

**ALBERTA HUMAN RIGHTS COMMISSION**

BETWEEN:

**TOANIE KREFT**

**Complainant**

- and -

**GREEN ACRES FOUNDATION**

**Respondent**

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**SECTION 26 REQUEST FOR REVIEW**

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## OVERVIEW

1. The Complainant, Toanie Kreft, applies pursuant to section 26 of the *Alberta Human Rights Act* to the Chief of the Commission and Tribunals for an order overturning the decision of the Director of the Commission issued April 16, 2026 and directing the complaint proceed to the Alberta Human Rights Tribunal for a hearing on the merits.
2. The Director has failed to demonstrate any meaningful comprehension of the relevant law as laid down by the Supreme Court of Canada in *Syndicat Northcrest v Amselem*;<sup>1</sup> in fact, the Director never once mentioned *Amselem*, the only precedent binding on him, attempting rather to replace the high court’s majority pronouncement with the Commission’s own invention most closely aligned with the dissenting view of the matter.
3. The Complainant, on the other hand, discharged her burden pursuant to the binding law—*Amselem*—to demonstrate a sincere, subjective belief with a nexus to religion, which is all the law requires.

## FACTUAL HISTORY

4. The Complainant is a resident of Monarch, Alberta and was at the material time a 16-year employee of Green Acres Foundation (“GAF” or the “Respondent”), a provider of housing for senior citizens which operates approximately twenty properties in southern Alberta.
5. In September 2021, GAF issued its COVID-19 Mandatory Vaccination Policy (the “Policy”) requiring employees to provide proof of having received the COVID vaccines, unless they could not receive the COVID vaccines due to a characteristic protected by the *Alberta Human Rights Act*. On July 12, 2022, the Policy was emailed to the Complainant, who was on maternity leave, and had begun arranging to return to work on August 7, 2022.
6. The Policy provided:

The Foundation will accommodate those employees who are unable to vaccinate on the basis of a recognized ground protected by the *Alberta Human Rights Act* in accordance with the Foundation’s Workplace Accommodation Policy. Adequate

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<sup>1</sup> [2004 SCC 47](#) [*Amselem*].

proof that the refusal is based upon a recognized protected ground will be required. Disbelief in vaccines or a personal belief that vaccines are improper is not a protected ground.

7. On July 18, 2022, Mr. Kitchen, counsel for the Complainant wrote on her behalf to Marcus Trotz in the Human Resources department of GAF, requesting accommodation on the basis of the Complainant's religious beliefs and appending a detailed statement of the Complainant's sincerely-held Christian beliefs. Counsel outlined the requirement for an employer to accommodate to the point of undue hardship, advised that the only lawfully acceptable purpose for mandatory workforce vaccination would be meaningful transmission reduction, and reminded GAF the inefficacy of the COVID vaccines in terms of preventing transmission was by that time a notorious fact. Counsel offered as a proposed accommodation that the Complainant would submit to weekly COVID testing and provide the results to GAF, at the company's expense.
8. On July 29, 2022, counsel for GAF wrote to Mr. Kitchen, informing him that GAF was under no obligation to accommodate the Complainant for the reason that COVID vaccination was a *bona fide* occupational requirement. Counsel went on to state that GAF was not forcing the Complainant to be vaccinated but that compliance with the Policy was mandatory and failure to comply would result in the Complainant being placed on indefinite unpaid leave, which she was as of August 7, 2022.
9. In other words, the Complainant sought a religious exemption from her employer's vaccination policy which the Respondent denied, notwithstanding that the Complainant provided sufficient information to make out a sincere, subjective, religious belief preventing vaccination, as follows:

Toanie Kreft is a baptized member of the Netherlands Reformed Congregation. She believes the entirety of the Holy Bible is true and that she is duty-bound out of love for her God and King to abide by all the commands in Scripture to the best of her ability.

Ms. Kreft believes God laid before her life and death (Deuteronomy 30:19), and she has chosen life in Christ. Ms. Kreft steadfastly believes that "all scripture is God-breathed" (I Timothy 3:16), and it is through the Scriptures that God communicates His instructions and expectations, which are perfect and true for her life (Psalm 18:30). God desires and values obedience to His word, stemming

from her love for Him, more than any religious ritual or sacrifice (I Samuel 15:22; Hosea 6:6; Mark 12:32-33).

