decision underscores the

importance of context in assessing the nature and seriousness of the misconduct at issue in the present case. At paras. 78-79, Arbitrator Kugler elaborates on this point as follows:

The importance of adopting a contextual analysis is especially acute when weighing health and safety risks arising out of the COVID-19 pandemic. In *Empower Simcoe v. JL*, 2022 ONSC 5371 (CanLII) (“*Empower*”), the Divisional Court quashed a decision of the Human Rights Tribunal of Ontario (“HRTO”) in part because the HRTO “did not sufficiently account for the context of the public health emergency and the evolving nature of the public health pronouncements in which Empower Simcoe was forced to make its decisions.” In finding that it had met its duty to accommodate, the Court noted that Empower Simcoe “pursued its duty by collaborating with local public health officials.” The Court further noted that the extent to which “Empower Simcoe was permitted to deviate from Public Health or MCCSS guidelines was unclear.” The Court noted the unprecedented circumstances brought on by COVID-19 as follows:

...

[4] The issue before the HRTO was one which places into focus the many difficult and unpopular strategies employed in the context of the uncertainties of the dangers posed by the spread of the COVID-19 virus, especially during the early stages of the pandemic when the risk of death from the disease appeared very serious but little had been clearly proven about its effective prevention or treatment. No vaccines were yet available to reduce the virulence of the virus or to tamp down its impact. The pandemic brought normal life for many people in Ontario and elsewhere to a standstill; shuttered many businesses and institutions in this province, including the schools and the courts; restricted the ability of people to move about freely during periods of lockdowns; and has thus far resulted in the deaths of over 13,000 people in this province alone.

The contextual comments made by the Court in *Simcoe*, *supra*, apply with equal force to the present matter. The pandemic was a global catastrophe of epic proportions. COVID-19 is lethal and highly transmissible. It spreads rapidly and has killed many. It curtailed by authorities to reduce the risk of transmission and infection. States of emergency were declared. Schools and businesses were shuttered. Hospitals were overwhelmed. Public health guidelines and directives were being issued and updated on a regular basis as new information about COVID-19 emerged. It is in this context that public health authorities introduced requirements to wear face masks in public places.

- [79] In *Ontario v. Trinity Bible Chapel et al*, 2022 ONSC 1344, Pomerance J. ruled that while the limits imposed by Ontario on restricting certain religious gatherings infringed s. 2(a) of the *Charter*, she was nevertheless satisfied that such limits were justified as reasonable in a free and democratic society. In reaching that conclusion, Pomerance J. emphasized that decisions made by the government amid the uncertainty and disruption of the pandemic warranted significant deference. She elaborated on this point, at paras. 127-129:

Public officials were faced with an unprecedented public health emergency that foretold of serious illness and death. Ontario was called upon to protect public health, while respecting a host of other interests and considerations. Restrictive measures aimed at curbing transmission of the virus would necessarily impact on social, commercial, and religious activities. The task at hand called for a careful balancing of competing considerations, informed by an evolving body medical and scientific opinion. As put by Ontario in its factum, at para. 82, the government was required to “balance risks and benefits that disproportionately impact different sectors of Ontario’s diverse population, including seniors and others with elevated health risks, all within the context of evolving research and knowledge about COVID-19 and a virus that has continued to evolve to produce new more transmissible [variants of concern].

It is frankly difficult to imagine a more compelling and challenging equation. Reasonable people may disagree on precisely where the balance should be struck. Just as the claimants say that limits were too restrictive, others have complained that they were not restrictive enough. The question of what is “just right” will, to some extent, lie in the eye of the beholder. This mix of conflicting interests and perspectives, centered on a tangible threat to public health, is a textbook recipe for deferential review. As it was put by Joyal C.J. in *Gateway*, at para. 292, the court must “be guided not only by the rigours of the existing legal tests, but as well, by a requisite judicial humility that comes from acknowledging that courts do not have the specialized expertise to casually second guess the decisions of public health officials, which decisions are otherwise supported in the evidence.”

