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COURT

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ALBERTA

JUDICIAL CENTRE

MEDICINE HAT

APPLICANT

STACEY ANDERSON

RESPONDENT

REXALL PHARMACIES LTD

and

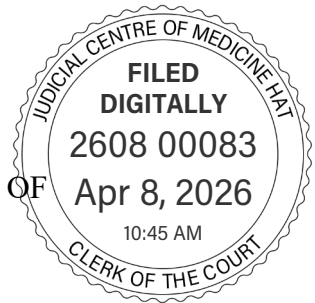
THE ALBERTA HUMAN RIGHTS  
COMMISSION

DOCUMENT

**BRIEF OF THE APPLICANT**

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## OVERVIEW

1. This is an application for judicial review of a decision of the delegate of the Chief of the Commission and Tribunals (“Delegate”) of the Alberta Human Rights Commission (“Commission”) to uphold the summary dismissal of a human rights complaint filed by Stacey Anderson (the “Applicant”).
2. On September 8, 2022 the Applicant submitted a complaint to the Alberta Human Rights Commission against Rexall Pharmacies Ltd (the “Respondent”) alleging discrimination in the area of employment on the basis of the protected characteristic of religion (the “Complaint”).<sup>1</sup> The Applicant was, at the time, unrepresented by legal counsel. The Respondent submitted a response to the Complaint through legal counsel.<sup>2</sup>
3. On January 30, 2025, the Director of the Commission (“Director”) issued a decision to dismiss the Complaint pursuant to section 21 of the Alberta *Human Rights Act* on the purported basis the Complaint has no reasonable prospect of success.<sup>3</sup>
4. On August 20, 2025, the Chief issued the impugned decision pursuant to section 26 of the *Act*, indexed as *Anderson v Rexall Pharmacies Ltd*, 2025 AHRC 85 (the “Decision”).<sup>4</sup>

## FACTS

### **Employment, Vaccination Policy and Testing Requirement**

5. The Applicant, an employee of the Respondent, is unable to vaccinate against covid due to her immutable and protected characteristic of religion.
6. On November 16, 2021, the Respondent effected a vaccination policy requiring unvaccinated employees to submit to rapid antigen testing for each shift.<sup>5</sup> Employees granted human rights exemptions to vaccination on the basis of protected characteristics were paid for

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<sup>1</sup> Certified Record of Proceedings [CROP] at 20-41.

<sup>2</sup> CROP at 43-56.

<sup>3</sup> CROP at 375-85.

<sup>4</sup> CROP at 5-18.

<sup>5</sup> CROP at 182-8 (first version, Sep 13/21); 200-6 (second version, Sep 23/21); and 219-26 (third version, Oct 29/21).

the time spent testing.<sup>6</sup> Employees refused human rights exemptions on the basis of protected characteristics or employees who otherwise decided against vaccination were not paid for the time spent testing.<sup>7</sup>

7. On November 2, 2021, the Applicant submitted a request for accommodation against vaccination on the basis of the immutable and protected characteristic of religion.<sup>8</sup>

8. The Applicant's potentially relevant religious beliefs concerning vaccination were articulated as follows:

I respectfully inform you that due to my conscientious and religious beliefs, I am unable to consent to receive any Covid-19 vaccines and am requesting a reasonable accommodation.

I have informed myself of the risks and benefits of receiving a Covid-19 vaccine. I have learned that the Covid-19 vaccines available at this time carry substantial risks including severe allergic reactions and death, and they have warning labels from Health Canada for the conditions of myocarditis, pericarditis, blood clots, and Bell's Palsy.

The Bible, in the writings of the apostle Paul, teaches me that my body is the "temple of the Holy Ghost" (1 Corinthians 6:19), and that I am not my own but "bought at a price; therefore, glorify God in your body and in your spirit, which are God's" (verse 20). As a living temple, I believe that I must protect my body, and keep it holy, and that I must not put any harmful substances into my body, nor take any action that unnecessarily risks my health physically and spiritually. This is a belief that I observe daily in my choice of diet as well as engaging in other health practices such as abstinence from smoking, alcohol, recreational drugs, or pornography.

Taking this vaccine with its known and unknown mechanisms is the same to me as consuming any of these other harmful substances which my faith prohibits, and as such, it would violate my conscience in doing so. Like the prophet Daniel in the Old Testament who "purposed in his heart that he would not defile himself with the portion of the king's delicacies, nor with the wine which he drank," (Daniel 1:8) but "requested of the chief of the eunuchs that he might not defile himself," I have also purposed in my heart not to take this vaccine in violation of my conscience and religious beliefs.

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<sup>6</sup> CROP at 223 (third version, Oct 29/21).

<sup>7</sup> CROP at 223 (third version, Oct 29/21).

<sup>8</sup> CROP at 228-37.

I further rely on the following references from the Christian Bible, the full text of which I can make available upon request:

1. My faith informs me that my body is the temple of the Holy Spirit. Therefore, I must carefully consider how I treat my body. For this reason alone, I cannot take this vaccine. **1 Corinthians 6:19**
2. My faith further instructs me that whether I eat or drink or whatever I do, I should do all to the glory of God. Taking this vaccination is not, in my opinion, doing something to God's glory. **1 Corinthians 10:31**
3. My faith instructs me that however well-meaning government health provisions are, they may conflict with my personal conscientious convictions and when they do, I am to choose the latter. This is the present case. **Daniel 1:5-8**
4. My faith instructs me that even when government officials think my choices will make me sick or put other lives in danger, I need to follow conscientious conviction. **Daniel 1:10**
5. My faith instructs me that there can be difference of conviction in Christianity. This means that other Christians even in my denomination including those holding positions of leadership may not be persuaded as I am. My convictions are not based on my fellow believers - they are between me and God. **Romans 14:1-5**
6. Likewise, my faith informs me that every individual has to be fully persuaded in their own minds. The evidence for me is not conclusive that this vaccine is safe. I am not fully persuaded in my own mind and therefore cannot conscientiously take this vaccination. **Romans 14:5**
7. My faith informs me that I am to submit to local and federal government when that government is acting for my good. I am not convinced that the local and federal government providing and mandating of the current vaccinations is acting for my good. **Romans 13:1-4**
8. My faith tells me to yield to local and federal governments for conscience's sake, but in circumstances where the civil authorities attempt to override conscience, I must obey God rather than man. Taking this vaccine, and also the mandates of it, are a violation of my conscientious convictions. **Romans 13:5**
9. My faith instructs me that my obligation to my community is love. I am to love others as I love myself. Taking this vaccination encourages others around me that this vaccination is safe and best for them. It communicates a message that I am not convinced is true. And therefore, it is not a loving act towards my community. **Romans 13:8**
10. My faith instructs me to love my neighbor. To openly or silently support mandating this vaccine, places [undue] hardship on my fellow citizens who are not convinced to take it. And therefore, is not the loving thing to do for my neighbor. **Matthew 22:39**
11. I DO NOT believe that taking this vaccine is the "mark of the beast." Yet the economic sanctions in Revelation 13 and the real threatened loss of livelihood are eerily similar. Vaccinated or unvaccinated, my faith calls me to

conscientiously stand against the economic pressure currently placed against people to make decisions under the real and unconscionable threat of economic hardship. **Revelation 13:15-17**

12. My faith teaches me that liberty, freedom of choice, is vital part of God's presence in my life. Where the Spirit of the Lord is there liberty, life and the pursuit of happiness. To support the government and employee pressure to be vaccinated or lose one's job is a violation of this liberty and the denial of God's presence in my life. **2 Corinthians 3:17**

I also believe that innocent life is sacred to God, from conception to birth, to natural death - **Jeremiah 1:5: Before I formed thee in the belly I knew thee**; and before thou earnest forth out of the womb I sanctified thee, and I ordained thee a prophet unto the nations. 6 Then said I, Ah, Lord God!

I must not endorse the killing of human life - **Exodus 20:13** "You shall not murder."

I understand that the manufacturers of the Covid-19 vaccines have used abortion-derived fetal cell lines as part of their development or testing of vaccines. Thus, my sincerely held beliefs prohibit me from participating or benefiting from an abortion, no matter how remote in time that abortion occurred.

After considering the risks, benefits, alternatives, the use of abortion-derived fetal cell lines, I have taken the matter to the Lord in prayer and am convinced that I should not take a vaccine for Covid-19 and that to do so would violate my conscience and religious beliefs.

As noted above, I respectfully request an exemption and accommodations based on my strongly and sincerely held conscientious and religious beliefs in accordance with the provincial human rights legislation which protects me from discrimination based on the protected ground of *creed*.<sup>9</sup>

9. On November 3, 2021, the Respondent requested additional information, specifically: "objective documentary information" establishing that "not being vaccinated is related to or required by a tenet of your religion" including "information relating to your religion from a credible source and a letter from a [*sic*] Official of your religion". At this time, the Respondent also informed the Applicant that "[r]equests for an accommodation are an interactive process" and "we will notify you of the status of your accommodation request once a full review of the documentation has been completed".<sup>10</sup>

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<sup>9</sup> CROP at 235-7. [Emphasis original.]

<sup>10</sup> CROP at 246.