For this reason, Ms. Kreft's beliefs are exclusively grounded in Scripture, which is the Word of God. Out of love and obedience to God, she strives to live by the Scriptures and "live a life worthy of the calling to which [she has] been called" (Ephesians 4:1), that is, a godly life reflective of the salvation gifted to her at Calvary. God commands Ms. Kreft to "take pains to have a clear conscience towards both God and man" (Acts 24:16), "desiring to act honourably in all things" (Hebrews 13:18) and warns her not to reject her conscience and thereby shipwreck her faith (I Timothy 1:18-19). James, the brother of Christ, states it clearly: "any person who knows what is right to do but does not do it, to him it is sin" (James 4:17). Thus, Ms. Kreft will not blindly conform to the rules, regulations or mandates of any country, state, principality, or institution, but will first test everything to ensure it is within the Will of God, and only when those rules align with God's Law can she comply (Romans 12:2; I Corinthians 8:1-13).

As a Bible-believing follower of Christ, Ms. Kreft's first loyalty is to Christ and His Word (the Bible), not to any particular Christian leader or his teachings. That some Christian teachers or leaders have endorsed the COVID vaccines is religiously (and therefore legally) irrelevant.

Ms. Kreft sincerely holds to Christian beliefs that compel her to not receive into her body the COVID vaccines due to their nature and contents. She is also religiously compelled by her beliefs to not participate in a mandatory COVID vaccination scheme, which, among other sinful things, involves coercion and vitiation of consent because it inevitably causes some individuals to receive the COVID vaccines against their will. Disobeying the Lord in this matter would be a sin, a sin which, if she committed, would grieve her deeply and cause her spiritual and moral distress.

Ms. Kreft understands her obligation at law to demonstrate that she holds sincere beliefs that have a nexus with religion (Christianity), and that receiving the COVID vaccines would interfere with those beliefs in a manner that is more than trivial or insubstantial. Reproduced below is the full articulation of Ms. Kreft's relevant sincere religious beliefs, including references to Scripture:

a. In all circumstances Christians seek to live in freedom, without fear, and openly before God and other people because "it is for freedom that Christ set us free" (Galatians 5:1). If Ms. Kreft received the COVID vaccines, it would be for no other reason than because someone in a position of power over her coerced her to do so. To do that would be to act out of fear. Ms. Kreft is commanded by the Bible to fear God, not other people (Matthew 10:28; Galatians 1:10; Proverbs 1:7, 29:25). If she received the COVID vaccines, she would be violating her conscience and committing a sin (James 4:17). "Do not be afraid of those who kill the body but cannot kill the soul. Rather, be afraid of the One who can destroy

both soul and body in hell...Whoever acknowledges me before others, I will also acknowledge before my Father in heaven. But whoever disowns me before others, I will disown before my Father in heaven” (Matthew 10:28, 32-33).

b. Ms. Kreft’s Lord and Saviour, Jesus Christ, is a God of justice who hates injustice, oppression, and tyranny (Deuteronomy 10:17-20; Isaiah 1:15-17; Ecclesiastes 3:16-17, 4:1, 5:8; Psalm 7:11, 9:7-9). He has appointed government to do good and to avenge evil (Romans 13:3-4; I Peter 2:13-14). Jesus’ concern for justice is Ms. Kreft’s concern, as a follower of Jesus Christ. Out of love for neighbor and obedience to Christ, she is called to resist oppression, which necessarily includes coercive vaccination programs, whether at the hands of government or private entities (Ephesians 5:11).

c. Jesus Christ is the supreme King of all, and Ms. Kreft is subject to His final authority alone in all matters of conscience, what she does with her body, and how she responds to societal injustice and coercive efforts to control her behaviour, which is a form of temptation (Ephesians 4:4-6; Colossians 1:16-18). Christians recognize that they will one day stand before God to give an account for their lives and therefore seek to exercise wisdom and discernment in all their decisions, and to live to please the Lord (Romans 12:2; II Corinthians 5:10). Further, Ms. Kreft believes she must not be conformed to the ways of the world, but be transformed by the renewing of her mind based on God’s ways, which are above the ways of the world and of men, so that she “will be able to test and approve what God’s will is—his good, pleasing and perfect will (Romans 12:2; Isaiah 55:8-9). Ms. Kreft sincerely believes that if she received the COVID vaccines, she would commit a sin before God and that God’s will for her is to not receive the COVID vaccines.

d. Fundamental to the Christian faith is the belief that all human persons bear the image of God (Genesis 1:27, 9:6). Christians are instructed by Scripture to view their bodies as temples of the Holy Spirit and to steward their bodies as creatures ultimately accountable to God (Romans 12:1-2; I Corinthians 3:16-17, 6:19-20). For Ms. Kreft, this extends to not injecting her body with substances such as those contained in the COVID vaccines. Some of these substances are not fully known, potentially dangerous, and have the effect of interfering with or manipulating her natural cell composition and cell mechanisms. The mRNA and the “spike protein” for which mRNA codes are examples. Ms. Kreft is compelled to maintain both the physical and spiritual integrity of her body, including her Divinely-designed cell mechanisms. She believes she is fearfully and wonderfully made by God and must entrust her health first to God, to His design of her immune system (over a man-made intervention that may alter the function of her immune system and is necessarily inferior to God’s design), and the sources of natural health and healing that God has provided (Genesis 1; Exodus 23:25; Psalm 91:5-7, 139:14; I Corinthians 3:19; Jeremiah 17:5).

