

HUNTER-LIBERATORE-LAW

## Healthcare Update – August 2023

*a) Vaccination Termination: The Applicant's personal belief, though it may be sincerely held, does not form a nexus to any organization or community of a shared system of belief and does not amount to Creed under the Human Rights Code.*

- *[Oulds v. Bluewater Health](#), (Human Rights Tribunal of Ontario, July 31, 2023)*

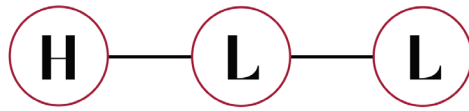
The Applicant alleged that the Respondent hospital discriminated against them on the basis of creed when they required the Applicant to provide a COVID-19 vaccine passport. The applicant's creed belief was that "the Covid-19 vaccine alters in some fashion all, or some of a person's genetic material, code, make up, of all or part of their body, or bodily systems". The Applicant further advised her employer as follows:

I have a conscience given to me by my Creator. That God conscience I access through prayer and meditation. This forms part of my connection to my Creator. Upon accessing that conscience, I am simply told by my Creator "no" in regard to this mandatory vaccination.

The employer did not believe the Applicants beliefs were sincerely held, considering her previous vaccinations and terminated the Applicant for failure to comply with the hospital's vaccination policy. The Tribunal found that the Applicant had failed to identify any specific acts of discrimination committed by the Respondent, and failed to explain how their creed interfered with their ability to be vaccinated:

... Accepting that the Applicant's belief may be sincerely, freely, and deeply held and accepting that it may even be linked to the Applicant's identity and self-definition, there is no additional basis on which I could determine that it meets the other criteria required to be considered a creed.

I note that the Applicant's creed lacks an overarching systemic component. While the Applicant refers to a "Creator" which is evocative of the being's believed influence over life, the submissions do not specifically address the question of human existence, nor contemplate life and death. The Applicant asserts that their dialogue with the Creator through prayer/meditation is generally life-guiding. They say that their spiritual



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beliefs “govern my conduct day to day” and that these beliefs are arrived at “through prayer and meditation.” If the submissions had included some examples about other life-guiding beliefs arrived at through dialogue with the Creator, or about other ‘alterations’ to the body that they similarly reject on the same grounds, then perhaps there could be connection to a particular and comprehensive, overarching system of belief. However, the submissions are devoid of these kinds of details.

I further note that this creed does not form a nexus to any organization or community with a shared system of belief. What is left seems focused on a singular belief around the lack of efficacy of the Covid-19 vaccine and some perception that the vaccine could alter DNA, and the need for autonomy to make this specific vaccine choice. (at paras 17-19)

Since the Applicant had failed to demonstrate how the personal choice not to vaccinate came within the meaning of Creed under the *Human Rights Code*, the application did not fall within the Tribunal’s jurisdiction and was dismissed.

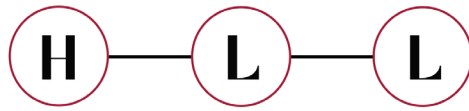
*b) Job Posting Remedy: An employer who has failed to post vacancies as required by the collective agreement will be Ordered to comply with the agreement but unless the act was willful and repeated, the employer is not liable for damages.*

- [\*Unity Health Toronto v Canadian Union of Public Employees, Local 5441\*](#), (Kugler, July 26, 2023)

The union alleged that the employer had violated Article 9.05(e) of the collective agreement by failing to post 12 permanent vacancies in 2022 and filed 12 grievances to that effect. The relevant collective agreement provision read as follows:

### 9.05 Job Posting

(e) The Hospital agrees that it shall post permanent vacant positions within 30 calendar days of the position becoming vacant, unless the Hospital provides the Union notice under Article 9.08(A) (a) of its intention to eliminate the position.



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The employer agreed that there had been a violation of the collective agreement and argued that the appropriate remedy was a declaration of the violation and remittance back to the parties. In the alternative, the arbitrator could order the employer to post the positions. The union argued that there should be a declaration of the violation, an order to post the vacancies, lost dues, and damages in the amount of \$5000 per grievance for the Hospital's "complete disregard of its obligations under the collective agreement".

Arbitrator Kugler declared a violation of the collective agreement due to the employer's failure to post the 12 vacancies. He further issued an Order directing the employer to post eight of the 12 permanent positions that remained vacant within 30 days of the Award. Finally, the arbitrator found that the union was entitled to be made whole however, the union had yet to confirm its monetary losses and so the arbitrator remitted the union's claim for lost dues back to the parties. Arbitrator Kugler acknowledged that repeated and willful breaches of the collective agreement could result in an award for damages, but he was not satisfied that the circumstances of this case warranted such an Order and declined to award damages.

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