

**SPORTS DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)**

No: SDRCC 22-0589

Between:

**MADISON MAYR
(Claimant)**

and

**CANADA GAMES COUNCIL (“CGC”)
(Respondent)**

Arbitrator:

Robert V. Wickett, Q.C.

Hearing:

via Zoom on August 4, 2022

Appearances:

For the Claimant:	Madison Mayr
For the Respondent:	Aaron Bruce Kelly-Ann Paul Dean Dolan (Counsel)

REASONS FOR DECISION

These reasons follow the Decision of August 4, 2022 and are delivered as required by Article 6.12 of the *Canadian Sport Dispute Resolution Code*.

Introduction

1. The Respondent, Canada Games Council (“CGC”), requires athletes and others to be vaccinated for the Covid-19 virus as a condition of participation in the 2022 Canada Summer Games (the “Games”) scheduled to proceed in Ontario commencing August 6, 2022.

2. The Claimant, Madison Mayr (“Ms. Mayr”), is an accomplished track and field athlete who qualifies for participation in the Games in the sport of high jump and, perhaps, long jump. Ms. Mayr wishes to participate in the Games but she is not vaccinated against Covid-19. She therefore sought from the CGC a non-medical exemption from the vaccine requirement on the grounds that her religious beliefs prevent her from accepting the Covid-19 vaccine. The availability of a non-medical exemption from the requirement is provided for in the relevant Covid-19 policy adopted by the CGC for the Games.
3. The CGC refused her application for a non-medical exemption pursuant to its policy and Ms. Mayr now appeals to the SDRCC. She seeks an order providing her with a non-medical exemption to the Covid-19 vaccine requirement so that she may be registered to participate in the Games.
4. I was appointed arbitrator to adjudicate this appeal on August 3, 2022. The appeal was heard on August 4, 2022 and I issued a short form of decision on August 5, 2022 with detailed reasons for the decision to follow. These are my reasons.
5. Pursuant to article 6.11(a) of the *Canadian Sport Dispute Resolution Code* dated January 1, 2021 I have the authority substitute my decision for the decision of the CGC or to substitute such measures and grant such remedies or relief that I consider just and equitable in the circumstances. I have the authority to conduct the appeal as a *de novo* hearing and the appeal proceeded on that basis.

The Policy and the CGC Decision

6. The CGC has not conducted games since 2017. They are typically conducted every 4 years, but the 2021 games were postponed due to the Covid-19 pandemic health restrictions.

7. In order to deal with the ongoing Covid-19 pandemic the CGC created a policy (the "Policy") dealing with the requirement for Covid-19 vaccine inoculations for participants and others associated with the Games. The Policy is dated November 21, 2021 (and amended April 20, 2022 and June 10, 2022).
8. The Policy provides that all athletes, coaches, managers, technical support workers, participant assistances, major technical officials, mission staff members, and any observers, must be fully vaccinated against Covid-19.
9. The Policy provides that, on application by an athlete or other participant, the CGC may provide an exemption from the requirement to be vaccinated against Covid-19 as a condition of participation in the Games.
10. The Policy states that individuals who wish to apply for a non-medical exemption must have their request, with supporting documentation, submitted in writing no later than July 4, 2022 or within 24 hours of being named to a team. The Policy further provides that "applications for creed based exemptions may be considered on a case-by-case basis."
11. On July 4, 2022 Ms. Mayr applied for a non-medical exemption from the Covid-19 vaccine requirement so that she would be eligible to participate in the Games. Ms. Mayr advised the CGC that the basis for her application for a non-medical exemption was that her religious faith dictated that she could not take a vaccine that was created using foetal stem cells taken from aborted fetuses. She advised the CGC that her religious faith compelled her to refuse to accept the Covid-19 vaccines because to do so would make her complicit in the sin of abortion, something she was unable to do while remaining true to her faith.
12. The CGC considered Ms. Mayr's application for a non-medical exemption including the various documents she submitted in support, such as a letter from her pastor at the Lutheran Church that she attends in Calgary. The CGC refused

her application for a non-medical exemption because it was of the view that Ms. Mayr's objection to taking the Covid-19 vaccine was rooted in personal conscience and not connected to the teachings or tenets of her faith. In these circumstances, the CGC advised Ms. Mayr that although they accepted that her statements of faith were honestly held, she had not fulfilled an essential requirement for a non-medical exemption from the Covid-19 vaccine requirement. That essential requirement is that her objection to the vaccine be objectively rooted in or connected to the teachings or tenets of her faith. On this basis the CGC refused Ms. Mayr's application for a non-medical exemption from the Covid-19 vaccine requirement. This appeal followed that decision.