e. Ms. Kreft is deeply concerned that the COVID vaccine and associated vaccine passports and mandates are a precursor to or may become the “mark of the beast” referred to in the Bible (Revelation 13:16-17). She is compelled to exercise wisdom regarding this matter (Revelation 13:18) by being very careful to not inadvertently receive the mark, as to receive the mark is to commit an unpardonable sin and to betray Christ, while the rewards of remaining loyal to Christ are eternal life (Revelation 14:11, 16:2, 19:20, 20:4). Ms. Kreft must avoid anything that could be associated with the mark of the beast.

f. Christians are required to fully, diligently, and resolutely honour the sanctity of human life, which Ms. Kreft believes manifests at conception and includes pre-natal life (Genesis 1:27, 4:1, 17, 9:6; Jeremiah 1:5; Psalm 22:10-11, 106:35-38, 113:7-9, 127:3, 139:13-16; Matthew 18:1-4, 19:13-15). “Whoever sheds human blood, by humans shall their blood be shed; for in the image of God has God made mankind” (Genesis 9:6). For Ms. Kreft, this necessarily extends to protecting, through her choices, unborn children from medical experimentation in the testing, development, or production of vaccines, and not participating directly or indirectly in any vaccine that was derived directly or indirectly from aborted human fetal cell lines (Exodus 20:13, Leviticus 18:21, 20:2-5; Deuteronomy 12:30-32, 18:10; 2 Kings 16:3; Psalm 16:38). Receiving the COVID vaccines would be to violate this belief and commit a sin before God (James 4:17; Romans 14:23; Leviticus 20:1-5). How products for human consumption are obtained and that from which they are derived is important for Ms. Kreft, just like it was for King David and the prophet Daniel (II Samuel 23:15-17; Daniel 1:8-14).

Ms. Kreft has prayed about the above beliefs as they apply to the COVID vaccine and she has received confirmation from the Holy Spirit that it is the Lord’s Will for her to act in accordance with these beliefs in rejecting the COVID vaccines. The Holy Spirit is the third person of the Trinity (consisting of God the Father, Jesus Christ the Son, and the Holy Spirit). As Jesus said, he gave Christians the Holy Spirit, the “Spirit of Truth”, to guide and teach them (John 14:17, 26, 16:13).

Due in large part to the beliefs above, Ms. Kreft has not received into her body any vaccines whatsoever in her adult life.

## **DIRECTOR’S ERRORS**

10. The foregoing clearly demonstrates a nexus between the Complainant’s beliefs and her religion. Pretending otherwise is either disingenuous or reflects an impoverished understanding of *Amselem*.

11. The Director made a number of absurd statements which run counter to the binding law. First, the Director stated that the Complainant’s information “does not demonstrate that Kreft’s

beliefs or conduct regarding the COVID-19 vaccines is a tenet of her faith, a fundamental practice of her faith, or a particular line of conduct that is required”.

12. This runs afoul of both the facts and the law. Indeed, the Complainant’s information **does** demonstrate that both her beliefs and her conduct are tenets and fundamental practices of her faith which reflect the conduct that her faith requires of her. It is essential to remember that the requirement for those beliefs and practices is entirely subjective, as the *Amselem* case makes unfailingly clear.

13. The Director next stated that the Complainant’s personal statement of her beliefs “does not show any requirement of the religion to refuse the vaccines or any contradiction of a tenet or fundamental part of her faith by taking the COVID-19 vaccines”. Again, the “requirement” of the religion is entirely subjective: it is what the Complainant sincerely believes the religion requires of her, nothing more, nothing less.

14. The Director capped his nonsensical inquiry with the statement that “[p]ersonal belief and individual conscience are not protected characteristics under the Act and therefore cannot be a basis for this Complaint to proceed”. This is a throw away. The Complainant made a complaint **based on religious beliefs**. Clearly the fact that those religious beliefs can be personal, individual and subjective rubs the Director the wrong way. However, that is the law. Anyone with the most rudimentary understanding of *Amselem* knows that religious beliefs are personal, individual and subjective and that the “nexus” is not difficult to make out.