10. On November 6, 2021, the Applicant furnished to the Respondent additional information, including a letter from the organization's in-house counsel, who is now, coincidentally, counsel for the Applicant in the present matter. The letter stated, most notably, that religious adherents are not required to provide third-party verification of their religious beliefs.<sup>11</sup>

11. Notwithstanding the Respondent's lack of entitlement, the Applicant submitted a declaration consistent with her beliefs, authored by the pastoral leadership of Liberty Coalition Canada.<sup>12</sup>

12. From November 16, 2021 to August 22, 2022, the Applicant submitted to the required testing protocol while she awaited the decision and the commencement of the accommodation dialogue, which never occurred.<sup>13</sup>

13. The Applicant received no decision at any time from the Respondent regarding her religious accommodation request.<sup>14</sup>

14. The Applicant worked approximately 184 shifts prior to which she was expected to attend early in order to discharge her obligation to submit to rapid antigen testing, and which she did, subject to the availability of a pharmacy staff member to perform the testing.<sup>15</sup>

15. The Applicant was never compensated for any early attendance at any shift on account of the required rapid antigen testing.<sup>16</sup>

### **Barrier to Full-time Employment**

16. On July 25, 2022 and August 11, 2022, exchanges between the Applicant and a senior staff member of the Respondent, Honeyben Patel, reveal the two were in discussions concerning moving the Applicant to a full-time position, which Patel ultimately dismissed as something "the vaccine policy won't allow", before disclosing the plan to hire someone else instead.<sup>17</sup>

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<sup>11</sup> CROP at 277-8.

<sup>12</sup> CROP at 270-2.

<sup>13</sup> CROP at 81, 82, 90.

<sup>14</sup> CROP at 128, 129, 130-1, 136, 300.

<sup>15</sup> CROP at 156.

<sup>16</sup> CROP at 81.

<sup>17</sup> CROP at 152-3.

## LAW

### Standard of Review

17. Reasonableness is the standard of review of administrative decisions in all but the narrowest of exceptions, pursuant to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*.<sup>18</sup> A reasonable decision bears the hallmarks of justification, transparency and intelligibility, the indicia and criteria of which are various.

18. To be reasonable, a decision must

- be rational and logical, including free of logical fallacies;
- be justified in relation to the constellation of law and facts;
- be constrained by elements of the legal and factual contexts which operate as constraints on the decision maker in the exercise of its delegated powers;
- take account of the evidentiary record and general factual matrix that bears on it;
- not adopt inferior interpretations for the sake of expediency;
- not engage in reverse-engineering;
- not fundamentally misapprehend or fail to account for the evidence before the decision maker;
- not fail to consider relevant facts and evidence before the decision maker;
- not follow an “irrational chain of analysis” or reach a “conclusion” that “cannot follow from the analysis undertaken”;
- meaningfully account for the central issues and concerns raised by the applicant;
- demonstrate the decision maker actually listened to the applicant;

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<sup>18</sup> [2019 SCC 65](#) [*Vavilov*].

- meaningfully grapple with the key issues and central arguments raised by the applicant;
- demonstrate the decision maker was actually alert and sensitive to the matter before it; and
- grapple with any particularly harsh consequences of a decision.<sup>19</sup>

19. Notwithstanding that prior to *Vavilov*, factors such as expertise weighed in favour of a more deferential standard of review, reasonableness is the single standard and the presumptive standard post-*Vavilov*. Assertions that human rights tribunals are entitled to “substantial” deference or that the Commissioner as gatekeeper is entitled to “wide latitude” in decision-making are vestiges of the pre-*Vavilov* scheme.<sup>20</sup>

20. Human rights tribunals are not a special category of administrative decision maker for which there is a different and more lenient standard of reasonableness. Deference is inherent in the reasonableness standard; there is no extra deference based on the nature of the decision maker or type of decision in question. Applied to the present case, *Vavilov* requires the Commissioner to make a reasonable decision; no anachronistic conception of “wide latitude” somehow permits the Commissioner to make an otherwise unreasonable decision.

### **Jurisprudence on Religion**

21. More than two decades ago in the leading case on religious freedom, *Syndicat Northcrest v Amselem*,<sup>21</sup> the Supreme Court of Canada decided that only two things are required for a religious adherent to trigger a claim premised on religious freedom:

[56] ... (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... and (2) he or she is sincere in his or her belief. Only then will freedom of religion be triggered.

...

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<sup>19</sup> *Vavilov* at paras 99-135.

<sup>20</sup> *X v Alberta (Human Rights Commission)*, [2022 ABKB 659](#) at para 19.

<sup>21</sup> [2004 SCC 47](#) [*Amselem*].

[65] ...the first step...is for a claimant to demonstrate that he or she sincerely believes in a practice or belief that has a nexus with religion.

...

[69] ...provided that an individual demonstrates that he or she sincerely believes that a certain practice or belief is experientially religious in nature in that...he or she sincerely believes that the practice engenders a personal, subjective connection to the divine...and as long as that practice has a nexus with religion, it should trigger the protection... .

22. Any “singular belief” or “objective tenet” inquiry is subsumed in the *Amselem* nexus inquiry. Put another way, the entire point of the nexus inquiry is to ensure that non-religious believers cannot use a non-religious belief system to game the protection intended only for religious adherents. The inquiry into nexus was not designed as an interrogation of each and every aspect of religious dogma in the commission of creating opportunities to isolate individual beliefs of genuinely religious persons and label them as secular beliefs as an excuse to withhold protection. The oft-invoked inquiry into a so-called “singular belief” or “a sufficient objective basis to establish that the belief is a tenet of a religious faith” beyond the nexus inquiry set out in *Amselem* is fallacious (the “‘Objective Tenet’ Fallacy”). *Amselem* could not possibly be any clearer on this point, beginning with its fact pattern.

### ***On the Amselem Facts***

23. The reason the ‘Objective Tenet’ Fallacy enjoys no explicit or implicit support from any precedent binding on any court or administrative decision maker comes into sharp relief with an understanding of the very facts on which Moïse Amselem succeeded at the Supreme Court of Canada. Under the ‘Objective Tenet’ Fallacy, the pure subjectivity of the manner in which Mr. Amselem desired to carry out his religious practice would have been considered a mere preference and barred his success at the Supreme Court of Canada.

24. After all, Mr. Amselem was not prohibited from observing the Feast of Tabernacles, or Sukkot, in any objective way. Mr. Amselem was not prohibited from building a temporary shelter, or sukkah. Mr. Amselem was prohibited from building a sukkah for his observance of Sukkot **only in the singular subjective way in which he singularly and subjectively believed** he should.

25. The *Amselem* court declares:

[68] Similarly, to frame the right either in terms of objective religious ‘obligation’ **or even as the sincere subjective belief that an obligation exists and that the practice is required would lead to arbitrary and hierarchical determinations of religious ‘obligation’, would exclude religious custom from protection, and would disregard the value of non-obligatory religious experiences by excluding those experiences from protection.** Jewish women, for example, strictly speaking, do not have a biblically mandated “obligation” to dwell in a succah during the Succot holiday. If a woman, however, nonetheless sincerely believes that sitting and eating in a succah brings her closer to her Maker, is that somehow less deserving of recognition simply because she has no strict “obligation” to do so? Is the Jewish yarmulke or Sikh turban worthy of less recognition simply because it may be borne out of religious custom, not obligation? Should an individual Jew, who may personally deny the modern relevance of literal biblical “obligation” or “commandment”, be precluded from making a freedom of religion argument despite the fact that for some reason he or she sincerely derives a closeness to his or her God by sitting in a succah? Surely not.

...

[72] Furthermore, based on the above-discussed definition of freedom of religion, it appears that the trial judge applied the wrong test to the evidence adduced by the appellants in support of their belief. For if freedom of religion encompasses not only what adherents feel sincerely obliged to do, but also includes what an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to engender a connection with the divine or with the subject or object of his or her spiritual faith, then **the proper test would be whether the appellants sincerely believe that dwelling in or setting up their own individual succah is of religious significance to them, irrespective of whether they subjectively believe that their religion requires them to build their own succah. This is because it is hard to qualify the value of religious experience. Religious fulfilment is by its very nature subjective and personal.** To some, the religious and spiritual significance of building and eating in one’s own succah could vastly outweigh the significance of a strict fulfilment of the biblical commandment of “dwelling” in a succah, and that, in and of itself, would suffice in grounding a claim of freedom of religion.

26. The Supreme Court of Canada found in favour of Mr. Amselem and his singular belief and purely subjective, read: non-objective tenet that he must build his own sukkah on his own balcony, despite Mr. Amselem’s testimony stating that he would not transgress Jewish law by

using a communal sukkah and that his religion permits him to find alternatives to building his own sukkah:

[199] The trial judge made a finding of fact that use of the communal sukkah would not compromise the appellants' observance of the festival of Succot, and the evidence of Mr. Amselem, the most exigent of the appellants in this respect, supports that conclusion. Mr. Amselem testified that it would not be contrary to his faith to go to the communal sukkah in the garden:

[TRANSLATION]

Q. ... So you do not transgress the law by walking from your unit to the proposed communal sukkah or in the communal garden?

A. No.

Q. Is that right: you do not transgress Jewish law?

A. No.

...

[200] Mr. Amselem then outlines the possibility of celebrating Succot in a communal sukkah at the synagogue:

[TRANSLATION] The meals given at the synagogue are for people for whom it is physically impossible to make a sukkah at home, because they have no room, they live in an apartment where there is no balcony. If a person is religious and has a balcony open to the sky and enough room, he makes a sukkah.

[201] He then states that his religion permits him to find alternatives:

[TRANSLATION]

A. If it's impossible for me to do it where I live, if I don't have the physical space to do it where I live?

Q. Yes.

A. Well, in that case, I find alternatives. I go to the synagogue.

[202] Apart from the synagogue, going to see family and sharing their sukkah is also permitted, according to Mr. Amselem:

[TRANSLATION]

Q. ... When you went to your son's home, did that comply with the precepts of Jewish law, the commandments?

A. Yes.

Q. Yes?

A. Absolutely.

[203] Friends are yet another possibility:

[TRANSLATION]

Q. You said earlier -- if I remember correctly -- that you've already spent Succot with friends at their homes?

A. Yes.

...