The Appeal

13. The issue on appeal can be stated as "Does Ms. Mayr qualify for a non-medical exemption to participate in the Games and, if she does, will the CGC be able to reasonably accommodate her?"
14. Ms. Mayr was the only witness to testify at the hearing of the arbitration. All of the other evidence tendered before me was in the form of documents disclosed by each of the parties and which were admitted into evidence by the consent of all parties.

Ms. Mayr

15. Ms. Mayr is now a 20-year-old student at the University of Calgary. She has participated competitively in track and field since junior high school. She now competes for the University of Calgary in long jump and high jump. She also competes for a private track club in Calgary.
16. Ms. Mayr is an accomplished athlete and her ranking in long jump and in high jump qualified her for registration in the Games.

17. She wishes to participate in the Games but she is not vaccinated and does not intend to accept vaccination for Covid-19. If granted an exemption she is prepared to abide by any other reasonable safety measures implemented by the CGC to ensure the health and safety of other competitors and officials that she would come in to contact with during her participation in the Games.
18. Ms. Mayr has declined vaccination for Covid-19 because, she says, her research online and from other reading has led her to conclude that all of the vaccines for Covid-19 were developed using lines of foetal cells taken from aborted fetuses. She testified that as a devout Christian she believes that taking any of the Covid-19 vaccines would make her complicit in the sin of abortion.
19. Ms. Mayr testified that as a Christian she views her body as a temple of the Holy Spirit and that she treats it accordingly. In her view, one of the Bible's teachings is that she must honour the sanctity of human life which includes pre-natal life. She further testified that in keeping with her conscience and God's word she cannot knowingly take any vaccine that has been developed using aborted foetal cells.
20. Ms. Mayr testified that her beliefs in this regard are not a matter of personal conscience but rather are rooted in scripture and reflect an essential tenet of her Christian faith that the taking of life is a sin.
21. Ms. Mayr is a member of the Prince of Peace Lutheran Church in Calgary and has been so for 2 years. She has been a Lutheran her entire life, but recently changed congregations. In support of her application for a non-medical exemption she tendered a letter dated July 28, 2022, from the pastor of her current church, Rev. Mark Rekken.

22. I consider this letter as important evidence in the assessment of the nature of Ms. Mayr's objections to vaccination and I reproduce the body of the letter in its entirety below:

To whom it may concern,

I am writing to you as an ordained pastor in the Lutheran Church-Canada to confirm that in the case of many of our Church members the choice not to receive the Covid-19 vaccine is not merely a personal choice but a moral choice bound by religious convictions.

The sanctity of human life, or in other words the belief that life is to be considered holy or sacred, is a core belief of the Christian faith, and thus is a core belief of the Lutheran Christians. Deuteronomy 32:29 states that it is God's right to give and take life and His right alone.

It is a documented fact that cells from aborted fetuses were used in the development of the Covid-19 vaccines. Abortion, the taking of a life while in the womb is contrary to Christian faith and belief. For this reason, members of the Lutheran Church- Canada may have legitimate conscientious objections to taking the Covid-19 vaccine if they believe it will make them complicit in the sin of abortion. In other words, because of their personal conscience it would be a sin for them to take the vaccine.

It has been pointed out that many Christians have taken the Covid-19 vaccine in good conscience and so it is understandable why it would appear that the choice for other Christians not to take the vaccine is a personal choice and not religiously motivated choice. However, this attitude fails to understand the importance of the individual conscience in Christian (and thus Lutheran) faith. Romans chapter 14 is abundantly clear that what one Christian may do with a clear conscience may indeed be a sin for another Christian who has questions in their conscience.