Finally, I share the wisdom imparted by the United States Supreme Court in a similar context (*South Bay United Pentecostal Church et al. v. Gavin Newsom, Governor of California, et al.*, 590 U.S. (2020), cited in *Gateway*, at para. 283):

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905). When those officials “undertake [] to act in areas fraught

with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U. S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. See *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 545 (1985).

- [80] In the present case, Dr. Colby emphasized that responding to the fallout from the pandemic while simultaneously drafting and implementing COVID-19-related policies, was akin to “building the plane as they were flying it.” He acknowledged that, in hindsight, different choices might have been made but maintained that decisions were based on the best available information at the time. Dr. Colby further testified that the severity of the crisis is difficult to appreciate in retrospect, noting that Chatham-Kent came dangerously close to being unable to provide life-saving care. Despite best efforts, many residents of Chatham-Kent died from COVID-19.
- [81] Dr. Colby testified that, even as of July 28, 2022, the date of Mrs. Krysac’s discharge, significant uncertainty remained regarding the trajectory of the COVID-19 pandemic. The Omicron variant was actively spreading through Chatham-Kent, and based on recent developments, the emergence of new variants was anticipated. In his view, although the provincial government had relaxed certain public health restrictions by March 2022, this was not a time for the Municipality to become less vigilant against the virus.
- [82] Ms. Hoffman worked closely with Dr. Colby to develop the Municipality’s COVID-19 Policy, which came into effect on October 1, 2021. At that time, Chatham-Kent had the second-highest number of COVID-19 cases in the province, following Windsor. Ms. Hoffman testified that, despite the provincial government lifting certain restrictions, the Municipality chose to maintain its measures due to the precarious local situation. COVID-19 cases remained high in Chatham-Kent, and a significant number of municipal employees were ill from the virus.
- [83] According to Ms. Hoffman, the Policy remained in effect at the time of Mrs. Krysac’s termination, and the Municipality had no intention of repealing it. She explained that local infection rates were rising, and the arrival of the Omicron variant – potentially marking a seventh wave – was expected in October. The province had also advised the Municipality to increase staffing levels in preparation for a projected surge in cases.
- [84] Ms. Hoffman testified that, at the time of Mrs. Krysac’s request, the Municipality was also dealing with several other accommodation requests. Further, in the midst of the pandemic, while continuing to deliver a cadre of services to the residents of Chatham-Kent – many of whom were particularly vulnerable – it was also engaged in taking steps to protect staff so

that services would continue uninterrupted. Ms. Hoffman described the challenges she faced during that period, stating:

“And there are not a lot of things about my job that keep me awake at night, but I would tell you that employees health and safety is absolutely one of them and when we were in the middle of a global pandemic this was real and culpable. We had employees that were sick. We had their family members that were sick. We had employees who couldn’t tend to elder care that they were required to do, who lost parents and family members. They couldn’t be with them. And we were not prepared to knowingly walk into situations that compromised any of that. And so, it was important to get this right; to understand it. And it was important to make sure that the steps we were taking were going to be to keep employees and our customers that we serve safe.”