A. But if you're travelling or visiting someone, or a cousin or son invites you to spend the holiday in his home, well, if he has a succah, that's great. But it isn't an obligation. You make accommodations to be together. It's the mitzvah, the commandment is fulfilled, but it's by chance. Normally, you want to spend Succot at your own home.

This language (you want) shows the "precept" is permissive not mandatory, a fact which he subsequently confirms:

[TRANSLATION]

A. No, I'll go to my children's home, to the synagogue, or I have friends, or I'll go to Miami, to the home of my brother, who's a rabbi.

Q. You could go to the homes of friends or family?

A. My family, my children.

Q. Or to the synagogue?

A. Or to the synagogue... .

[204] The appellants called as their expert Rabbi Moïse Ohana, who testified on their behalf that the faithful are exempted from celebrating Succot if such celebration causes [TRANSLATION] "serious discomfort":

[TRANSLATION] In practice, though, if eating meals in a succah leads to genuine drudgery, day after day after day, we then start to come under a provision of the law according to which if the succah is a source of serious discomfort, you are *ipso facto* released from the obligation to stay there.

[205] There was thus ample evidence before the trial judge that Mr. Amselem and the other appellants could have had recourse to a communal succah, whether at the synagogue, in the communal garden with friends, or elsewhere. If a succah is unavailable, or if use of it involves “serious discomfort” (“inconfort sérieux”), the faithful are to that extent “released” of their religious obligation (“libéré de l’obligation”). These conclusions are not the subject of controversy but flow directly from the evidence of Mr. Amselem and his own expert and they are borne out by the historical practice of the other appellants.

...  
[207] ...12. Mr. Amselem’s religious beliefs did not, according to his own testimony, preclude recourse to a communal succah where a personal succah was not available.

27. On the standard of the ‘Objective Tenet’ Fallacy, Mr. Amselem’s choice to build a sukkah **on the balcony of his condominium** against the condominium development’s prohibition was as unobjective a tenet as any practice could be. The Supreme Court of Canada was unbothered by this, caring only that Mr. Amselem’s belief was **sincere** and in some way **tethered** to religion.

### *On the Amselem Law*

28. Apart from what can be divined from the facts of the case and the resulting judgment, *Amselem* offers a rich discussion of religious freedom, including possible facets of religion and possible indicia of religion. However, contrary to popular belief, *Amselem* stops short of creating a rigid checklist for establishing religious belief.

29. *Amselem* decides that the content of religious belief is subjective, personal, and not for the state, courts, or administrative decision makers to decide, which it repeats in numerous direct and indirect ways:

- The Supreme Court of Canada has always conceived of religious freedom as “personal or subjective”, “stress[ing] the subjective aspect of the believer’s personal sincerity rather than the objective aspect of the conformity of the beliefs in question with established doctrine”; and “a function of personal autonomy and choice, elements which undergird the right”,<sup>22</sup>

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<sup>22</sup> *Amselem* at para 42.

- The emphasis is on “personal choice of religious beliefs”; claimants need not “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”;<sup>23</sup>
- “[A] court is in no position to question the validity of a religious belief, notwithstanding that few share that belief”; “it is not the role of this Court to decide what any particular religion believes”;<sup>24</sup>
- Both “obligatory” and “voluntary expressions of faith should be protected”; “[a]n inquiry into the mandatory nature of an alleged religious practice” is “inappropriate” and “plagued with difficulties”; the courts have “no basis” on which to “distinguish between a requirement of a particular faith and a **chosen** religious practice”;<sup>25</sup>
- A claimant need not show an “objective” religious “precept”, which would be inconsistent with the underlying purposes and principles of the freedom emphasizing personal **choice**;<sup>26</sup>
- Judges are not to determine “doctrines of faith”, which would inappropriately “interfere with **profoundly personal beliefs**” which “**govern one’s conduct and practices**”;<sup>27</sup>
- “[T]he State is in no position to be, nor should it become, the arbiter of religious dogma” and “courts should avoid judicially interpreting” the “**content of a subjective understanding** of religious requirement, ‘obligation’, precept, ‘commandment’, custom or ritual”;<sup>28</sup>

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<sup>23</sup> *Amselem* at para 43.

<sup>24</sup> *Amselem* at para 44.

<sup>25</sup> *Amselem* at para 47.

<sup>26</sup> *Amselem* at para 48.

<sup>27</sup> *Amselem* at para 49.

<sup>28</sup> *Amselem* at para 50.

- “**Secular judicial determinations of theological or religious disputes**, or of contentious matters of religious doctrine, **unjustifiably entangle** the court in the affairs of religion”;<sup>29</sup>
- Inquiries into sincerity should be “minimal”, seeking **only to ensure a claimed belief is not an “artifice”**, else “**nothing short of a religious inquisition would be required to decipher the innermost beliefs of human beings**”;<sup>30</sup>
- “[T]he focus of the inquiry is not on what others view the claimant’s religious obligations as being, but rather what the claimant views these personal religious “obligations” to be...**Religious belief is intensely personal** and can easily vary from one individual to another”;<sup>31</sup>
- The goal is to avoid “**the invidious interference of the State and its courts with religious belief**” and “value-judgment indictments of those beliefs that may be unconventional or not mainstream”.<sup>32</sup>

30. No support is found in *Amselem* for any objective requirement—only more discussion of the personal, individual and subjective nature of religious belief, and an exploration of various potential indicia, couched in the conceptual:

- Religion “**tends to involve**” the belief in a divine;<sup>33</sup>
- “**In essence, religion is about** freely and deeply held **personal convictions**...”;<sup>34</sup>
- “This Court has long articulated an **expansive definition** of freedom of religion, which revolves around the notion of **personal choice** and **individual autonomy**”;<sup>35</sup>

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<sup>29</sup> *Amselem* at para 50.

<sup>30</sup> *Amselem* at para 52.

<sup>31</sup> *Amselem* at para 54.

<sup>32</sup> *Amselem* at para 55.

<sup>33</sup> *Amselem* at para 39.

<sup>34</sup> *Amselem* at para 39.

<sup>35</sup> *Amselem* at para 40.

- “The **essence** of the **concept** of freedom of religion is the right to entertain such religious beliefs as a person **chooses**...But the concept means more than that...no one is to be forced to act in a way contrary to his beliefs **or his conscience**...it has become the right of every Canadian to **work out for himself** or herself what his or her religious obligations, if any, should be...”;<sup>36</sup>
- “The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest **whatever beliefs and opinions his or her conscience dictates**, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own”.<sup>37</sup>

31. Justice Dickson as here quoted by Justice Iacobucci does not enumerate a checklist to trap claimants who fail to tick ever-increasing numbers of invisible boxes; rather, he provides expansive and comprehensive guidance to future courts which must avoid becoming “unjustifiably entangle[d]” in the “affairs of religion”.<sup>38</sup>

32. The *Amselem* court’s protracted exploration of what religion **might** involve culminates in just two requirements for triggering protection: a belief that is sincere and a belief with a nexus to religion, whether objective **or subjective**.<sup>39</sup> The Alberta Human Rights Commission explicitly recognizes<sup>40</sup> the authority of *Syndicat Northcrest v Amselem*.

33. *Amselem* is clear that no confirmation of the belief or practice by a religious leader is necessary;<sup>41</sup> no proof of the established practices of a religion is necessary;<sup>42</sup> no mandatory doctrine of faith supporting the belief is necessary;<sup>43</sup> 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;<sup>44</sup> even the role of a tribunal is to assess mere sincerity of belief, not

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<sup>36</sup> *Amselem* at para 40.

<sup>37</sup> *Amselem* at para 41.

<sup>38</sup> *Amselem* at para 50.

<sup>39</sup> *Amselem* at para 56.

<sup>40</sup> Alberta Human Rights Commission Human Rights Guide, “Duty to Accommodate” at 17.

<sup>41</sup> *Amselem* at para 56.

<sup>42</sup> *Amselem* at para 54.

<sup>43</sup> *Amselem* at para 49.

<sup>44</sup> *Amselem* at para 50.

validity of belief;<sup>45</sup> and sincerity of belief simply implies an honesty of belief.<sup>46</sup> *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”.<sup>47</sup>

34. Further, the law specifically rejects the conception of the religious as extricable from the personal. *Amselem* does not require the religious claimant to have no thoughts or opinions. *Amselem* could not possibly be more clear that personal beliefs cannot be severed from the religious beliefs of the religious person, characterizing religion as inherently involving “personal convictions or beliefs”,<sup>48</sup> “**personal choice and individual autonomy**”,<sup>49</sup> “**personal or subjective conception**”,<sup>50</sup> “personal autonomy”,<sup>51</sup> “personal sincerity”,<sup>52</sup> “**personal choice of religious beliefs**”,<sup>53</sup> “**personal notions of religious belief**”,<sup>54</sup> “**voluntary expressions of faith**”,<sup>55</sup> “profoundly personal beliefs”,<sup>56</sup> “intensely personal” beliefs<sup>57</sup> and “personal religious ‘obligations’”.<sup>58</sup> *Amselem* discloses that religious belief is *personal* belief.

35. Religious infringement is established when a policy interferes with 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.<sup>59</sup>

36. Religion governs both belief and conduct, as *Amselem* decides: “he or she has a practice or belief, having a nexus with religion, **which calls for a particular line of conduct**”. No objective link whatsoever is necessary; the language is **either** objective **or** subjective: “**either** by

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<sup>45</sup> *Amselem* at para 52.

<sup>46</sup> *Amselem* at para 51.

<sup>47</sup> *Amselem* at para 43.

<sup>48</sup> *Amselem* at para 39.