In the case of this vaccine, one Christian may receive it in good conscience if they believe it will ultimately help and serve to save lives; yet, another Christian may be unable to take it if they believe it is making them complicit in the sin of abortion. It comes down to the individual's conscience.

If a Christian has a bound conscience on this matter and is required to go against it by receiving the vaccine, it would indeed be a sin for them to do so. Thus, if this is the true state of their conscience it is not merely a personal choice but a morally bound choice informed by their faith.

For this reason, I humbly ask you to respect the Christians whose consciences are bound in this issue and allow them to compete without receiving the Covid-19 vaccine.

Rev. Mark Rekken

23. Ms. Mayr testified that she has received exemptions and waivers that have entitled her to participate in her track and field events in Calgary since live events have resumed following the initial Covid-19 lock down.
24. In addition to athletic waivers, Ms. Mayr has also received a religious exemption from the mandatory vaccination policies of the University of Calgary and from Westjet.
25. Ms. Mayr also relied on a letter entitled "Christian Declaration on Freedom from Vaccination Coercion". This letter was created by the Liberty Coalition Canada and is signed by a number of different Reverends and Pastors, along with Ms. Mayr. This letter states, in part, "Christians are instructed by Scripture to view their bodies as temples of the Holy Spirit and to steward their bodies accordingly as creatures ultimately accountable to God." It states further, "that Christians shall remain free to decide for themselves whether to be vaccinated or unvaccinated, and shall maintain their bodily integrity by asserting their God-given freedom to decline participation in any medical experiment or vaccination program that violates their convictions and conscience before God."
26. The CGC did not challenge the sincerity of Ms. Mayr's beliefs. I accept Ms. Mayr's testimony about the sincerity and source of her beliefs. I conclude that these beliefs are honestly held and of fundamental importance to her.

The CGC

27. The case for the CGC in this arbitration consisted entirely of various documents tendered to support the submission that Ms. Mayr's beliefs, although honestly

held, are personal convictions and did not objectively qualify as important or fundamental tenets of her Christian faith.

28. The response of the CGC states that to best protect the health and safety of its participants, staff, volunteers and spectators throughout the Covid-19 pandemic, the CGC implemented the Policy. The response further provides that Ms. Mayr provided no evidence that her “opposition to the vaccination was a fundamental tenet of her religion” and that “rather, the information provided showed that her choice not to be vaccinated was a personal one.” As a consequence, the CGC denied her request for a non-medical exemption from the requirement to receive a vaccination.
29. In support of this position, the CGC tendered documents from a variety of sources intended to demonstrate that Ms. Mayr’s beliefs were personal in nature and not an important or fundamental tenet of her Christian faith.
30. For example, the CGC tendered in evidence the mandatory vaccination policies of the Martin Luther Evangelical Lutheran Church in Toronto and the Eastern Synod of the Evangelical Lutheran Church in Canada. During the course of the pandemic these churches required proof of vaccination as a condition of personal attendance on church property. The CGC says that it is not possible that Ms. Mayr’s beliefs are fundamental to or an important tenet of the Lutheran Church when that very church obliges those attending at church property to be vaccinated.
31. The CGC also tendered the Vanderbilt Faculty & Staff Health and Wellness Survey on Immunizations and Religion which details the current position on vaccinations of some of the more common religious faiths. In relation to Christianity, the document says that the faith holds “multiple different denominations, which may differ in theological approach to vaccines.” The

document further claims that the Lutheran faith has no theological objection to vaccination.

32. The CGC's position on this matter is driven by its assessment of the law relating to freedom of religion. In the submission of the CGC, Ms. Mayr is not entitled to a non-medical exemption from the vaccination requirement of the Policy because the law requires that her beliefs be objectively rooted in an important or fundamental tenet of her religion. The CGC submits that most Christians, including most Lutherans have received the Covid-19 vaccination. It further submits that the evidence demonstrates there is no formal teaching or instruction from the Lutheran Church that the taking of a vaccine makes congregants complicit in the sin of abortion. In these circumstances, the CGC submits that Ms. Mayr's beliefs although held by other Christians, are fundamentally a matter of her personal conscience and not tethered to the teachings of her church.
33. The CGC submits that having failed to demonstrate a connection between her beliefs and the teachings of her church or religion, her application for a non-medical exemption must fail.
34. The CGC made a further submission that even if Ms. Mayr met the legal test for the granting of a non-medical exemption she should still not receive the exemption. This is because, CGC submits, there is no way to safely accommodate her religious beliefs without unreasonably endangering the health and safety of others at the Games that will inevitably come into contact with her and thereby be exposed to the risk of Covid-19 infection.