- [85] Applying this broader context to the case at hand, I now turn to accommodation options that were arguably available to the parties while the Policy remained in effect.
- [86] Ms. Hoffman testified that a leave of absence was not warranted in the circumstances of this case. She emphasized that the fallout from the pandemic required that the Municipality “absolutely” have “all hands-on deck.” This was particularly true in departments such as Employment and Social Services, where Mrs. Krysac worked, serving highly vulnerable individuals who were homeless, disabled, or struggling with addictions. In her view, the Municipality could not afford to operate with less than a full complement of staff, especially given the ongoing uncertainty surrounding the pandemic’s duration and impact. In any event, even if a leave of absence had been offered, Mrs. Krysac ultimately declined to pursue that option as her termination date approached – a decision that, in my view, limits the extent to which her sincere religious objection to testing mitigates the seriousness of her non-compliance.
- [87] Ms. Hoffman testified that no viable accommodation options were available to Mrs. Krysac other than termination. Progressive discipline for non-compliance with the Policy while working onsite was not considered feasible, as it would have posed a serious risk to the health of employees and service recipients, despite existing COVID-19 safety measures. I will elaborate on this point later.
- [88] Another potential option, using banked vacation time, was also explored. In an October 18, 2021, email from Program Director Matthew Keech, it was reported that Mrs. Krysac had accrued a total of 26 days. Mrs. Krysac testified the total was closer to 40 days at the time of termination. Ms. Hoffman took the position that cashing out Mrs. Krysac’s banked vacation days was not a viable option for an employee terminated for cause due to non-compliance with the Policy. In any event, such a measure would have been temporary at best, given the significant uncertainty surrounding the duration of COVID-19-related restrictions, even at the time of her termination in July 2022.

- [89] Other potential accommodations included allowing Mrs. Krysac to continue working unvaccinated and without testing either in a hybrid capacity – partially onsite and partially remote – or entirely from home. As above, Ms. Hoffman described the serious risks associated with permitting occasional onsite work under such conditions, stating the health and safety of staff and their families was paramount.
- [90] Working onsite without complying with the Policy was not a viable option. As previously noted, case managers, including Mrs. Krysac, were expected to meet in person with some of the community’s most vulnerable individuals. Moreover, as of May 2022, the Province had mandated an increase in the amount of time employees were to spend meeting clients face-to-face, further reinforcing the need for strict adherence to health and safety protocols.
- [91] The plaintiff argues that there was no reason why the Municipality should have denied her accommodation request to work from home while the Policy remained in place. According to the plaintiff, for the eight months that it took before the Municipality denied her request, she demonstrated that not only was she able to perform all the essential duties of her job from home, but that the quality of her work was exemplary. Mrs. Krysac testified that she had no ongoing case load that would require her to meet with clients in the office. She stated that on only one occasion as a “volunteer” for a crisis worker shift between October 2020 and July 2021 did she have to ask another person to assist her. On this and other occasions, Mrs. Krysac stated that crisis workers already in the office could easily cover any urgent tasks. As a result, the plaintiff argues that not being able to attend the office as a crisis worker hardly amounted to an essential element of her employment.
- [92] With respect to the option of working entirely remotely, I agree with the defendant. Permitting Mrs. Krysac to work onsite without complying with the Policy would have posed an unacceptable risk to the health and safety of her colleagues and the broader community. Moreover, allowing her to work 100 percent remotely, as she requested, would have placed an undue burden on her co-workers, who were required to assume her responsibilities for an indeterminate period.
- [93] Ms. Hoffman testified that Mrs. Krysac could not remain at home indefinitely and continue performing the essential duties of her role during the pandemic. From her testimony, she appeared to believe that Mrs. Krysac maintained an active caseload, was expected to meet clients in person on occasion, and attended the office a few times per month for crisis shifts, even under the work-from-home arrangement. However, under cross-examination, it became clear that Ms. Hoffman lacked direct knowledge and was speculating about these obligations. Her testimony also conflicted not only with that of Mrs. Krysac, but also with other evidence adduced at trial.
- [94] Accordingly, I assign limited weight to Ms. Hoffman’s evidence regarding the nature of Mrs. Krysac’s duties and instead accept Mrs. Krysac’s testimony that she had no active caseload. That said, with respect to other areas – including those relating to the expectations associated with Mrs. Krysac’s role as a crisis worker – I do not accept the evidence of either Mrs. Krysac or Ms. Hoffman. Instead, I prefer the testimony of Mr. Keech, who supervised

Mrs. Krysac as part of his team of approximately 30 case managers during the relevant period. Her direct supervisor, Megan Carson-Leistra, also reported directly to Mr. Keech.