15. Accordingly, the Director’s reliance on ersatz precedent that claims otherwise does not hold up to scrutiny. Paragraph 36 of *Pelletier v 1226309 Alberta Ltd. o/a Community Natural Foods*, 2021 AHRC 192, which states that a claimant “must provide a sufficient objective basis to establish that the belief is a tenet of a religious faith” is a non-starter because this assertion is **utterly incorrect at law. The test for religious belief is not objective.** Such a thing may be what the Commission wishes were true, as did the dissenting judges in *Amselem*. However, the Commission is not at liberty to make up what it wishes the law to be. The Commission is bound by what the law is, no matter how fervently it wishes otherwise. *Pelletier* may have been gleefully relied upon dozens of times by the Commission and Respondents seeking to avoid liability, but that does not make it good law.



## Director's Impoverished Grasp of *Amselem*

16. That the Director never once mentioned the leading and binding Supreme Court case on religious freedom, and the one the Commission acknowledges in its policies is authoritative, is telling. Nevertheless, *Amselem* is the decision to which the Commission must submit itself, and the Director's decision fails on that front.

17. **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 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 *seeks not to clarify the test, but to modify it to their liking*. The *Amselem* test resists modification. It represents the state of the law as it is, not as the Commission wishes it to be. The Supreme Court said what it meant and meant what it said. This was recently affirmed by the Alberta Court of Justice in *Yee v WestJet*.<sup>2</sup>

18. *Amselem* decides that only two things are required to trigger a freedom of religion claim: sincerity of belief and nexus to religion.

19. *Amselem* states:

[56] Thus, at the first stage of a religious freedom analysis, an individual advancing an issue premised upon a freedom of religion claim must show the court that (1) he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief. Only then will freedom of religion be triggered.

...

65 As outlined above, the first step in successfully advancing a claim that an individual's freedom [page587] of religion has been infringed **is for a claimant to demonstrate that he or she sincerely believes in a practice or belief that has a nexus with religion**. The second step is to then demonstrate that the impugned conduct of a third party interferes with the individual's ability to act in accordance with that practice or belief in a manner that is non-trivial.

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<sup>2</sup> [2025 ABCJ 87](#) [*Yee*].

...

69 Rather, as I have stated above, regardless of the position taken by religious officials and in religious texts, **provided that an individual demonstrates that he or she sincerely believes that a certain practice or belief is experientially religious in nature in that** it is either objectively required by the religion, *or* that he or she subjectively believes that it is required by the religion, *or* that **he or she sincerely believes that the practice engenders a personal, subjective connection to the divine** or to the subject or object of his or her spiritual faith, **and as long as that practice has a nexus with religion, it should trigger the protection....**

20. Once the claimant demonstrates sincerity and nexus, the inquiry becomes whether the infringement is non-trivial. The Director stopped short of this inquiry, pretending as he did that the clearly religious Complainant who clearly stated her religious objections to vaccination has somehow failed to show that her clearly religious conduct in this regard had a nexus to religion.

21. A nexus simply means a connection. Demonstrating a nexus is nowhere near as arduous a task as the Commission purports. The statement of a practising Christian that her body is the temple of the Holy Spirit and she seeks not to defile that temple with vaccines, for example, provides a nexus between the belief and the religion. No fewer than two dozen additional connections are found throughout the Complainant's statement of her religious beliefs against vaccination.

22. 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 for an excuse to withhold protection. *Amselem* could not possibly be any clearer on this point, beginning with its fact pattern.

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

23. The facts on which Moïse Amselem succeeded at the Supreme Court leave little doubt that the facts on which the Complainant's complaint rests prove she brought a legitimate religious accommodation matter before the Commission.

24. After all, Mr. Amselem was not prohibited from observing the Feast of Tabernacles, or Sukkot. Mr. Amselem was not prohibited from building a temporary shelter, or sukkah. Mr. Amselem was purportedly prohibited from building a sukkah for his observance of Sukkot only in the personal, individual and subjective way in which Mr. Amselem personally, individually and subjectively believed he should. **Even subjective obligation is not necessary to demonstrate a nexus.**

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 sukkah during the Succot holiday. If a woman, however, nonetheless sincerely believes that sitting and eating in a sukkah 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 sukkah? Surely not.<sup>3</sup>

...

[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 sukkah is of religious significance to them, irrespective of whether they subjectively believe that their religion requires them to build their own sukkah.** 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 sukkah could vastly outweigh the significance of a strict fulfilment of the biblical commandment of “dwelling” in a

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<sup>3</sup> *Amselem* at para 68.

succah, and that, in and of itself, would suffice in grounding a claim of freedom of religion.

26. The Supreme Court found in favour of Mr. Amselem and his personal, individual and subjective belief 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 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:

[TRANSLATION]

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.

...

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

[TRANSLATION] The meals given at the synagogue are for people for whom it is physically impossible to make [page644] a succah 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 succah. [Underlining added.]

[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. [Emphasis added.]

[202] Apart from the synagogue, going to see family and sharing their succah 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. Mr. Amselem's **choice** to build a sukkah on the balcony of his condominium against the condominium development's prohibition was as personal, individual and subjective a practice as any could be. The Supreme Court was unbothered by this, caring only that Mr. Amselem's belief was sincere and tethered to religion.