Analysis and Decision

35. The analysis in this matter must begin with a review of some of the case law dealing with section 15(1) and 2(a) of the *Charter of Human Rights and Freedoms* (the "Charter"). Section 2(a) of the *Charter* provides that everyone

has the fundamental freedom of conscience and religion. Section 15(1) of the *Charter* provides that everyone has the right to equal protection and benefit of the law without discrimination and, in particular, without discrimination based on religion (amongst other protected characteristics).

36. One of the leading authorities on the protection and accommodation of religious belief is the decision of the Supreme Court of Canada in the matter of *Syndicat Northcrest v Amselem* [2004] 2 SCR 551, ("*Amselem*").
37. *Amselem* concerned a claim by members of the Orthodox Jewish Faith in Montreal that they should be granted an exemption from various municipal zoning laws which prevented them from the construction of succahs on their apartment balconies. The mandatory construction of succahs during the nine-day Jewish religious festival of Succot are a well-known tenet of the Orthodox Jewish Faith.
38. In the context of these facts, the Supreme Court formulated the test that religious adherents must meet in order to assert their rights pursuant to section 2(a) of the *Charter*.
39. The test established in *Amselem* requires; (1) The existence of a religious precept; (2) a sincere belief that the practice dependent on the precept is mandatory; and (3) the existence of a conflict between the practice and the rule.
40. The Supreme Court stated that it is "not necessary to prove that the precept objectively creates an obligation, but that it must be established that the claimant sincerely believes he or she is under an obligation that follows from the precept." Further, "the inquiry into the sincerity of beliefs must be as limited as possible, since it will expose an individual's most personal and private beliefs to public airing..." *Amselem supra* at paras 52 & 141.

41. The Supreme Court in *Amselem* defined religion as follows. Religion is said to typically involve “a particular and comprehensive system of faith and worship... Religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to his or her self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.” [Emphasis added]. *Amselem* supra at para 39.
42. Finally, the Supreme Court noted that the *Charter* “does not require a person to prove that his or her religious practices are supported by any mandatory doctrine of faith.” [Emphasis added]. *Amselem* supra at para 66).
43. A number of cases have considered similar freedom of religious exemption issues based on section 15 of the *Charter* which prohibits discrimination based on religious belief. Prohibitions on discrimination based on religious beliefs are also set out in the various human rights acts of every Province in Canada. For example, in *Pelletier v 1226309 Alberta Ltd o/a Community Natural Foods* [2021] AHRC 192 (“*Pelletier*”), section 4 & 26 of the *Alberta Human Rights Act*, RSA 2000, c A-25.5 were considered in the context of a claim for a vaccination exemption.
44. *Pelletier* concerned a long-standing customer of the respondent grocery store who was denied entry to the store because he refused to wear a mask contrary to the mandatory policy of the store as required by a City of Calgary bylaw. He argued, in part, that wearing a face mask infringed on his religious beliefs. The claimant submitted that there should be further accommodations offered to him because of his religious beliefs and that the respondent’s failure to accommodate his beliefs constituted an infringement of his right to be free from discrimination on the basis of his religious beliefs.