[95] Mr. Keech confirmed that Mrs. Krysac was one of approximately four out of sixty case managers who did not carry an ongoing caseload. In addition to her roles as EVP – responsible for financial audits of Ontario Works files – and ERO – tasked with investigating potential fraud – she, like other case managers, had “a duty” to attend the office approximately ten days per year to fulfill crisis responsibilities. These shifts involved responding to urgent client needs, many of whom could not be served remotely due to barriers such as lack of internet access. Mr. Keech stated that full coverage required Mrs. Krysac’s in-person attendance. However, between October 2021 and July 2022, she worked from home during her crisis shifts, which required that the schedule of other case managers had to be adjusted to ensure full support for clients in her absence.

[96] When questioned on what would happen if not enough crisis managers were in the office on any given day, Mrs. Krysac became somewhat evasive, as reflected in the following exchange:

THE COURT: November 21. Okay. And if they did not have enough people on site then you would have been expected, you know generally, in the normal course to attend?

A. That was just a broad scheduling. They tended to by default to have that crisis worker in office to make sure they had enough people.

THE COURT: But if they didn’t?

A. If they didn’t have enough people in office?

THE COURT: Yes?

A. Then, they could call more people to come back into the office.

THE COURT: But in the normal course, if they did not have enough people in office; that would be part of your duties, right?

A. They would need a case manager to be in office, yes.

THE COURT: Okay. Anyways, Ms. Crawford, go ahead.

[97] I find that in this and other aspects of her testimony, Mrs. Krysac was not entirely forthcoming and tended to minimize the core responsibilities associated with her role as EVP and ERO by, for example, suggesting that participation in crisis shifts was voluntary.

[98] Mr. Keech also testified that certain EVP and ERO functions required in-person meetings with clients to be fully effective. While Mrs. Krysac claimed to have achieved excellent results conducting interviews strictly by telephone from March 2020 onward, Mr. Keech

emphasized that in-person interviews were “really critical” and “necessary,” to obtain the best results especially during active investigations. He also noted that EROs are specifically trained to observe body language, which can be essential in assessing credibility – something not always possible via Zoom. Additionally, some clients lacked access to technology or sufficient phone minutes, necessitating in-person contact. Finally, by May 2022, province mandated in-person duties were to resume for all EVPs and EROs.

- [99] Mr. Keech testified that case managers were also expected to respond when community emergencies happen. He stated that several emergencies had occurred in the recent past. These emergencies include various floods and quite significantly, the Wheatley explosion, which happened approximately two years prior. At the time of an emergency, case managers were required to attend in person and set up emergency services onsite so that ongoing support could potentially be provided for days, weeks, or even months.
- [100] Mrs. Krysac described such emergencies as “very rare occurrences.” This may be accurate, but their potential impact is both significant and unpredictable. Had a community emergency arisen during her employment with the Municipality, her refusal to be vaccinated or undergo testing would have compromised her ability to fulfill her responsibilities as a case manager to assist affected individuals. This characterization reflects another attempt by Mrs. Krysac to minimize the importance of her core duties.
- [101] Finally, Mr. Keech testified that the duties of the EVP and the ERO could not be performed entirely remotely, or on an indefinite basis. While some tasks could be completed from home for a limited period (perhaps a few months), certain administrative responsibilities, such as pulling files and completing paperwork, required in-office attendance.
- [102] In summary, the evidence demonstrates that when Mrs. Krysac worked remotely as a crisis worker, or attempted to do so, certain essential duties had to be reassigned to other employees who were physically present in the workplace. The fact that she may have performed relatively well from home for approximately eight months, does not mean that that this was a “sustainable” arrangement on an indefinite basis: *Briffa v. Costco Wholesale Canada Ltd.*, 2012 HRTO 1970, at para. 62.
- [103] The evidence further establishes that periodic in-office attendance was an essential component of her other responsibilities, and that attending without vaccination or regular testing would have posed an unacceptable health risk to others. As previously indicated, I accept the testimony of Mr. Keech, whose account was honest and measured and I reject the testimony of Mrs. Krysac where the two diverge. Accordingly, due to her non-compliance with the Policy, Mrs. Krysac was unable to perform key and fundamental aspects of her roles as EVP and ERO which adversely impacted the Municipality, her colleagues, and the public they serve.
- [104] This case presents a situation unlike the circumstances in *Yee*, a case relied upon by the plaintiff. In *Yee*, Argento J. found that the employee was wrongfully terminated for failing to comply with the employer’s vaccination policy due to religious beliefs. In the instant case, I specifically found that Mrs. Krysac’s refusal to comply with the Policy while

