**Brief Insights for Those Who Seek Exemptions for Convictions of Conscience**

1. **Federal and Provincial Employers**

Federal and provincial employers are subject to the *Charter* (Banks Airlines Transit) Universities and Hospitals- Private post-secondary education is not subject to the *Charter.* All other employers are not subject to the *Charter* but would be subject to provincial human rights legislation.

On August 13, 2021, the Government of Canada announced that it will require all federal public servants to be fully vaccinated as early as by the end of September 2021. In addition, the Government of Canada also announced its intention to require federally-regulated employees in the air, rail and marine sectors to be fully vaccinated by no later than the end of October 2021. The Government of Canada also expects that Crown corporations and other federally-regulated employers will require mandatory vaccination of employees.[[1]](#endnote-1)

The government stated that:

… for those few who are unable to be vaccinated, accommodation or alternative measures, such as testing and screening, may be determined in each situation, to protect broader public health by reducing the risk of COVID-19.[[2]](#endnote-2)

The language here does not contemplate termination or leave of absence. It contemplates accommodation.

1. **Human Rights Legislation**

The *(put in the name of your provincial human rights act here)* protects the ground of religious belief, which includes a system of belief and does not require an objector to belong to a church to be considered for exemption. A *bona fide* (occupational) requirement is necessary in order to infringe on my objections based on religious belief. That means that the policies of (*put in the name of your employer here)* must be rationally connected to a reasonable basis.

The Supreme Court of Canada case, *Syndicat Northcrest* v *Amselem* [2004] 2 S.C.R. 551[[3]](#endnote-3) (“**Amsalem**”) advocated freedom of religion under section 2 of the *Canadian Charter of Rights and Freedoms* as tolerating a practice where the individual sincerely feels it is connected to religion, regardless of whether the practice is required by a religious authority.

These paragraphs from the Ontario Human Rights Commission may be of assistance to you as you consider your request for an exemption (even if you are not in Ontario):

#### 4.  Can my employer or any service or housing provider require proof that I’ve received a COVID-19 vaccine?

* Receiving a COVID-19 vaccine is voluntary.
* At the same time, governments across Canada are examining and beginning to set conditions where proof of vaccination may be required to take part in some activities.
* Requiring proof of vaccination to ensure fitness to safely perform work, or protect people receiving services or living in congregate housing, may be permissible under the Code if the requirement is made in good faith and is reasonably necessary for reasons related to health and safety.
* The Code grounds of disability and/or creed may be engaged when employers, housing or other service providers impose medical testing or treatment requirements, including proof of vaccination.
* Under the Code, organizations have a duty to accommodate people who may be unable to receive a COVID-19 vaccine, for reasons related to disability or creed, unless it would amount to undue hardship based on cost or health and safety.
* The right to be free from discrimination can be limited under the Code, where, for example, broader health and safety risks are serious, like in a pandemic, and would amount to undue hardship. The OHRC and relevant human rights laws like the Code recognize the importance of balancing people’s right to non-discrimination and civil liberties with public health and safety, including the need to address evidence-based risks and treatment associated with COVID-19.
* Everyone involved should be flexible in exploring whether accommodation is possible, including alternative ways a person might continue to safely work, receive a service or live in congregate housing without being vaccinated.
* Organizations should make clear the reasons why proof of vaccination is needed in the circumstances.
* Organizations should only request and share medical information, including proof of vaccination, in a way that intrudes as little as possible on a person’s privacy, and does not go beyond what is necessary to ensure bona fide fitness to safely perform work, or protect people receiving services or living in congregate housing, and accommodate any individual needs.
* No one should experience harassment or other discriminatory treatment based on a Code ground because they are unable to receive a vaccine.
* Also, workers have rights and employers have obligations for workers’ health and safety under the Occupational Health and Safety Act. Visit the Ontario Ministry of Labour, Training and Skills Development [**website**](https://www.labour.gov.on.ca/english/hs/index.php) for more information, including how to contact the Ministry.

#### 5. I do not believe in vaccinations (or masks and lockdowns). Does the Human Rights Code exempt me based on creed from COVID-19 requirements like providing proof of vaccination set by my employer or a service provider?

* Not all beliefs amount to a creed under the Code.
* The Code does not define creed. The OHRC’s [***Policy on preventing discrimination based on creed***](http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-creed)sets out guiding factors, based on case law, to help organizations, and ultimately tribunals and courts, make these determinations. This includes considering whether the belief is:
	+ Sincerely, freely and deeply held
	+ Integrally linked to a person’s identity, self-definition and fulfilment
	+ Part of a particular and comprehensive, overarching system of belief that governs one’s conduct and practices
	+ Addressing ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a Creator and/or a higher or different order of existence
	+ Connected in some way to an organization or community that professes a shared system of belief
* The OHRC’s position is that a singular belief or personal preference against vaccinations or masks does not appear to be protected on the ground of creed under the Code.
* The OHRC is not aware of any tribunal or court decision that found a singular belief against vaccinations or masks amounted to a creed within the meaning of the Code.
* In Ataellahi v Lambton County (EMS), 2011 HRTO 1758 (CanLII), the HRTO held that in the absence of a sincerely held religious belief with a nexus to the divine or as a function of spiritual faith, the person could not assert that he was discriminated against based on creed, because the respondent had a requirement that employees be immunized and the person refused to be immunized. In Sharma v Toronto (City), 2020 HRTO 949 (CanLII), the HRTO found the person’s objection to wearing a mask does not fall within the meaning of “creed.”
* Also, not all creed-related needs must be accommodated in the Code-protected social areas, such as employment, facilities and services or housing.
* The requirement to wear a mask or prove vaccination may represent a reasonable and bona fide requirement for health and safety reasons, especially when serious risks to public health and safety are shown to exist like during a pandemic.[[4]](#endnote-4)
1. **Hospital Employer**

In *Eldridge* v. *British Columbia[[5]](#endnote-5)*, the Court found that hospitals are often subject to *Charter* scrutiny as many government policies are designed to be carried out by the hospitals.

