

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

**Tristan Bogart**

**Claimant**

**-and-**

**Canada Games Council**

**Respondent**

Heard on July 27, 2022, by Videoconference  
before Julie G. Hopkins, Arbitrator

**DECISION**

**I. Introduction**

1. Tristan Bogart is a 15-year-old Alberta Team wrestler who is eligible to compete in the 2022 Canada Summer Games which are being held in Niagara, Ontario starting on August 6, 2022.
2. The Canada Games Council organizes, administers, operates, and runs the Canada Games and develops policies and procedures for the Canada Games in consultation with stakeholders and partners.
3. The Canada Games Council has adopted a Policy on Mandatory COVID-19 Vaccinations (the “Policy”) requiring participants to be “fully vaccinated” against COVID-19 for them to attend and participate in the Canada Summer Games. Tristan is not vaccinated against COVID-19. His father, Sean Bogart, applied on Tristan’s behalf to the Canada Games Council for a religious exemption from the requirements of the Policy. The Canada Games Council denied the requested religious exemption based on its determination that Tristan’s choice not to be vaccinated was a

personal one and not one based on a fundamental tenant of his religion. This is the appeal of that decision.

4. As set out below, I have determined that the requested religious exemption should be denied but for different reasons than those of the Canada Games Council.

## **II. Procedural History**

5. On July 6, 2022, the Canada Games Council issued its decision denying Tristan's requested religious exemption from the Policy.

6. On July 22, 2022, Sean Bogart, filed a Request for Arbitration with the SDRCC on Tristan's behalf.

7. On July 25, 2022, I was appointed by the SDRCC to arbitrate the dispute.

8. On July 26, 2022, the Canada Games Council filed an Answer to the Request to Arbitrate. An Administrative and Procedural Conference Call was held with the Parties on the same day. In attendance on the call were Sean Bogart, as representative for Tristan, Aaron Bruce, Vice President of Sports and Games for the Canada Games Council, as representative for Canada Games Council and Dean Dolan, legal counsel for the Canada Games Council. During the Conference Call the process and scheduling of the hearing was discussed and agreed to by the Parties. Given the urgency of the matter, the hearing was agreed to be held by videoconference and was scheduled for the following day, July 27, 2022. To allow Tristan to attend a pre-camp for the Canada Games if the appeal were allowed, Sean Bogart requested a decision on the matter be made by the following day, July 28, 2022.

9. At the hearing on July 27, 2022, Sean Bogart appeared as a representative and as a witness on behalf of Tristan. Dean Dolan appeared as legal counsel for the Canada Games Council and Kelly-Ann Paul, who is President and CEO of the Canada Games Council, appeared as its representative. Aaron Bruce testified as a witness on behalf of the Canada Games Council.

10. At the end of the hearing, I reserved my decision. On July 28, 2022, I issued a short-form decision denying the requested religious exemption with reasons for the decision to follow in

accordance with the requirements and timelines set by the Canadian Sport Dispute Resolution Code (effective January 1, 2021) (the “Code”). These are those reasons.

### **III. Rules and Law Governing the Arbitration**

11. This proceeding is governed by the Code. It provides that the applicable law is the law of the Province of Ontario (Article 5.1). The Code also provides an arbitrator with the power to substitute his or her decision for the decision that gave rise to the dispute or substitute such measures and grant such remedies or relief that the arbitrator deems just and equitable in the circumstances (Article 6.11(a)). It also provides that an arbitrator has the power to hold a *de novo* hearing (Article 6.11(b)). As a result, an arbitrator may consider the matter afresh and is not limited to the evidence before the Canada Games Council when it made its decision concerning the requested exemption. Finally, it also provides that “no deference need be given” by the arbitrator to any discretion exercised by the original decision-maker except under certain circumstances set out in Rule 6.11(c) that have not been engaged here.

### **IV. Facts**

#### **A. The Policy**

12. The relevant version of the Policy was approved on June 10, 2022 by the Canada Games Council Board of Directors, the 2022 Canada Games Board of Directors, and the 2023 Canada Games Board of Directors (the “Policy”). The evidence of Aaron Bruce was that it was initially adopted on the advice of Niagara Regional Public Health.