28. The Complainant's beliefs against vaccination are explicitly tethered to her religion of Christianity in the following ways: the biblical prohibition on acting out of fear; the biblical prohibition on violating the conscience; the biblical prohibition on yielding to coercion; the biblical prohibition on doing anything she believes is a sin; the biblical prohibition on desecrating the body, which is the temple of the Holy Spirit; the biblical prohibition on submitting to the mark of the beast, or even the appearance of such evil; and the biblical prohibition on the shedding of innocent blood.

29. Given the Complainant believes taking the vaccination violates all of the above prohibitions, there is absolutely no question the Complainant's beliefs and abstention from vaccination have a nexus to her religion.

30. The final paragraph of the Complainant's statement of beliefs further articulates the connection:

Ms. Kreft has prayed about the above beliefs as they apply to the COVID vaccine and she has received confirmation from the Holy Spirit that it is the Lord's Will for her to act in accordance with these beliefs in rejecting the COVID vaccines. The Holy Spirit is the third person of the Trinity (consisting of God the Father, Jesus Christ the Son, and the Holy Spirit). As Jesus said, he gave Christians the Holy Spirit, the "Spirit of Truth", to guide and teach them (John 14:17, 26, 16:13).

### ***On the Amselem Law***

31. 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, *Amselem* stops short of creating a rigid checklist for establishing religious belief.

32. *Amselem* decides that the content of religious belief is subjective, personal, and not for adjudicators to decide, which it repeats in numerous direct and indirect ways:

[42] This understanding is consistent with a **personal or subjective conception of freedom of religion**, one that is integrally linked with an individual's self-definition and fulfilment and is a function of **personal autonomy and choice, elements which undergird the right**; see, generally, J. Woehrling, "L'obligation d'accommodement raisonnable et l'adaptation de la société à la diversité religieuse" (1998), 43 McGill L.J. 325. According to Professor Woehrling, at p. 385:

[TRANSLATION] Virtually every judicial decision based on s. 2(a) of the *Canadian Charter* or s. 3 of the *Quebec Charter* concerns freedom of religion. However, it would appear that these decisions stress 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.

[43] The emphasis then is on **personal choice of religious beliefs**. In my opinion, these decisions and commentary should not be construed to imply that freedom of religion protects only those aspects of religious belief or conduct that are objectively recognized by religious experts as being obligatory tenets or precepts of a particular religion. Consequently, **claimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs** in that their beliefs are objectively recognized as valid by other members of the same religion, **nor is such an inquiry appropriate for courts to make**; see, e.g., *Re Funk and Manitoba Labour Board* (1976), 66 D.L.R. (3d) 35 (Man. C.A.), at pp. 37-38. In fact, this Court has indicated on several occasions that, **if anything, a person must show “[s]incerity of belief”** (Edwards Books, *supra*, at p. 735) and **not that a particular belief is “valid”**.

[44] For example, in *R. v. Jones*, [1986] 2 S.C.R. 284, La Forest J., writing for the minority (but not on this point), opined, at p. 295:

Assuming the sincerity of his convictions, I would agree that the effect of the *School Act* does constitute some interference with the appellant’s freedom of religion. For **a court is in no position to question the validity of a religious belief**, notwithstanding that few share that belief.

Although La Forest J. did not explicitly state that **all that must be shown is a sincerity of belief, it is implicit in his reasons**. Indeed, this position was subsequently explicitly adopted by this Court in *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, at para. 70, where La Forest J. reasoned that **“it is not the role of this Court to decide what any particular religion believes”**.

...

[46] To summarize up to this point, our Court’s past decisions and the basic principles underlying freedom of religion support the view that freedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.

[47] But, at the same time, this freedom encompasses objective as well as **personal notions of religious belief**, “obligation”, precept, “commandment”, custom or ritual. Consequently, both obligatory as well as **voluntary expressions of faith should be protected** under the *Quebec* (and the *Canadian*) *Charter*. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection. An inquiry into the mandatory nature of an alleged religious practice is not only inappropriate, it is



plagued with difficulties. Indeed, the Ontario Court of Appeal quite correctly noted this in *R. v. Laws* (1998), 165 D.L.R. (4th) 301, at p. 314:

There was no basis on which the trial judge could distinguish between a requirement of a particular faith and a **chosen religious practice**. Freedom of religion under the Charter surely extends beyond obligatory doctrine.

[48] This is central to this understanding of religious freedom that a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion. Such an approach would be inconsistent with the underlying purposes and principles of the freedom emphasizing **personal choice** as set out by Dickson C.J. in *Big M* and *Edwards Books*.