45. In the context of these facts, the Human Rights Tribunal of Alberta discussed two tests that must be met under human rights law for a complainant to establish a “prima facie case” of discrimination on a prohibited ground (such as religion).
46. The first test in *Pelletier* requires the complainant to demonstrate that: (a) they have a characteristic protected by the Act (for example, a religious belief); (b) that they experienced adverse treatment; and (c) that the characteristic was at least a factor in the adverse treatment. *Pelletier* at para 21 citing *Moore v British Columbia (Education)* [2012] 3 SCR 360, at para 33).
47. If the complainant is able to meet the first test in *Pelletier* then, if the Respondent wishes to maintain the impugned adverse treatment, it must demonstrate that: (a) the policy, rule or practice giving rise to the complaint is rationally connected to a legitimate business purpose; (b) that it was adopted in good faith; and (c) that it is impossible to accommodate the complainant, without incurring undue hardship. *Pelletier* at para 21 citing *British Columbia (Public Service Employee Relations Commission) v BCGSEU* [1999] 3 SCR 3, at para 54).
48. In considering whether Mr. Pelletier had established that he held a religious belief prohibiting the wearing of a mask the Alberta Human Rights Tribunal stated:

These facts, if proven, could not establish that the Worker’s objection to wearing a mask is “experientially religious in nature”. He has not pointed to any facts that could support a finding that wearing a mask is objectively or subjectively prohibited by any particular religion, or that not wearing a mask “engenders a personal, subjective connection to the divine or the subject or object of [his] spiritual faith”: *Amselem* at para. 43. Rather, his objection to wearing a mask is his opinion that doing so is “arbitrary” because it does not stop the transmission of COVID-19. As set out in *The Customer*, that view is not protected under the Code: *Pelletier* supra at para 32, citing *The Worker v The District Managers* [2021] BCHRT 41, at para 11.

49. In summary, in the context of this appeal I am required to determine whether Ms. Mayr has met the burden imposed on her by the Supreme Court in *Amselem* and

Pelletier and, if she has, whether the CGC, in resisting this appeal, has fulfilled its obligation to accommodate Ms. Mayr's religious beliefs.

Application of the Law

50. In my opinion Ms. Mayr has met the test established in *Amselem*.

Religious Precept

51. Ms. Mayr has established that she sincerely holds to a belief, grounded in Christianity, that the taking of human life is a sin. She has also established to my satisfaction that she believes that taking Covid-19 vaccines would be akin to condoning the taking of human life because of her belief, also grounded in Christian theology, that abortion constitutes the taking of human life. The connection between these religious beliefs and the Covid-19 vaccine is her understanding that foetal cells taken from aborted foetus were utilized in the development of Covid-19 vaccines.

52. I am further satisfied that these beliefs are integrally and objectively connected to her faith. I have come to this conclusion based on Ms. Mayr's testimony and the letter provided by Ms. Mayr's pastor, Rev Rekken.

53. Rev. Rekken states that if I accept that Ms. Mayr's refusal to take the vaccine is a consequence of her "bound conscience" based on her Christian beliefs then the refusal of the vaccine is "not merely a personal choice but a morally bound choice informed by their (her) faith".

54. The primary submission made by the CGC in resisting this appeal is that Ms. Mayr's decision to refuse the vaccine is not objectively grounded in a religious tenet but rather was a personal choice. The CGC does not dispute the sincerity of Ms. Mayr's beliefs but it submits that she holds these beliefs separately from

and unconnected to the beliefs of other Christians including Lutherans who have taken vaccines and who have ascribed to mandatory vaccine policies in respect of their own churches.

55. Rev Rekken addressed this issue directly. He states that that this submission:
“fails to understand the importance of individual conscience in Christian (and thus Lutheran) faith. Romans chapter 14 is abundantly clear that what one Christian may do with a clear conscience may indeed be a sin for another Christian who has questions in their conscience”.
56. In my respectful opinion, the CGC misstates the test that Ms. Mayr must meet to establish that her vaccine refusal results from her honestly held religious beliefs. Ms. Mayr need not establish that her beliefs are held by all Christians or even by all Lutherans. Rather, as described in paragraph 40 of this decision, Ms. Mayr is not required to prove that her religious belief (the precept) objectively creates an obligation to refuse the Covid-19 vaccine but rather only that she sincerely believes she is under an obligation to refuse the vaccine that follows from the religious belief.
57. Further, Ms. Mayr is not obliged to prove that her religious practice (refusal of the vaccine) is supported by any mandatory doctrine of Christian or Lutheran faith. (See para 42 of this decision).
58. In my opinion, Ms. Mayr has established that she believes that she is under an obligation to refuse the vaccine and that this belief results from her sincerely held religious belief.

