

# SINGULAR BELIEF ON VACCINATION IS NOT DISCRIMINATION

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While COVID-19 may feel like a blurred and distant reality this summer, a recent Human Rights Tribunal of Ontario (“**HRTO**”) decision reminds employers about the reality of dismissing employees who refused to comply with vaccine mandates. The HRTO’s decision also provides helpful guidance on the protected ground of “creed” under the *Human Rights Code* (the “**Code**”).

In [Oulds v Bluewater Health](#), 2023 HRTO 1134, the employee alleged discrimination against her hospital employer on the basis of creed when the employer instituted a mandatory vaccination policy and then terminated her employment for failing to comply. The employee alleged that her right to bodily autonomy constituted a creed under the *Code* and that her termination was therefore discriminatory.

## Background

In November 2021, the employer wrote to the employee warning that her employment would be terminated if she did not become vaccinated, as she had not provided the employer with evidence that she was medically contraindicated to the vaccine or stated any objection to the vaccine that engaged a protected ground under the *Code*. The day before her employment was terminated, the employee’s lawyer wrote to the employer on her behalf requesting accommodation due to her creed, writing in part:

“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 employee also believed the COVID-19 vaccine altered her DNA and that she had a right to bodily autonomy. The employer replied that the employee’s decision not to be vaccinated was a personal choice, and that it did not accept that her beliefs amounted to a creed under the *Code*, partly because she had received other vaccinations in her life.

## The Decision

In its decision, the HRTO noted that while the *Code* does not define creed, “creed may also include non-religious belief systems that, like religion, substantially influence a person’s identity, worldview and way of life”.

The HRTO also adopted a policy from the Ontario Human Rights Commission to help in identifying creed, which will be found when the belief:

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

Ultimately, the HRTO ruled that the concept of bodily autonomy and individual choice does not meet the definition of creed under the *Code*. It noted that while the employee's belief may be sincerely, freely, and deeply held and it may even be linked to her identity, it did not meet any of the other criteria above. Importantly, there was no overarching systemic component to the employee's belief about the COVID-19 vaccine or any connection to an organization or community with a shared system of belief.

Simply put, a singular belief about vaccination or bodily autonomy does not attract the protections of a creed under the *Code*.

### **Takeaways**

This decision underscores the limits of what beliefs will be protected as a creed and reinforces that personal beliefs – even if sincerely held – will not generally be protected by the *Code*. This decision provides further support for employers' rights to make decisions for their workplaces and that such decisions will not be considered discriminatory if employees do not sufficiently justify their creed or other *Code*-based refusal.

Employers are further permitted to (and should) probe an employee's belief system to test whether it is legitimate or not, particularly when weighing employee beliefs against broader workplace health and safety. If an employee's beliefs do not contain the necessary characteristics for a creed, employers can be confident that such beliefs will not be protected by the *Code*.

by [Ioana Pantis](#) and [David Fanjoy](#)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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