13. The Policy states that eligible individuals accredited in a number of categories, including athletes, are required to be “fully vaccinated” against COVID-19 in order to attend or participate in the 2022 and the 2023 Canada Games. Aaron Bruce testified that “fully vaccinated” has been interpreted by the Canada Games Council for the purposes of implementing the Policy as two doses of COVID-19 vaccine.

14. The Policy also provides that individuals can apply for exemptions from the mandatory vaccination requirement. The Policy states:

The Canada Games Council will work with the respective Host Society to implement a review process for individuals seeking an exemption from the

mandatory COVID-19 vaccine requirement. Individuals who are granted an exemption from the requirement may be subject to additional COVID-19 mitigation measures at the Games, such as testing and quarantines.

The Canada Games Council, the 2022 Canada Games Host Society and the 2023 Canada Games Host Society will make accommodations for individuals who are either ineligible to receive a COVID-19 vaccination, or have received an exemption on medical or protected grounds. (Emphasis added)

15. “Protected grounds” are defined under the Policy as “the reasons for which an individual cannot be discriminated against” with reference generally to Canadian Provincial and Territorial Human Rights Codes. It then states: “for the purposes of this policy, protected grounds are limited to creed (religion).”

16. Appendix ‘A’ to the Policy outlines the process for a participant to apply for a “non-medical” exemption. In addition to providing his or her name, contact information, and Provincial or Territorial team, an applicant must submit “a signed letter from a Commissioner of Oaths clearly stating why an exemption is required”, “any documentation supporting the exemption request” and “a note on sincere religious beliefs and COVID-19 vaccine”.

17. The Policy then states that a number of religions and religious denominations have released public statements indicating their support for the COVID-19 vaccine and it provides links to those statements. The Policy continues:

In addition, a number of provincial human rights commissions have taken the position that objection to vaccination for personal reasons is not a protected ground under their respective Code and does not need to be accommodated.

18. Aaron Bruce’s evidence was that in early June 2022 the Canada Games Council consulted with stakeholders on the continued need for the Policy. After this consultation, and based on the recommendation of Niagara Regional Public Health, it determined that the Policy would be maintained as an appropriate measure to help reduce the risk of COVID-19 transmission. His evidence was that Niagara Region Public Health had recommended that the Canada Games Council maintain its mandatory vaccination policy based on the latest data on COVID-19 detection in Ontario. He stated that the latest wastewater surveillance trends show an increase in COVID-19 detection, indicating a potential increase in infection risk and observed “[s]ince that time, it has

been announced that Ontario is currently in the 7th wave of COVID-19 infections, driven by new variants”.

19. Mr. Bruce’s evidence also provided the following rationale for adopting the Policy:

The Canada Games bring together participants and volunteers from across Canada into a multi-sport Games environment with shared accommodations, transportation, dining spaces, competition and training venues for seven consecutive days (then a second group of participants arrive for a new consecutive 7-day period). The vaccination mandate helps protect everyone in the Games environment and reduce the risk of disruption to Games operations and the competitor’s ability to compete, thereby helping to ensure the safe and successful delivery of the Canada Games and competition.

In addition to those directly involved in the Canada Games, the policy is also in place to help protect the health and wellbeing of the people who live in the Host community and mitigate the risk of a superspreader event.

## **B. The Exemption Application**

20. The exemption application submitted by Sean Bogart on behalf of Tristan was in evidence. It consisted of the following four documents: (1) a statement sworn by Sean Bogart before a Commissioner for Oaths dated June 29, 2022 (“Bogart Statement”); (2) a statement dated June 29, 2022 from Logan Seibert, the Pastor of the Lighthouse Baptist Church (“Pastor Seibert Statement”); (3) a certificate from the Métis Nation of Alberta certifying Tristan Bogart is recognized as Métis; and (4) a medical note dated September 27, 2021 signed by Dr. James Adams, MD stating that “Due to medical conditions, Tristan Bogart is not able to receive the COVID-19 Vaccine permanently”. Given the importance of the Bogart Statement and the Pastor Seibert Statement to this decision, I summarized them in more detail below.