As a public provider of health services, (*Put the name of your employer in here)* is subject to the *Canadian Charter of Rights and Freedoms* (“***Charter***”) Section 2 of the *Charter of Rights* guarantees that all Canadians are entitled to freedom of conscience and religion, expression, thought, opinion, and belief.

Security of the person under section 7 of the*Charter* protects individual’s rights to bodily autonomy. Ownership and autonomy over the body and the ability to freely choose what does or does not enter one’s body is a critical aspect of individual and religious liberty. Liberty is egregiously interfered with by the threat of being fired and excluded from programs and services if individuals decline to be unnecessarily injected with the COVID-19 vaccines that may carry serious risks and limited benefits.[[6]](#endnote-6)

1. **Ontario Health Care Employer**

The Ontario Government has indicated to all employers (with the exception of health care workers) that employees who decline vaccination may be reasonably accommodated with testing and mask policies. [[7]](#endnote-7) The strictest directive from the government of Ontario is set out in Directive 6 [[8]](#endnote-8) for employees in health care. Directive 6 also explicitly provides accommodation with testing and education for those who decline the vaccines for any reason. I consent to the Ontario Government accommodations as set out in their recommendations and in Directive 6.

There is no mention of termination or leave of absence. There is only mention of accommodation.

1. **Universities**

Universities are subject to the *Charter*. Section 2 of the *Canadian Charter of Rights and Freedoms* guarantees that all Canadians are entitled to freedom of conscience and religion, expression, thought, opinion, and belief.

Security of the person under section 7 of the*Charter* protects individual’s rights to bodily autonomy. Ownership and autonomy over the body and the ability to freely choose what does or does not enter one’s body is a critical aspect of individual and religious liberty. Liberty is egregiously interfered with by the threat of being fired and excluded from programs and services if individuals decline to be unnecessarily injected with the COVID-19 vaccines that may carry serious risks and limited benefits.

1. **Elementary and High-School**

You may have forms exempting students from vaccines. Look for these and utilize them if possible. The *(put in the name of your provincial human rights act here)* protects the ground of religious belief, which includes a system of belief and does not require an objector to belong to a church to be considered for exemption. A *bona fide* requirement is necessary in order to infringe on my objections based on religious belief. That means that the policies of (*put in the name of your employer here)* must be rationally connected to a reasonable basis.

The Supreme Court of Canada case, *Syndicat Northcrest* v *Amselem* [2004] 2 S.C.R. 551[[9]](#endnote-9) (“**Amsalem**”) advocated freedom of religion under section 2 of the *Canadian Charter of Rights and Freedoms* as tolerating a practice where the individual sincerely feels it is connected to religion, regardless of whether the practice is required by a religious authority.

1. **Nuremberg Code**

“The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision."

The above would imply that regardless of personal vaccination status, history rightfully frowns upon any situation where a health procedure is mandated accompanied by "any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion". Unfortunately, to mandate that individuals are either vaccinated or they must suffer some serious penalty is coercion. Serious penalties may include personal cost for evaluative testing to determine health status, being restricted from daily activities, participation in society, and having to choose between education or employment and sincerely held conscientious or religious beliefs. These are all coercive mechanisms enforced upon **h e a l t h y** people.

1. **Employment Contract**

Please take out your employment contract and look for any clauses that protect you from mandated vaccines. Further, look to see if your contract is subject to vaccines. If not, then declining the vaccine cannot be grounds for termination.

1. **Personalize your letter**

Through personal narrative explain how your convictions shape the decisions and practices in your daily life.

1. **Legal opinions**

While government emergency measures supersede contracts, we are not aware of any mention of the right of employers to terminate employees or to put employees on an unpaid leave of absence. Rather they have set out terms and conditions for accommodation and continued paid employment.

1. **Medical Exemptions**

These are proving very hard to get. Ask your physician or a nurse to write an exemption for you. If they are not able to do so, then ask for a copy of your medical file so that you can provide documentation of your medical condition to your employer as supporting evidence of your concerns for your physical safety.

1. **Do not quit, unless you have another job offer that protects your conscientious beliefs. Wait to be terminated or put on unpaid leave of absence.**

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1. <https://www.canada.ca/en/treasury-board-secretariat/news/2021/08/government-of-canada-to-require-vaccination-of-federal-workforce-and-federally-regulated-transportation-sector.html> [↑](#endnote-ref-1)
2. <https://www.canada.ca/en/treasury-board-secretariat/news/2021/08/government-of-canada-to-require-vaccination-of-federal-workforce-and-federally-regulated-transportation-sector.html> [↑](#endnote-ref-2)
3. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do> [↑](#endnote-ref-3)
4. <http://www.ohrc.on.ca/en/news_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-questions-and-answers> [↑](#endnote-ref-4)
5. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1552/index.do> [↑](#endnote-ref-5)
6. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1552/index.do> [↑](#endnote-ref-6)
7. <https://www.ontario.ca/page/covid-19-workplace-health-safety>

<https://www.ontario.ca/page/screening-covid-19-guidance-employers> [↑](#endnote-ref-7)
8. <https://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/directives/vaccination_policy_in_health_settings.pdf> [↑](#endnote-ref-8)
9. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do> [↑](#endnote-ref-9)