[49] To require a person to prove that his or her religious practices are supported by a mandatory doctrine of faith, leaving it for judges to determine what those mandatory doctrines of faith are, would require courts to **interfere with profoundly personal beliefs in a manner inconsistent with the principles set out by Dickson C.J. in *Edwards Books*, supra, at p. 759:**

The purpose of s. 2(a) is to ensure that society does not interfere with **profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices.**

[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 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.**

[53] Assessment of sincerity is a question of fact that can be based on several non-exhaustive criteria, including the credibility of a claimant's testimony (see Woehrling, *supra*, at p. 394), as well as an analysis of **whether the alleged belief is consistent with his or her other current religious practices.** It is important to underscore, however, that it is inappropriate for courts rigorously to study and focus on the past practices of claimants in order to determine whether their current beliefs are sincerely held. Over the course of a lifetime, individuals change and so can their beliefs. Religious beliefs, by their very nature, are fluid and rarely static. A person's connection to or relationship with the divine or with the subject or object of his or her spiritual faith, or his or her perceptions of religious obligation emanating from such a relationship, may well change and evolve over time. Because of the vacillating nature of religious belief, **a court's inquiry into sincerity, if anything, should focus not on past practice or past belief but on a person's belief at the time of the alleged interference with his or her religious freedom.**

[54] A claimant may choose to adduce expert evidence to demonstrate that his or her belief is consistent with the practices and beliefs of other adherents of the faith. While such evidence may be relevant to a demonstration of sincerity, it is not necessary. Since the 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, it is inappropriate to require expert opinions to show sincerity of belief. An "expert" or an authority on religious law is not the surrogate for an individual's affirmation of what his or her religious beliefs are. Religious belief is intensely personal and can easily vary from one individual to another. Requiring proof of the established practices of a religion to gauge the sincerity of belief diminishes the very freedom we seek to protect.

[55] This approach to freedom of religion effectively **avoids the invidious interference of the State and its courts with religious belief.** The alternative would undoubtedly result in unwarranted intrusions into the religious affairs of the synagogues, churches, mosques, temples and religious facilities of the nation with value-judgment indictments of those beliefs that may be unconventional or not mainstream. [...]

Again, the *Amselem* court's protracted exploration of what religion might involve culminates in just two requirements for triggering protection:

[56] Thus, at the first stage of a religious freedom analysis, an individual advancing an issue premised upon a freedom of religion claim must show the court that (1) **he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct**, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) **he or she is sincere in his or her belief**. Only then will freedom of religion be triggered.

33. The Alberta Human Rights Commission explicitly recognizes<sup>4</sup> the authority of *Amselem*, and the Complainant easily discharged the *Amselem* test.

34. *Amselem* is clear that no confirmation of the belief or practice by a religious leader is necessary;<sup>5</sup> no proof of the established practices of a religion is necessary;<sup>6</sup> no mandatory doctrine of faith supporting the belief is necessary;<sup>7</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>8</sup> even the role of a tribunal is to assess mere sincerity of belief, not validity of belief;<sup>9</sup> and sincerity of belief simply implies an honesty of belief.<sup>10</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>11</sup>

35. To claim the nexus is missing, as the Director attempts to do, is to claim some a) traditional authority or b) external authority to decide the content of the Complainant's religious beliefs, which the *Amselem* court makes clear is forbidden. It is to require proof of objective validity,

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<sup>4</sup> Alberta Human Rights Commission Human Rights Guide, "Duty to Accommodate" at 17.

<sup>5</sup> *Amselem* at para 56.

<sup>6</sup> *Amselem* at para 54.

<sup>7</sup> *Amselem* at para 49.

<sup>8</sup> *Amselem* at para 50.

<sup>9</sup> *Amselem* at para 52.

<sup>10</sup> *Amselem* at para 51.

<sup>11</sup> *Amselem* at para 43.

which is forbidden. If the Christian Complainant says the Scripture she cites means to her that she is not to indulge in vaccination, the nexus is established. Requiring anything more is delving into “validity” of belief, and the Supreme Court has bluntly stated this Commission has no business there.

36. 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 on the point that personal beliefs cannot be severed from the religious beliefs of the religious person, characterizing religion as inherently involving “**personal convictions or beliefs**”,<sup>12</sup> “**personal choice and individual autonomy**”,<sup>13</sup> “**personal or subjective conception**”,<sup>14</sup> “personal autonomy”,<sup>15</sup> “personal sincerity”,<sup>16</sup> “**personal choice of religious beliefs**”,<sup>17</sup> “**personal notions of religious belief**”,<sup>18</sup> “**voluntary expressions of faith**”,<sup>19</sup> “profoundly personal beliefs”,<sup>20</sup> “intensely personal” beliefs<sup>21</sup> and “personal religious ‘obligations’”.<sup>22</sup> *Amselem* discloses that religious belief **is** *personal* belief.