<sup>49</sup> *Amselem* at para 40.

<sup>50</sup> *Amselem* at para 42.

<sup>51</sup> *Amselem* at para 42.

<sup>52</sup> *Amselem* at para 42.

<sup>53</sup> *Amselem* at para 43.

<sup>54</sup> *Amselem* at para 47.

<sup>55</sup> *Amselem* at para 47.

<sup>56</sup> *Amselem* at paras 41, 49.

<sup>57</sup> *Amselem* at para 54.

<sup>58</sup> *Amselem* at para 54.

<sup>59</sup> *Amselem* at para 59.

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".

## **Human Rights Law**

37. The Alberta *Human Rights Act*<sup>60</sup> prohibits an employer from discriminating against an employee on certain enumerated grounds except where the employer is able to establish a *bona fide* occupational requirement ("BFOR"). An employer must accommodate an employee's protected characteristic to the point of undue hardship. Undue hardship and/or a BFOR cannot be established unless and until the employer has discharged its procedural duty to accommodate.

### ***Religious Discrimination***

38. Religious discrimination in employment is an action, policy, practice, or decision that has a negative effect on an employee related to his or her immutable and protected characteristic of religion. Whether such action, policy, practice, or decision is intentional or unintentional is of no moment. Even a facially neutral policy is discriminatory if it has the effect of imposing burdens or disadvantages on a person possessing a characteristic protected under the Alberta *Human Rights Act*.<sup>61</sup>

39. By prohibiting discrimination at work on the basis of religious beliefs, the Alberta *Human Rights Act* allows employees to follow their various religious beliefs without fear of their human rights being denied.<sup>62</sup>

40. The Alberta *Human Rights Act* states that individuals shall not be discriminated against because of their religious beliefs, which include native spirituality. Religious beliefs refer to a system of belief, worship and conduct. Religion has been defined by the Supreme Court of Canada as being "about freely and deeply held personal convictions or beliefs connected to an

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<sup>60</sup> [RSA 2000, c A-25.5](#) [the *Act*].

<sup>61</sup> <https://albertahumanrights.ab.ca/what-are-human-rights/about-human-rights/discrimination/>; <https://albertahumanrights.ab.ca/issues-at-work/rights-and-responsibilities/>; Alberta Human Rights Commission "Religious beliefs Information Sheet" ("Religion Sheet").

<sup>62</sup> Religion Sheet at 1.

individual's spiritual faith and integrally linked to his or her self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith." In the same Supreme Court of Canada decision, "it was determined that **religious beliefs are subjective** in nature. In defining religious beliefs in such an open-ended manner, the Supreme Court acknowledged the wide variety of religious beliefs **personally** held by Canadians".<sup>63</sup>

41. The Commission continues: "Discrimination on the ground of religious beliefs often occurs because of rules that may appear to be neutral and non-religious in nature, but still have a negative impact on some individuals because of their religious beliefs".<sup>64</sup> An example of a neutral rule is an employer mandating vaccination in the workplace. This neutral rule may negatively affect employees who abstain from vaccination due to their religious beliefs.

42. The employer has a duty to accommodate the immutable and protected characteristic of religion to the point of undue hardship. The duty to accommodate has both a procedural and a substantive component, the former of which is onerous and by no means optional. Undue hardship cannot be found unless and until the employer has discharged its procedural duty to accommodate.

### ***Duty to Accommodate Generally***

43. The Alberta Human Rights Commission provides direction on an employer's duty to accommodate in the context of a BFOR, by way of published Human Rights Guides entitled "Duty to Accommodate" ("Accommodation Guide") and Defences to Human Rights Complaints ("Defences Guide").

44. The Commission discloses that "[t]he duty to accommodate is a responsibility of the employer...to adjust the conditions of employment...in order to address any prima facie (on its face) discrimination"<sup>65</sup> experienced by the employee, and that despite "inconvenience, disruption, and expense to the employer...accommodation to the point of undue hardship is

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<sup>63</sup> Religion Sheet at 1. [Emphasis added.]

<sup>64</sup> Religion Sheet at 2.

<sup>65</sup> Accommodation Guide at 2.

required by law”.<sup>66</sup>

45. While a “reasonable and justifiable” practice that would otherwise be discriminatory—that is, a *bona fide* occupational requirement—stands as an exception to otherwise prohibited grounds of discrimination, this does not occur until accommodation solutions have been fully canvassed.<sup>67</sup> “Courts and human rights tribunals have found that the process of accommodation is an important factor in determining whether a standard or policy is reasonable and justifiable”.<sup>68</sup> Indeed, “[t]he ‘reasonable and justifiable’ defence to prima facie discrimination can only be successful if a respondent shows that serious attempts or considerations were given to accommodate a complainant facing the respondent’s prima facie discriminatory standard”.<sup>69</sup>

46. The third step of the SCC-devised *Meiorin*<sup>70</sup> test for determining whether a BFOR exists requires that “[i]n demonstrating if the standard is reasonably necessary, the employer must show that they have accommodated the employee to the point of undue hardship”.<sup>71</sup> The Commission further states:

In *Meiorin*, the Court found that even though the employer’s standard was based on safety concerns (step 1) and established in good faith (step 2), the employer had failed to show the requirement was reasonably necessary (step 3)...the Court made it clear that a standard is not reasonably necessary if the employer has not **fully considered** alternative accommodations that *might* allow the affected individual to fill the position.<sup>72</sup> [Emphasis added.]

47. The duty to accommodate includes two distinct components: the duty to accommodate substantively, which is to say, put in place an accommodation, to the point of undue hardship; and the duty to accommodate procedurally. Undue hardship cannot be established unless and until the **procedural duty** to accommodate has been discharged.

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<sup>66</sup> Accommodation Guide at 3.

<sup>67</sup> Accommodation Guide at 12-3; Defences Guide at 7-10, 13.

<sup>68</sup> Defences Guide at 7.

<sup>69</sup> Defences Guide at 7.

<sup>70</sup> *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3, 1999 CanLII 652 [*Meiorin*].

<sup>71</sup> Defences Guide at 8; *Meiorin* at para 54.

<sup>72</sup> Defences Guide at 8-9.

### ***Procedural Duty to Accommodate***

48. The Commission states that the duty to accommodate has both a substantive and **procedural** component,<sup>73</sup> with the substantive component referring to the accommodation itself, and the procedural component involving the employer undertaking an individualized assessment of the employee's needs and entertaining flexible and creative solutions in search of an accommodation that meets those needs.<sup>74</sup> The employer must meaningfully consult with the employee to identify possible means of accommodation.<sup>75</sup> Only after the employer has participated in this consultation process and the parties have determined there are no means of accommodating the employee without the employer incurring undue hardship has the employer fulfilled its duty to accommodate.<sup>76</sup>

49. The Commission leaves no doubt about an employer's obligations. The employer **must**: determine if the request falls under any of the areas and grounds protected under the Act; be aware that, once a request is received, the onus to accommodate is on the employer; respect the dignity of the person or group requesting accommodation; listen to and consider the needs of the person seeking accommodation and her suggestions for accommodation; be willing to take substantial and meaningful measures to accommodate the needs of the person seeking accommodation; be flexible and creative when considering and developing options; and discuss options with the person who needs accommodation.<sup>77</sup> An employer's duty to accommodate an employee is far reaching and may involve adjusting policies.<sup>78</sup>

50. The employer **must make every effort** to make a reasonable accommodation for an employee. Some hardship may be necessary in making an accommodation, and only when the point of undue hardship is reached is the employer's duty to accommodate fulfilled.<sup>79</sup>

51. Again, a BFOR stands as an exception to otherwise prohibited grounds of discrimination,

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<sup>73</sup> Accommodation Guide at 4; see also *Canadian National Railway Company v Teamsters Canada Rail Conference*, [2018 ABQB 405](#) [Teamsters] and *Stewart v Elk Valley Coal Corp*, [2017 SCC 30](#) [Stewart] at para 127.

<sup>74</sup> Accommodation Guide at 4.

<sup>75</sup> Accommodation Guide at 4; *Teamsters* at para 36.

<sup>76</sup> Accommodation Guide at 4-5.

<sup>77</sup> Accommodation Guide at 9-10.

<sup>78</sup> Accommodation Guide at 11. [Emphasis added.]

<sup>79</sup> Accommodation Guide at 5 [Emphasis added].

but **only once accommodation solutions have been fully canvassed**.<sup>80</sup> Courts and human rights tribunals have found that the **process of accommodation** is an important factor in determining whether a standard or policy is reasonable and justifiable.<sup>81</sup> Indeed, the **“reasonable and justifiable” defence to prima facie discrimination can only be successful if a respondent shows that serious attempts or considerations were given to accommodate** a complainant facing the respondent’s prima facie discriminatory standard.<sup>82</sup> An employee seeking accommodation should suggest appropriate accommodation measures, consider any reasonable accommodation options and cooperate to make the agreement work.<sup>83</sup>

52. Beyond the Commission’s own specific guidance to employers in Alberta, various courts have weighed in on the procedural component of the duty. The SCC discloses in the seminal case of *Meiorin* that a standard cannot be deemed reasonably necessary unless and until the organization has **fully considered** alternative accommodations that **might** allow the affected individual to continue in the employment.<sup>84</sup> The SCC has found that procedurally, an organization has a duty to inquire as to the specific circumstances of a person requiring accommodation before taking adverse action against him.<sup>85</sup>

53. The Ontario Divisional Court has held that a full exploration of the nature of the protected ground, consideration of the extent to which carefully managing the challenges around the protected ground and examination of the roles and responsibilities of various staff in monitoring the situation are required;<sup>86</sup> undue hardship cannot be established by relying on impressionistic or anecdotal evidence, or after-the-fact justifications;<sup>87</sup> and **in assessing whether the organization has met the duty, its efforts must be assessed at the time of the alleged discrimination**.<sup>88</sup>

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<sup>80</sup> Accommodation Guide at 12-3; Defences Guide at 7-10, 13.