Sincere Belief That the Practice Based on the Precept is Mandatory

59. Ms. Mayr testified that she cannot knowingly take any vaccine that has been developed using aborted foetal cells in keeping with her conscience and God’s word. I accept her testimony as honest and sincere and I also accept Rev.

Rekken's statement that such a belief is held by some, but not all Lutherans, and that this choice is a morally bound choice informed by faith.

Conflict Between the Precept and the Practice

60. The CGC Policy requires Covid-19 vaccination as a condition of participation in the Games. Ms. Mayr cannot accept the vaccine because of her religious belief. The Policy requirement that she take the vaccine as a condition of participation in the Games and Ms. Mayr's religious belief cannot be reconciled. Absent an exemption, Ms. Mayr will be excluded from the Games because her faith conflicts with the Policy.
61. Having established all three criterion of the *Anselem* test, Ms. Mayr has established her ability to rely on conscientious objection to vaccination based on her religious faith as provided for in the Policy.

Duty to Accommodate

62. Having established that the vaccine requirement within the Policy conflicts with her right to freedom of religion I must now consider whether it is possible for the CGC to reasonably accommodate Ms. Mayr and, if so, how.
63. I approach this issue having accepted that the CGC has implemented the Policy to "best protect the health and safety of its participants, staff, volunteers, and spectators through the Covid-19 pandemic." The Policy is rationally connected to a legitimate business purpose and it was adopted in good faith, meeting the first and second criteria described in *Pelletier*.
64. With respect to the third criteria described in *Pelletier*, the CGC submitted that it could not reasonably accommodate Ms. Mayr because of the danger of the Covid-19 virus and the risk to other persons who will come into contact with Ms.

Mayr. I cannot accept this submission because the Policy itself provides for and describes the criteria to be employed in accommodating any person receiving a non-medical vaccine exemption.

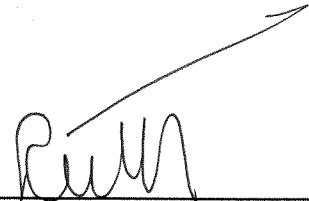
65. I take into account the fact that the Policy provides that individuals “who are granted an exemption from the vaccination requirement may be subject to additional public health measures, such as testing.” I also note Ms. Mayr’s uncontradicted evidence that the CGC has established protocols and arranged testing and medical facilities to identify and treat any person suspected of contracting Covid-19. The CGC expects to deal with Covid-19 infections of persons attending the Games and it has established procedures to deal with such infections.
66. I am also aware of the notorious fact that the existing Covid vaccines do not efficiently prevent the transmission of the Omicron variant of Covid-19, rather they only prevent serious illness. This leads me to conclude that if Ms. Mayr participates in the Games she will not materially increase the risk to other persons at the Games. If anything, it will be Ms. Mayr who is at most at risk of contracting Covid-19 and suffering serious illness as a result. This is a risk Ms. Mayr is prepared to accept.
67. I also observe that Ms. Mayr participates in individual track and field events. There is no requirement that she be in close contact with other competitors or staff in order to compete.
68. For these reasons, I am of the opinion that the CGC can reasonably accommodate Ms. Mayr’s religious beliefs without putting other persons present at the Games at undue risk. Ms. Mayr must accept that as a condition of her participation in the Games, the CGC is entitled to put in place additional health measures applicable to her and as provided in the Policy so as to ensure the

health and safety of everyone. These additional measures may include testing, masking and distancing requirements.

Decision

69. The appeal is allowed. Ms. Mayr is granted a non-medical exemption from the requirement of a Covid-19 vaccine as a condition of participation in the Games.
70. Ms. Mayr shall abide by all reasonable requirements of the CGC resulting from this decision including any requirements for additional testing, distancing and masking.

Dated at Vancouver, British Columbia on Aug 18, 2022.

A handwritten signature in black ink, appearing to read 'RW', with a long, sweeping horizontal line extending to the right from the end of the signature.

Robert V. Wickett, Q.C., Arbitrator