37. 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>23</sup>

38. 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 being objectively **or subjectively** obligatory or customary, **or** by, **in general**, **subjectively** engendering

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<sup>12</sup> *Amselem* at para 39.

<sup>13</sup> *Amselem* at para 40.

<sup>14</sup> *Amselem* at para 42.

<sup>15</sup> *Amselem* at para 42.

<sup>16</sup> *Amselem* at para 42.

<sup>17</sup> *Amselem* at para 43.

<sup>18</sup> *Amselem* at para 47.

<sup>19</sup> *Amselem* at para 47.

<sup>20</sup> *Amselem* at paras 41, 49.

<sup>21</sup> *Amselem* at para 54.

<sup>22</sup> *Amselem* at para 54.

<sup>23</sup> *Amselem* at para 59.

a **personal** connection with the divine or with the subject or object of an individual's spiritual faith".

39. The one correct proposition the Director managed is that the Complainant is sincere in her belief. This turns out to be all that matters. The only appropriate inquiry is as to sincerity of beliefs, which are unquestionably connected to her religion, and which *Amselem* twenty years ago decided and Justice Argento of the Court of Justice followed:

There was no evidence at trial that the Defendant questioned the sincerity or 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... [T]he Defendant's refusal to grant the Plaintiff an exemption, even though it accepted the sincerity of her religious beliefs, was not a reasonable application of its Vaccination and Accommodation Policies.<sup>24</sup>

40. The Complainant need not provide any "objective evidence". The Complainant'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 Complainant is a Christian, the Complainant interprets the Christian Scriptures as requiring her to abstain from covid vaccination, and the Complainant is sincere in that belief. The Complainant has without question discharged her burden under the *Amselem* test.

## **LAW ON ACCOMMODATION**

### **Employer Must Accommodate or Establish a BFOR**

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

42. 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

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<sup>24</sup> *Yee* at paras 72, 78.

face) discrimination”<sup>25</sup> experienced by the employee, and that despite “inconvenience, disruption, and expense to the employer...accommodation to the point of undue hardship is required by law”.<sup>26</sup>

43. 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>27</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>28</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>29</sup>

44. The third step of the SCC-devised *Meiorin*<sup>30</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>31</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>32</sup> [Emphasis added.]

45. 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;

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<sup>25</sup> Accommodation Guide at 2.

<sup>26</sup> Accommodation Guide at 3.

<sup>27</sup> Accommodation Guide at 12-3; Defences Guide at 7-10, 13.

<sup>28</sup> Defences Guide at 7.

<sup>29</sup> Defences Guide at 7.

<sup>30</sup> *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3, 1999 CanLII 652 [*Meiorin*].

<sup>31</sup> Defences Guide at 8; *Meiorin* at para 54.

<sup>32</sup> Defences Guide at 8-9.

and the duty to accommodate procedurally. Undue hardship cannot be established unless and until the **procedural duty** to accommodate has been discharged.

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

46. The Commission states that the duty to accommodate has both a substantive and **procedural** component,<sup>33</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>34</sup> The employer must meaningfully consult with the employee to identify possible means of accommodation.<sup>35</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>36</sup>

47. 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>37</sup> An employer's duty to accommodate an employee is far reaching and may involve adjusting policies.<sup>38</sup>

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<sup>33</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>34</sup> Accommodation Guide at 4.

<sup>35</sup> Accommodation Guide at 4; *Teamsters* at para 36.

<sup>36</sup> Accommodation Guide at 4-5.

<sup>37</sup> Accommodation Guide at 9-10.

<sup>38</sup> Accommodation Guide at 11. [Emphasis added.]

48. 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>39</sup>

49. Again, a BFOR stands as an exception to otherwise prohibited grounds of discrimination, but **only once accommodation solutions have been fully canvassed**.<sup>40</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>41</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>42</sup> An employee seeking accommodation should suggest appropriate accommodation measures, consider any reasonable accommodation options and cooperate to make the agreement work.<sup>43</sup>

50. 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>44</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>45</sup>

51. 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>46</sup> undue hardship cannot be established by relying on impressionistic

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<sup>39</sup> Accommodation Guide at 5 [Emphasis added].

<sup>40</sup> Accommodation Guide at 12-3; Defences Guide at 7-10, 13.

<sup>41</sup> Defences Guide at 7.

<sup>42</sup> Defences Guide at 7.

<sup>43</sup> Accommodation Guide at 8-9.

<sup>44</sup> Defences Guide at 8-9. [Emphasis added.]

<sup>45</sup> *Stewart* at para 133; see also *Grismer*.