<sup>81</sup> Defences Guide at 7.

<sup>82</sup> Defences Guide at 7.

<sup>83</sup> Accommodation Guide at 8-9.

<sup>84</sup> Defences Guide at 8-9. [Emphasis added.]

<sup>85</sup> *Stewart* at para 133; see also *Grismer*.

<sup>86</sup> *Adga Group Consultants Inc v Lane*, [2008] OJ No 3076, 2008 CanLII 39605 [*Adga*] at para 109.

<sup>87</sup> *Adga* at para 118.

<sup>88</sup> *Adga* at para 108.

54. The Ontario Court of Appeal has described satisfaction of the procedural component of the duty thus:

The procedural component typically involves the identification of the process or procedure to be adopted in providing accommodation to the person who would be subject to the discriminatory standard: see *Lane v. ADGA Group Consultants Inc. (2008)*, 295 D.L.R. (4th) 425 (Ont. Div. Ct.), at para. 106; *Roosma v. Ford Motor Co. of Canada (2002)*, 164 O.A.C. 252 (Div. Ct), at para. 210, per Lax J. (dissenting, but not on this point). Because it requires an understanding of the person’s needs, and requires the person to provide information, procedural accommodation is sometimes referred to as the “accommodation dialogue”: see *Liu v. Carleton University*, 2015 HRTO 621, at para. 18. Once the institution has an understanding of the claimant’s specific needs, it must ascertain and seriously consider possible accommodations that could be used to address those needs, including the option of undertaking an individualized assessment in the case of a discriminatory standard: see *Grismer*, at para. 42; *ADGA*, at para 106. The substantive component of accommodation can refer to the steps taken to implement the accommodation to the point of undue hardship. It involves the consideration of what was actually done in the accommodation process to meet the individual’s needs: see *Roosma*, at para. 210.<sup>89</sup>

55. Where the organization has failed to take any of the steps it could have taken in order to assess and pursue the question of accommodation, and failed to learn what it could have learned had it only made appropriate enquiries, it will not have discharged its procedural duty to accommodate.<sup>90</sup>

56. The Alberta Court of Queen’s Bench likewise determined the crucial nature of the procedural component of the duty, quoting the arbitrator: “procedure is of the essence”. The Court explained that engagement with the person requiring the accommodation and making all reasonable efforts to verify whether the person can be accommodated is **not** optional.<sup>91</sup>

57. Even the Commission admits that “[p]art of establishing that a requirement is a BFOR or is reasonable and justifiable is for the employer or service provider to **demonstrate that they have attempted to accommodate up to the point of undue hardship**”.<sup>92</sup>

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<sup>89</sup> *Longuepée v University of Waterloo*, [2020 ONCA 830](#) at para 70.

<sup>90</sup> *Adga* at paras 126-7.

<sup>91</sup> *Teamsters* at para 36.

<sup>92</sup> *Religion Sheet* at 2. [Emphasis added.]

## ***Establishing Religious Discrimination in Employment***

58. Religious discrimination in employment occurs when an employee possesses the protected characteristic of religious belief, which factors into an adverse impact the employee experiences.

### ***Section 26 Grant of Authority***

59. On a request for review, the Chief can either uphold the Director's decision to dismiss or overturn the Director's dismissal and refer the matter to the Tribunal for a full hearing, based on a *de novo* assessment the Chief performs without deference to the Director's decision and on the remarkably low "no reasonable prospect of success" threshold, the principles of which include:

- 1) The overarching question is whether there is a genuine issue that needs to be resolved at a hearing;
- 2) Matters that have some chance of success should go on to hearing;
- 3) The Chief must accept the allegations of fact as true except to the extent the allegations are based on assumptions or speculations or where they are patently ridiculous or incapable of proof; and
- 4) The evidence must take the case out of the realm of conjecture.<sup>93</sup>

## **ANALYSIS**

### **Delegate Missed All but Two Religious Beliefs—and Missed the Point of Those Two**

60. The Delegate appears to understand that "[i]n order to establish *prima facie* discrimination at a hearing, the complainant would need to demonstrate that: (1) she has a characteristic protected from discrimination under the Act; (2) she has experienced a negative or adverse impact; and (3) the protected characteristic was a factor in the negative or adverse impact";<sup>94</sup> however the Delegate fails to comprehend that the Applicant discharged all three components of the test.

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<sup>93</sup> Decision at para 69, CROP at 14.

<sup>94</sup> Decision at para 71, CROP at 14-5.

61. Indeed, the Applicant possesses the protected characteristic of religion, which she clearly articulated as preventing her from vaccinating on, among other bases, that a) her body is the temple of the Holy Spirit and b) she is religiously unable to receive into this temple products tainted by abortion, given the biblical prohibition on murder. Pretending those somehow fail to be religious positions strains credulity and raises the spectre of a decision made for improper purposes.

62. Moreover, the Applicant cited additional vaccination-averse religious beliefs she harbours, and the religious bases for them, reproduced at paragraph 8 of these submissions, which the Delegate failed to grapple with **at all**, let alone meaningfully.

63. Additionally, given the opportunity to present more information to the Director, the Applicant documented in painstaking detail her life-long dedication to her faith and additional medical procedures she rejects on the basis of her stated beliefs. The Applicant's explanations were at all points open, comprehensive and free flowing, and there is no excuse for the Delegate to have ignored this trove of evidence.<sup>95</sup>

64. *Amselem* leaves no doubt that the Applicant's subjective understanding of her religious obligation as a Christian to abstain from taking into God's temple a substance which has utilized the products of murder as dictated by the Holy Bible, being the holy book of her religion, easily qualifies as a belief with a nexus to religion.

65. *Vavilov* leaves no doubt that failure to consider religious beliefs and practices conveyed by the Applicant, such being central to her arguments, calls into question the Decision's reasonableness:

[127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. **The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.**

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<sup>95</sup> CROP at 33, 34, 35, 40, 41.

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. **However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it.** In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.<sup>96</sup>

66. Further, *Vavilov* leaves no doubt that irrespective of whether an outcome is reasonable, which is denied in the present case, the method by which the Delegate arrived at it must also be reasonable:

[I]t is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. **While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.**<sup>97</sup>

67. Given the volume of key material with which the Delegate refused to meaningfully grapple, the reasoning process employed by the Delegate is not sufficiently reliable to leave the decision undisturbed. Coupled with the weaknesses attending the Delegate’s analysis of the material it did consider, the Decision is profoundly unsound.

### **Delegate Disclosed It Thinks Religious Persons Are Not Whole Persons**

68. The Delegate’s tacit confession it regards religious adherents as either incapable or undeserving of holding any thoughts or opinions without invalidating their religious beliefs further compounds the absurdity of its decision.

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<sup>96</sup> Emphasis added.

<sup>97</sup> *Vavilov* at para 86. [Emphasis added.]

69. The Applicant can believe that smoking defiles her body as God’s temple *and* opine that it causes emphysema. She can believe that excessive liquor consumption is a scourge on society *and* opine that it causes cirrhosis of the liver. She can believe that pornography desecrates the soul *and* opine that it degrades women. **The Applicant is a whole person, capable of religious faith, emotions, opinions, thoughts, and every other faculty assumed to be accessible to the non-religious.**

70. The court in *Yee v WestJet*<sup>98</sup> addressed the same bigoted and frankly, *cartoonish* conception of the interaction between religious belief and thought head-on:

The Defendant’s evidence did not explain how or why the Plaintiff could not hold both a religious objection and a non-religious objection to vaccination on safety grounds at the same time. It also did not explain why holding a non-religious objection in addition to a religious objection meant the Plaintiff was seeking an accommodation solely on non-religious grounds...The Defendant’s Denial Letter stated that the Plaintiff’s safety concern “casts doubt on religion being the grounds for your application”. However, the Defendant’s evidence did not clearly explain why that was the case or how the Plaintiff’s safety concerns somehow overrode her religious beliefs.<sup>99</sup>

71. The Delegate having failed to demonstrate by what method it managed to sever the sacred from the profane, it cannot rely on the finding the Applicant had some thoughts and opinions to oust her religious objection to vaccination.

### **Delegate Missed Connection Between Religious Beliefs and Adverse Impact**

72. Likewise, the Applicant sustained an adverse impact in which the protected characteristic was a factor when she was compelled to appear early for every shift and denied compensation, in order to satisfy the Respondent’s testing requirement. **Only those employees lacking protected characteristics were required to attend at the workplace for testing absent compensation.**

73. The moment the Respondent distinguished between persons with protected characteristics and persons without protected characteristics, it exposed itself to liability should it misstep in

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<sup>98</sup> [2025 ABCJ 87](#) [*Yee*].

<sup>99</sup> *Yee* at paras 73, 75.

determining the existence of a protected characteristic—which it did in the Applicant’s case.

74. That “an employee [who] was unable to be vaccinated due to a protected ground under the *Act*...could request accommodation under the Policy by submitting a written request” is a tacit confession that the Respondent’s facially neutral policy was capable of discriminating.<sup>100</sup> Were it otherwise, the choice open to all to test in place of vaccinating would have eliminated any need to make application for accommodation of protected characteristics preventing vaccination.