working from home had a direct and negative impact on her department's operations and her co-workers – this was not the situation in *Lee*. In that respect, Argento J. said the following, at para. 87:

The Plaintiff's non-compliance with the Vaccination Policy did not prevent her from doing her work before she was placed on unpaid leave. It did not put other employees or members of the public at risk as the Plaintiff was working from home exclusively from May 2021 up to her termination on December 1, 2021. There was no evidence that the Plaintiff's refusal to comply with the Vaccination Policy impacted the operation of her department or its other employees.

- [105] The plaintiff also relies on *Paul*. In that recent decision, de Sa J. held that just cause for termination was not established after the employee refused to disclose her vaccination status in accordance with the employer's policy. However, unlike the present case, de Sa J. found that the employee's vaccination status had "no impact whatsoever" on her ability to meet with customers, and she willingly complied with other pandemic-related safety measures, including temperature checks and masking. As a result, the employee was capable of performing the core duties of her role, and termination was neither necessary nor proportionate. De Sa J. went on to conclude that alternative measures – such as reassigning her from customer-facing duties or granting a leave of absence – would have been more appropriate than termination.

D. CONCLUSION

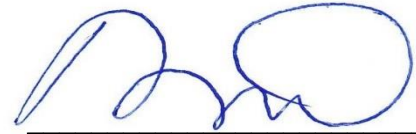
- [106] Notwithstanding Mrs. Kryzac's positive record as a long-standing and valued employee of the Municipality, I find that, in the absence of more proportionate alternatives to address her refusal to comply with the testing requirements of the Policy, termination was the only reasonable course of action available.
- [107] Accordingly, based on a contextual examination of all the circumstances, I am satisfied that the defendant has established that, as a result of the plaintiff's misconduct, she was unable to perform the most basic fundamental elements of her employment and that this misconduct was sufficiently serious to cause a breakdown in the employment relationship, thereby warranting the necessary and proportionate response of dismissal for just cause.

E. COSTS

- [108] I find that the defendant was the more successful party. I urge counsel to attempt to resolve this issue, failing which they may file brief written submissions with the court of no more than five (5) double-spaced pages (exclusive of any costs outlines, bill of costs, dockets, offers to settle, or authorities), in accordance with the formatting standards of r. 4.01 and the following schedule:
- a. The defendant shall deliver their submissions within thirty (30) days following the release of these reasons.

- b. The plaintiff shall deliver her submissions within twenty (20) days following service of the defendant's submissions.
- c. The defendant shall deliver their reply submissions, if any, which shall be limited to no more than three (3) double-spaced pages, within five (5) days following service of the plaintiff's submissions.

[109] If any party(s) fails to deliver their submissions in accordance with this schedule, they shall be deemed to have waived their rights with respect to the issue of costs and the court may proceed to make its determination in the absence of their input or give such directions as the court considers necessary or advisable.



Brian D. Dubé
Justice

Released: October 1, 2025

Krysac v. Chatham-Kent (Municipality), 2025 ONSC 5559
COURT FILE NO.: CV-23-1146 (Chatham)
DATE: 20251001

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SUZANNE KRY SAC

Plaintiff

– and –

MUNICIPALITY OF CHATHAM-KENT

Defendant

REASONS FOR JUDGMENT

Dubé J.

Released: October 1, 2025