<sup>46</sup> *Adga Group Consultants Inc v Lane*, [2008] OJ No 3076, 2008 CanLII 39605 [*Adga*] at para 109.



or anecdotal evidence, or after-the-fact justifications;<sup>47</sup> and **in assessing whether the organization has met the duty, its efforts must be assessed at the time of the alleged discrimination.**<sup>48</sup>

52. 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>49</sup>

53. 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>50</sup>

54. 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>51</sup>

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<sup>47</sup> *Adga* at para 118.

<sup>48</sup> *Adga* at para 108.

<sup>49</sup> *Longuepée v University of Waterloo*, [2020 ONCA 830](#) at para 70.

<sup>50</sup> *Adga* at paras 126-7.

<sup>51</sup> *Teamsters* at para 36.

55. The duty on the Respondent was to begin the accommodation process, which it failed to do, and for which it must answer before the Tribunal. The Respondent did not establish a BFOR because as the law makes plain, it is impossible to establish a BFOR without discharging the procedural duty to accommodate.

#### **DIRECTOR FAILED SCREENING FUNCTION**

56. The Director thoughtlessly stated that he was applying the “no reasonable prospect of success” threshold, but displayed no sign of knowing what that is, let alone any justification for dismissing the Complainant’s matter on that basis.

57. The following principles apply to the no reasonable prospect of success threshold:

- (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 decision maker 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>52</sup>

58. The threshold of no reasonable prospect of success is low. Certainly it is not meant for a case wherein the Complainant has provided evidence of a comprehensive, overarching system of religious beliefs, replete with references to the holy book of the Complainant’s religion, and some two dozen intersections of the Complainant’s stated beliefs about vaccination with the Scriptural basis for them. That sort of evidence does not provide a basis for “screening out”, particularly in the context of the subjective test *Amselem* provides.

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<sup>52</sup> *Gipson v Finning (Canada), a Division of Finning International Inc.*, [2023 AHRC 81](#) at para 12; *Minor v MacEwan University*, [2022 AHRC 74](#) at paras 17-25.

59. The Complainant is required to show only that the evidence takes the case out of the realm of conjecture in order to pass the “screening”.

***Yee v WestJet* has affirmed the *Amselem* test**

60. The Commission has the advantage of the recently decided case of *Yee v WestJet* which affirms the one and only unmodified *Amselem* test, and resists perversion of that test by various tribunal decisions. Deciding this matter offside *Amselem*—and now *Yee*—will constitute a reviewable error. Any decision purporting to decide a matter on the basis of religious freedom which refuses to grapple with the authoritative precedent on religious freedom will not be reasonable.

**CONCLUSION**

61. No justice results from this Commission’s refusal to send the Complainant’s matter to the Tribunal for hearing. The complaint has merit and is almost certain to succeed at a hearing, with recent jurisprudence disambiguating *Amselem* and putting paid to the Commission’s and Tribunal’s past impoverished interpretations thereof.<sup>53</sup>

62. These submissions have been biting. That is not accidental. Counsel is aware the Commission generally and the Director specifically has summarily dismissed a significant number of complaints similar to this one based upon the same poor reasoning and incomprehension of the applicable law. Indeed, many of the Director’s decisions in this regard appear to be based upon a template or form carelessly reused for every complaint similar to this one.

63. With all due respect, Albertans deserve better and counsel will not shy from the duty as an advocate to zealously hold the Commission accountable to what has become a serious matter of systemic injustice.

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<sup>53</sup> *Yee* at paras 72-8.

64. The Complainant's matter should be scheduled for a hearing at the Tribunal as soon as is practicable.

ALL OF WHICH IS SUBMITTED this 14<sup>th</sup> day of May, 2026.

**KITCHEN WELLS LLP**

A handwritten signature in black ink, appearing to be 'Jody Wells', with a stylized, cursive script.

Per:  
James SM Kitchen  
Jody Wells  
Counsel for Toanie Kreft

## LIST OF AUTHORITIES

| TAB | AUTHORITY                                                                                                                                          |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 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>Canadian National Railway Company v Teamsters Canada Rail Conference</i> , <a href="#">2018 ABQB 405</a>                                        |
| 4.  | <i>Gipson v Finning (Canada), a Division of Finning International Inc.</i> , <a href="#">2023 AHRC 81</a>                                          |
| 5.  | <i>Longuepée v University of Waterloo</i> , <a href="#">2020 ONCA 830</a>                                                                          |
| 6.  | <i>Minor v MacEwan University</i> , <a href="#">2022 AHRC 74</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>Yee v WestJet</i> , <a href="#">2025 ABCJ 87</a>                                                                                                |
| 10. | <a href="#">Alberta Human Rights Commission Defences to Human Rights Complaints</a>                                                                |
| 11. | <a href="#">Alberta Human Rights Commission Duty to Accommodate Human Rights Guide</a>                                                             |