75. Another adverse impact flowing from the Respondent’s discrimination against the Applicant on the basis of her immutable and protected characteristic is that the Respondent ignored the Applicant’s accommodation request for nine months while she waited in abject terror for the outcome and its potential impact to her employment and her life.<sup>101</sup>

76. The sleeplessness, anxiety, mental stress, and similar ailments visited on the Applicant began when the vaccination policy was first introduced, and the Applicant experienced coercion and threats of termination. It continued throughout the nine months during which the Applicant faithfully turned up early while she waited for the decision of the Respondent, who apparently had no intention of reviewing her request, extending her the courtesy of a decision, and beginning the accommodation dialogue integral to the procedural duty to accommodate.<sup>102</sup>

77. Yet another adverse impact flows from the Respondent’s admission, in writing, that the Applicant would be passed over for any opportunity of full-time work owing to her vaccination status. Indeed, the Applicant *was* passed over in favour of a student who was to be offered a part-time position followed by a full-time position if all went according to plan.<sup>103</sup>

78. Any one of the preceding adverse impacts is sufficient to ground the adverse impact component of the discrimination test.

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<sup>100</sup> Decision at para 21, CROP at 8.

<sup>101</sup> CROP at 71, 74, 75, 83.

<sup>102</sup> CROP at 71, 74, 81, 83, 92.

<sup>103</sup> CROP at 85-7, 152, 153, 408-9.

## **Delegate Missed Applicant's Entitlement to Accommodation**

79. The Respondent's failures culminated in its failure to discharge the duty to accommodate, beginning with the procedural duty to accommodate. Procedural accommodation was never commenced, let alone discharged.

80. A universal process for anyone and everyone who prefers to avoid vaccination in the absence of protected human rights grounds is not human rights accommodation, which is not available to those lacking protected characteristics, as the Director admitted in its section 21 decision, and as the Delegate affirmed in its section 26 decision.

81. The Director found and the Delegate affirmed that "there is no independent procedural duty to accommodate".<sup>104</sup> This cuts both ways. The Delegate cannot decide that the process afforded persons lacking protected characteristics and therefore unentitled to accommodation counts as discharging the procedural duty to accommodate those possessing protected characteristics, as disclosed by the Commission's vast literature and court precedents on the rigours of the procedural duty.

82. The procedural duty to accommodate is onerous and individualized. Even if the rapid antigen testing implemented by the Respondent could have removed institutional barriers such that no possibility of discrimination remained, **it would have required applying the policy equally, which the Respondent failed to do; one class of persons was compensated for the time spent fulfilling the testing requirement and the other class of persons was not.**

83. Discharging the procedural duty would have required **beginning an accommodation conversation, which itself would have required deciding on the Applicant's exemption request.** None of the foregoing occurred.

## **An Alternative Is Not the Same As an Accommodation**

84. The argument that an *alternative* to vaccination available to all unvaccinated staff regardless of whether they possess protected characteristics is somehow an *accommodation for*

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<sup>104</sup> Decision at para 39, CROP at 10.

*the Applicant* is without merit. It certainly does not admit of the sort of individual treatment the Commission and the law contemplate when accommodating protected characteristics.

85. The Respondent did not undertake an individualized assessment of the Applicant's needs and entertain flexible and creative solutions in search of an accommodation to meet her needs.<sup>105</sup> The Respondent did not meaningfully consult with the Applicant to identify possible means of accommodation.<sup>106</sup>

86. The Respondent did not respect the dignity of the Applicant, listen to and consider her needs and suggestions, display willingness to take substantial and meaningful measures to accommodate her needs, or flexibly and creatively develop options—let alone discuss such options with the Applicant.<sup>107</sup>

87. The Respondent did not make every effort to make a reasonable accommodation specifically for the Applicant with her individual needs in mind, even though some hardship might have resulted. In fact, and as established, the Respondent did not even bother to decide her accommodation request.

88. One problem for the Respondent is that only **after** participating in these procedural accommodation requirements might the employer make the case for either undue hardship or a BFOR. It matters not that testing off the clock was a general default, because absent discharging the procedural duty to accommodate, with the significant effort it entails, there is no way to know whether testing off the clock would have been a suitable accommodation for the Applicant, which is unlikely, given other employees with protected characteristics were permitted to test on the clock.

89. Accommodation must be individualized and tailored to the needs of the employee with the protected characteristic. **It need not be perfect, but it must be better than unilaterally imposed.** There must be consultation, and failure to engage in the process is failure to discharge

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<sup>105</sup> Accommodation Guide at 4.

<sup>106</sup> Accommodation Guide at 4; *Teamsters* at para 36.

<sup>107</sup> Accommodation Guide at 9-10.

the procedural aspect of the duty, absent which neither undue hardship nor BFOR can absolve the Respondent.<sup>108</sup>

90. Default testing off the clock does not evince an effort or intention to canvass the most appropriate accommodation for **the Applicant**, the person with the protected characteristic, as the law of accommodation contemplates. Moreover, a default offered to all staff, that is, staff who do not possess protected characteristics, will be subject to far less rigorous standards; such employees are, after all, not entitled to accommodation. The notion that any default alternative to vaccination is necessarily an appropriate accommodation for a person entitled to accommodation by virtue of a protected characteristic is wrong at law, as the procedural duty to accommodate guidance and jurisprudence make plain. The Applicant was entitled to have her protected characteristic accommodated respectfully, carefully, and **individually**.

91. Even though some form of testing might have been the ultimate substantive accommodation solution, the law is clear that cannot be ascertained, because the Respondent failed to discharge its procedural duty to accommodate. Put another way, whether the best accommodation solution was reached can only be known after all potential accommodation solutions were canvassed as between the parties. That did not happen.

92. The Delegate failed to provide any analysis whatsoever of the vaccination alternative versus vaccination accommodation issue, absent which its decision cannot be reasonable.

### **Unilaterally Imposed “Accommodation” Leveled Discrimination**

93. Alternatively, if the testing option offered to all employees was supposed to constitute accommodation, then the accommodation was itself discriminatory, which does not solve the Respondent’s discrimination problem.

94. The Applicant discharged her burden under the *Amselem* test. She demonstrated that she is a Christian. She put forward her interpretations of the sacred text of her religion, the Holy Bible, as they relate to what she believes God would have her do with her body, generally and in

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<sup>108</sup> Accommodation Guide at 4-5.

the context of covid vaccination. She demonstrated the sincerity of her beliefs, as admitted by the Delegate.

95. The Respondent failed to grasp the *Amselem* test, failed to acknowledge the Applicant's religious abstention from vaccination and attendant entitlement to accommodation to the point of undue hardship, and failed to discharge its procedural duty to accommodate—an error fatal to its defence. But the Respondent did not stop there. The Respondent continued its discriminatory behaviour by subjecting the Applicant to even a discriminatory so-called “accommodation” which had an adverse impact on her because of her protected characteristic of religion.

96. That the default testing was to take place on the Applicant's personal time, just the same as any employee undergoing the testing who did **not** possess a protected characteristic, is the discrimination. Implementing a one-size-fits-all “solution” without regard to the needs of the Applicant relating to her protected characteristic resulted in adverse effect discrimination.

97. Whether or not intended, the Respondent cannot escape the fact that the Applicant was expected to bear the inconvenience of testing at least in part owing to her protected characteristic, because her inability to vaccinate resulted from her religion.

98. It is well established that a policy universally applied which has the tendency to disadvantage a person with a protected characteristic is no less discriminatory than a policy which specifically targets that person, or even which intentionally discriminates. Intent is unimportant; it is effect that matters.

99. Requiring the Applicant to bear the time expense of testing was discriminatory because it had an adverse impact related to her protected characteristic. Other staff were not required to bear the time expense of testing, but the Applicant was required to do so because of her religious abstention from vaccination. That is the definition of adverse effect discrimination and the Delegate's disregard of the same is not reasonable.

## Delegate Attempted to Backfill Decision with Non Sequiturs

100. It does not follow that since no termination, suspension, or unpaid leave attended the discrimination,<sup>109</sup> adverse impact did not happen. The adverse impacts were before the Delegate; it simply chose to ignore them and raise adverse impacts that were *not in play* in an effort to justify its unreasonable decision.

101. It does not follow that since the Applicant “participated in rapid antigen testing...without complaint”,<sup>110</sup> the duty to accommodate had been discharged. The Applicant may not have complained, but she was waiting for the Respondent to issue its decision on her accommodation request and begin discharging its procedural duty to accommodate.

102. It does not follow that since the Delegate is “unaware of any authority supporting an argument that having to attend a test without pay for that time constitutes an adverse impact”, employees must be expected to attend at work without pay—and in fact, defies all employment law of which the Delegate presumably *is* aware. Moreover, being compelled to attend at work absent pay when the Respondent’s other employees with protected characteristics are paid for the same is manifestly an adverse impact.

103. It does not follow that since “the complainant’s opinion on the strength of her case is not determinative of whether it meets the standard to be referred to a hearing”, the case does not meet the standard to be referred to a hearing. The Applicant’s information *demonstrates* that her case meets the standard to be referred to a hearing, whether or not her “opinion” does.

104. It does not follow that if some of the Applicant’s submissions do not evince religious reasons to pass on vaccination, none of the Applicant’s submissions evince religious reasons for abstention from vaccination. In convincing itself the Applicant has not demonstrated *prima facie* discrimination, the Delegate has overlooked that even if 99.9% of the information and argumentation furnished by the Applicant is of zero value, so long as the Applicant has demonstrated a reasonable prospect of establishing sincere, **subjective** religious belief compelling her abstention from vaccination, **on the genuine *Amselem* standard and not on**

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<sup>109</sup> Decision at para 81, CROP at 16.

<sup>110</sup> Decision at para 81, CROP at 16.

**some perversion of the same**, and as long as the Applicant has demonstrated a reasonable prospect of establishing an adverse impact, “the standard to be referred to a hearing” is met.

105. On the genuine *Amselem* standard as decided by the Supreme Court of Canada, ***as distinct from a standard purported to be the Amselem standard but which adds to it and/or takes away from it***, the Applicant has clearly demonstrated a sincere, subjective religious belief compelling her vaccination abstinence.

106. In demonstrating that despite this immutable and protected characteristic, the Respondent forced her to appear up to a half hour early for every shift without remuneration—the penalty for vaccination ***refusal*** as distinct from **religious abstention**—the Applicant demonstrated an adverse impact connected to her immutable and protected characteristic.

107. In both cases, less is required of the Applicant at this stage, who must demonstrate only a ***reasonable prospect*** of establishing the preceding protected characteristic and attendant adverse impact. As the Delegate admits, the threshold to be met by the Applicant is extremely low: matters that have some chance of success—not even a good chance, rather more or less ***any*** chance—should proceed to a hearing before the Tribunal.<sup>111</sup>

### **Delegate Attempted to Rely on Its Own Unreasonable Decision(s) for Backup**

108. To the extent the Commission’s decision in *Smart v University of Lethbridge*<sup>112</sup> departs from *Amselem*, it is not reliable. To the extent any other Commission or Tribunal decision departs from *Amselem*, it is not reliable. To the extent any lower court decision departs from *Amselem*, it is not reliable.

109. A comprehensive understanding of *Amselem* illuminates the inherent problems with the Commission’s reliance on *Smart*, a decision of the Commission and not a court precedent, which is replete with unreasonable findings and legal errors, and otherwise distinguishable in various ways.

110. In *Smart*, the complainant was Catholic, characterized his body as God’s temple, a

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<sup>111</sup> Decision at para 69, CROP at 14.

<sup>112</sup> [2024 AHRC 103](#) [*Smart*].

distinctly **biblical** principle, and explained his objection to receiving into this temple a substance tainted by abortion, which is to say, murder—also a distinctly **biblical** principle.

111. There is little question that the preceding is sufficient on the *Amselem* standard, because all that is necessary to establish the immutable and protected characteristic of religious belief is demonstrating the belief is sincerely held—which the Delegate did not dispute, and that the belief has a nexus to religion—which it manifestly does, given the claimant’s references to Catholicism, the biblical principle of his body as God’s temple, and the biblical principle that life begins at conception coupled with the biblical prohibition on murder.

112. Nevertheless, relying on the ‘Objective Tenet’ Fallacy, the Delegate added a made-up requirement it described as “a sufficient objective basis to find that refusing a COVID-19 vaccine is a fundamental tenet of the complainant’s Catholic faith”.

113. Mr. Smart argued that the Delegate did not understand Catholicism. That seems patently evident. But the Delegate’s real failure was wandering from its secular lane, as prohibited by *Amselem*. The Delegate is under no obligation, and in fact, has no business attempting to understand religion, which is clearly way over its head. The Delegate’s obligation is to refrain from sticking its beak in matters of religious dogma:

50 In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, “obligation”, precept, “commandment”, custom or ritual. **Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.**

51 That said, while **a court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief**, it is qualified to inquire into the sincerity of a claimant’s belief, where sincerity is in fact at issue: see Jones, supra; Ross, supra. It is important to emphasize, however, that **sincerity of belief simply implies an honesty of belief**: see *Thomas v. Review Board of the Indiana Employment Security Division*, supra.

52 According to American constitutional law scholar Professor Laurence Tribe, the jurisprudence in this area evinces that **inquiries into a claimant’s sincerity must be as limited as possible**. He argues that “given the widening

understanding of what constitutes religion in our society, the very rights ostensibly protected by the free exercise clause might well be jeopardized by any but the most minimal inquiry into sincerity”: L. H. Tribe, *American Constitutional Law* (2nd ed. 1988), at pp. 1245-46. **While this was written in the context of the First [page582] Amendment to the U.S. Constitution, I believe that it is equally applicable to delimiting the court’s role in interpreting religious freedom** under the Quebec (or the Canadian) Charter. Indeed, the court’s role in assessing sincerity is intended **only to ensure that a presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice.** Otherwise, nothing short of a religious inquisition would be required to decipher the innermost beliefs of human beings.

...  
55 This approach to freedom of religion effectively **avoids the invidious interference of the State and its courts with religious belief...**”.

114. Having run roughshod over everything the Supreme Court directed in Mr. Smart’s case, the Delegate then used its fallacious underpinning and irrational chain of analysis to deprive the present Applicant of protection for her immutable and protected characteristic of religious belief by pretending its irrational decision in *Smart* is somehow adequate support for its irrational decision in *Anderson*.

115. Recall first that the Supreme Court of Canada does not require even a subjective obligation on the part of a religious adherent, let alone any sort of “objective” “tenet”:

[T]o frame the right either in terms of objective religious ‘obligation’ or even as the sincere subjective belief that an obligation exists and that the practice is required would lead to arbitrary and hierarchical determinations of religious ‘obligation’, would exclude religious custom from protection, and would disregard the value of non-obligatory religious experiences by excluding those experiences from protection...the proper test would be whether the appellants sincerely believe that dwelling in or setting up their own individual succah is of religious significance to them, irrespective of whether they subjectively believe that their religion requires them to build their own succah. This is because it is hard to qualify the value of religious experience. Religious fulfilment is by its very nature subjective and personal.<sup>113</sup>

116. For further certainty, *Amselem* mentions exactly nothing about an “objective tenet”. This is a fiction perpetrated by the Delegate and other members of the Commission and Tribunal.

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<sup>113</sup> *Amselem* at paras 68, 72.

117. Recall next that Moïse Amselem testified his faith did not require him to build a sukkah on his balcony against the condominium board's prohibition:

- “The trial judge made a finding of fact that use of the communal succah would not compromise the appellants’ observance of the festival of Succot, and **the evidence of Mr. Amselem, the most exigent of the appellants in this respect, supports that conclusion. Mr. Amselem testified that it would not be contrary to his faith to go to the communal succah in the garden**”;
- Q. “... So **you do not transgress the law** by walking from your unit to the proposed communal succah or in the communal garden? A. No. Q. Is that right: **you do not transgress Jewish law**? A. No”;
- “Mr. Amselem then outlines the possibility of celebrating Succot in a communal succah at the synagogue”;
- “He then states that **his religion permits him to find alternatives**”;
- “A. Well, in that case, I find alternatives. I go to the synagogue”;
- “Apart from the synagogue, going to see family and sharing their succah is also permitted, according to Mr. Amselem”;
- “Q. ... When you went to your son’s home, **did that comply with the precepts of Jewish law, the commandments?** A. Yes. Q. Yes? A. **Absolutely**”;
- “Friends are yet another possibility”;
- “Q. ...[Y]ou’ve already spent Succot with friends at their homes? A. Yes...but... Normally, you **want** to spend Succot at your own home”;
- “This language (you **want**) shows the ‘precept’ is permissive not mandatory, a fact which he subsequently confirms”;
- “Q. You could go to the homes of friends or family? A. My family, my children. Q. Or

to the synagogue? A. Or to the synagogue...”;

- “The appellants called as their expert Rabbi Moïse Ohana, who testified on their behalf that **the faithful are exempted from celebrating Succot if such celebration causes... ‘serious discomfort’**”;
- “In practice, though, **if eating meals in a succah leads to genuine drudgery, day after day after day, we then start to come under a provision of the law according to which if the succah is a source of serious discomfort, you are *ipso facto* released from the obligation** to stay there”;
- “There was thus ample evidence before the trial judge that Mr. Amselem and the other appellants could have had recourse to a communal succah, whether at the synagogue, in the communal garden with friends, or elsewhere. If a succah is unavailable, or if use of it involves ‘serious discomfort’ (‘inconfort sérieux’), the faithful are to that extent ‘released’ of their religious obligation (‘libéré de l’obligation’). **These conclusions are not the subject of controversy but flow directly from the evidence of Mr. Amselem and his own expert and they are borne out by the historical practice of the other appellants**”;
- “Mr. Amselem’s religious beliefs did not, according to his own testimony, preclude recourse to a communal succah where a personal succah was not available”.<sup>114</sup>

118. Given the religion even released the adherent from the observance **altogether** should it lead to “genuine drudgery”, what shakes out in the end is that the religious adherent was not obligated, even personally or subjectively, to celebrate Sukkot ***at all***, let alone in the ***singular*** fashion he “**wanted**”. For further certainty, it was not an “objective” tenet of his faith, ***or even a subjective one***. **The Supreme Court of Canada did not care**. Moïse Amselem’s preference to engage in something only tenuously tethered to his professed religion clearly passed muster as both a religious preference and a protected religious preference. What emerges from the Amselem case, however distasteful to *Amselem* dissenters everywhere, is that **preferences based on religion are not difficult to make out, and such religious preferences are**

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<sup>114</sup> *Amselem* at paras 199-207.

**protected.**

119. Even if the Applicant simply chooses to abstain from vaccination because she subjectively believes that abstention brings her closer to her God on the biblical basis of keeping His temple pure and undefiled, **that is plenty** to ground the abstention in the immutable and protected characteristic of religious belief, as *Amselem* discloses.

120. The Delegate found no protected characteristic, because it was looking for the wrong thing. No “objective basis” for the religious adherent’s religious belief is necessary, as the Supreme Court of Canada ruled over two decades ago. No singular belief fallacy, however cunningly framed, displaces the principles in *Amselem*. The Commission is not at liberty to depart from high court precedent by invoking the phrase, “in human rights law...”. **Human rights law is subject to Supreme Court law.**

121. The nexus between a religion that views the body of the believer as God’s temple and the belief that abstention from defiling that temple with certain substances is self-evident. That those substances are believed to carry the taint of murder strengthens the case. Acknowledging anything less is disingenuous at best.

122. Returning to *Amselem*:

- “[T]he State is in no position to be, nor should it become, the arbiter of religious dogma...Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the **content of a subjective understanding** of religious requirement, “obligation”, precept, “commandment”, custom or ritual. **Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion**”;
- “[A court] is qualified to inquire into the sincerity of a claimant’s belief, where sincerity is in fact at issue”;
- “[S]incerity of belief simply implies an honesty of belief”;
- “[I]nquiries into a claimant’s sincerity must be as limited as possible...the court’s role in

assessing sincerity is intended only to ensure that a presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice”;

- “This approach to freedom of religion effectively avoids the invidious interference of the State and its courts with religious belief...”;
- “[A] court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief”.<sup>115</sup>

123. The Applicant’s positions—clearly **religious positions**—are that her body is the temple of God, abortion is murder, and taking products with the taint of murder into God’s temple defiles it and dishonours God.

124. In stating that the Applicant’s religious positions in this regard are insufficient to evince a religious belief against receiving a vaccination tested on fetal cell lines, the Delegate insidiously “**choose[s] among various interpretations of belief**” as prohibited by *Amselem*. The only thing that matters, after all, is the *Applicant’s interpretation* of Scripture in grounding her sincere belief that she must abstain from substances tainted by abortion, as to do otherwise would defile God’s temple.

125. The Applicant need not provide any “objective evidence” of why her interpretation of Scripture is correct. The Applicant’s personal interpretation of Scripture is precisely the nexus to Christianity and the subjective evidence of her sincere belief that is required, whether or not accepted by others. The Applicant is a Christian, the Applicant interprets the Christian Scriptures as requiring her to abstain from covid vaccination, and the Applicant is sincere in that belief. The Applicant has without question discharged her burden under the *Amselem* test.

126. A recent opportunity to interpret *Amselem* occurred in *Yee*, which remained faithful to the *Amselem* test, notwithstanding every errant Commission and Tribunal decision the WestJet defendant stooped to place before the Court. Justice Argento correctly held that deference is to be given to honestly held religious beliefs:

There was no evidence at trial that the Defendant questioned the sincerity or

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<sup>115</sup> *Amselem* at paras 50-2, 55. [Emphasis added.]

honesty of the Plaintiff's religious beliefs at any time. The principles established by the Supreme Court of Canada in *Syndicat Northcrest v Amselem*, [2004 SCC 47](#), require that the Plaintiff's religious beliefs be given due regard and deference if they are found to be sincere and honestly held.<sup>116</sup>

127. Only a decision maker with an impoverished understanding of *Amselem* could think the reasons in either of the Delegate's decisions stand up to scrutiny.

128. Only by blinding itself to everything it prefers to ignore did the Delegate manage to conclude in the present case that any chance of success was foreclosed, or in the words of the Delegate, "no *prima facie* discrimination (or reasonable prospect of establishing same)".<sup>117</sup>

129. Notwithstanding its unequivocal statement that it need not consider the supplementary submissions of counsel because "the relevant law will already be considered and applied",<sup>118</sup> **the Delegate failed to properly consider and reasonably apply the relevant law.**

130. The Delegate's decision to uphold the Director's decision to dismiss the Applicant's complaint is not reasonable.

## CONCLUSION

131. The *Amselem* test is not an objective test. The *Amselem* test is a subjective test. Were the *Amselem* test an objective test, the Supreme Court of Canada would not have taken great pains to declare that the practice or belief must be **either** objective *or subjective*. This is not subtle, this is not difficult, and anyone attempting to pretend it is seeks not to clarify the test, but rather to modify the test. The *Amselem* test resists modification. The Supreme Court said what it meant and meant what it said. No decision maker post-*Amselem*, save the Supreme Court itself, has enjoyed the authority to disturb it, though many have sought to sully it.

132. Applied to the case at bar, when the Applicant, who openly and repeatedly declared herself a Christian and explained, with reference to Scripture, that her body is the temple of the Holy Ghost and that receiving into her body a substance tainted by the sin of murder constitutes a

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<sup>116</sup> *Yee* at paras 72. [Emphasis added.]

<sup>117</sup> Decision at para 86, CROP at 17.

<sup>118</sup> Decision at para 66, CROP at 13-4.

desecration of God's temple—**this is the precise sort of religious doctrine in which the Delegate had no business involving itself.**

133. The Delegate appears to have isolated for analysis only two of the Applicant's stated religious beliefs, a problem made worse by its abject failure to grasp their adequacy as an impenetrable foundation for the Applicant's religious accommodation claim, even in isolation from the remainder of the Applicant's stated religious beliefs, the latter of which the Delegate outright ignored. None of this is reasonable on the *Vavilov* standard.

134. The Decision is also unreasonable for its propensity to defy the authoritative decision of *Amselem*, and even the Commission's own interpretation of its home statute as explicated in its various policies and guidance publications.

135. The Decision is further unreasonable given the stage of the proceedings. By deciding, even on the profoundly low threshold the Applicant is required to meet, that there is no reasonable chance a Tribunal informed of all the facts placed before the Delegate—facts the Delegate chose to ignore—could possibly find that the clearly religious complainant's clearly religious abstention from vaccination is protected, the Delegate unreasonably foreclosed the Applicant's opportunity to seek vindication of her human rights. This is diametrically opposed to what the Commission and Tribunal claim to do and are legislatively mandated to do.

136. The Delegate's unreasonable decision culminates in the absurd statement that the Applicant has no reasonable prospect of tying her abstention from vaccination to her religion, even while accepting that the Applicant has sincerely held religious beliefs summarized by the Delegate<sup>119</sup> as the scriptural beliefs that the Applicant's body is the temple of the Holy Spirit and that the Applicant must abstain from knowingly placing into that temple products tainted by abortion, which is murder:

As held by the Director, the information supports that the complainant has sincerely held religious beliefs. It also supports that the complainant sincerely believes that she should not be vaccinated. However, that is not alone enough to demonstrate a reasonable prospect of establishing the protected characteristic of religious beliefs with respect to her beliefs regarding the vaccine... While the complainant has provided a significant amount of information, **the information**

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<sup>119</sup> Decision at para 10, CROP at 6-7.

**provided does not have a reasonable prospect of success in demonstrating her belief that she cannot be vaccinated for COVID-19 is linked to a tenet of her faith that calls for a particular line of conduct.** Rather, the information provided demonstrates only that she has religious beliefs and, separately, that she has strongly held personal and freedom of conscience beliefs related to vaccination.<sup>120</sup>

137. The Delegate’s conclusion does not logically follow from its analysis, and the Decision is thus fatally flawed.<sup>121</sup> The Applicant’s abstention from vaccination is manifestly “linked to a tenet of her faith”: the Applicant’s biblical belief that her body is God’s temple and the Applicant’s biblical belief that she must not defile that temple with products tainted by abortion, given the biblical prohibition on murder. Likewise, the Applicant’s stated biblical beliefs that her body is God’s temple and that abortion is murder manifestly call for “a particular line of conduct”: abstaining from taking into God’s temple products tainted by what is biblically understood as murder.

138. Not only is the Decision unreasonable; there is no reasonable decision apart from a decision that affirms the Applicant’s clear religious beliefs compelling abstention from covid vaccination. “Some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning.”<sup>122</sup> The outcome of the Decision is just such an outcome.

## **REMEDY SOUGHT**

139. The Applicant applies to this Honourable Court for the following relief:

- a) An Order quashing the Decision;
- b) An Order directing the Alberta Human Rights Commission to refer the Complaint to the Tribunal for a hearing on the merits;
- c) Costs of this Application; and

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<sup>120</sup> Decision at paras 74, 76, CROP at 15.

<sup>121</sup> *Vavilov* at paras 101-5.

<sup>122</sup> *Vavilov* at para 86.

d) Such further and other relief as this Honourable Court deems just and equitable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of April, 2026.

KITCHEN WELLS LLP

Per

A handwritten signature in black ink, appearing to read 'Jody Wells', written in a cursive style.

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Jody Wells  
Counsel for Stacey Anderson

## LIST OF AUTHORITIES

1.	<i>Adga Group Consultants Inc v Lane</i> , <a href="#">[2008] OJ No 3076</a> , <a href="#">2008 CanLII 39605</a>
2.	<i>British Columbia (Public Service Employee Relations Commission) v BCGSEU</i> , <a href="#">[1999] 3 SCR 3</a> , <a href="#">1999 CanLII 652</a>
3.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , <a href="#">2019 SCC 65</a>
4.	<i>Canadian National Railway Company v Teamsters Canada Rail Conference</i> , <a href="#">2018 ABQB 405</a>
5.	<i>Longueépée v University of Waterloo</i> , <a href="#">2020 ONCA 830</a>
6.	<i>Smart v University of Lethbridge</i> , <a href="#">2024 AHRC 103</a>
7.	<i>Stewart v Elk Valley Coal Corp</i> , <a href="#">2017 SCC 30</a>
8.	<i>Syndicat Northcrest v Amselem</i> , <a href="#">2004 SCC 47</a>
9.	<i>X v Alberta (Human Rights Commission)</i> , <a href="#">2022 ABKB 659</a>
10.	<i>Yee v WestJet</i> , <a href="#">2025 ABCJ 87</a>
11.	Alberta Human Rights Commission Human Rights Guide, <a href="#">“Defences to Human Rights Complaints”</a>
12.	Alberta Human Rights Commission Human Rights Guide, <a href="#">“Duty to Accommodate”</a>
13.	Alberta Human Rights Commission, <a href="#">“Religious beliefs Information Sheet”</a>