21. The Bogart Statement sets out that Tristan was “born, raised and baptized in the Church” and that Tristan’s baptism took place in 2017. It states that COVID-19 vaccines use aborted fetal cells and that Tristan “believes that life is precious and that abortion is wrong and murder according to our God and scripture and in no way he can use the vaccine according to his faith in Jesus Christ”.

22. The Bogart Statement continues:

Certainly we try to steer clear of actions forbidden by Scripture, but on some issues Scripture is silent. At those times, we should follow our consciences. "If you do anything you believe is not right, you are sinning" means that to go against a conviction you have would leave you with a guilty or uneasy conscience...

Taking the COVID-19 [vaccine] bothers Tristan's conscience due to the fact that cell lines are from aborted fetuses that were murdered and that it's an experimental vaccine that could cause adverse side effects.

23. The Bogart Statement also states:

Tristan's body belongs to the Lord and injecting mRNA vaccines that are still in the experimental stages is not glorifying God. There are potential side effects such as pericarditis, myocarditis, and hepatitis. Plus using aborted fetus cell lines. This all goes against Tristan's faith in God and bothers his conscience."

24. The Bogart Statement also sets out that Tristan is recognized as an Indigenous person by the Métis Association of Alberta and among other things "[a]s Indigenous peoples, we have trust issues with the government" and:

Forcing Tristan to take a vaccine that he doesn't want to take isn't what Canada calls reconciliation, it's called coercion. Saying to Tristan you can't compete in the Canada Summer Games because he's unvaccinated is discrimination because of our Christian and Indigenous beliefs.

25. The Bogart Statement also states in relation to a medical exemption from the Policy that "Tristan Bogart does have a medical vaccine exemption certificate, but his doctor is unwilling to fill out any more paperwork as Tristan already has the vaccine exemption" and later "Tristan just wrestled at the Canadian Nationals trials where his medical vaccine exemption was all he needed".

26. The Bogart Statement concludes: "Tristan Bogart has proved that he is unable to get vaccinated due to his faith as an Indigenous person, his conscience and his medical exemption for COVID-19".

27. The Pastor Seibert Statement says that Tristan has been raised by his father in the Baptist Church and that Tristan was baptized in 2017. It continues: "As a Protestant, Tristan has held to our traditional understanding that a Christian is not to go against conscience, whether by compulsion from one's own desires or the will of another." The Statement traces this "doctrine on

conscience” through Baptist history and states that it has grounding in the Bible citing specific passages in support of the conclusion “it is sin for a Christian to do what they are not convinced in the conscience God would have them to do”. He then states:

For Tristan to go against his conscience in a matter that God has not commanded him would be disobedience to God and malpractice as a Protestant Baptist Christian.

Tristan does not believe it is sinful for Christians to get the vaccine if they so choose. However, he is unsettled by the uncertainty of the longer-term effects of the vaccine. This means he cannot receive these medical procedures with confidence God wants him to do so. We do not recognize receiving or refusing the vaccine/testing as something commanded by God. A Christian has liberty in this matter, just as in other areas that God does not command or prohibit.

28. The application was received by the Canada Games Council on June 29, 2022. Aaron Bruce’s evidence was that on July 4, 2022, he emailed the application documents to Canada Games Council’s legal counsel for review and for the drafting of a response. On July 5, 2022, he received the legal opinion and draft response back from legal counsel, which he forwarded to Kelly-Ann Paul, President and CEO of the Canada Games Council and Barry Wright, CEO of the 2022 Canada Summer Games, for a final decision. Later that day, he received their decision to deny the exemption. His evidence was:

The rationale for not granting the request, stated to be on legal advice, was that Mr. Bogart had not provided sufficient evidence that not being vaccinated was a fundamental tenet of his religion versus a personal belief.

### **C. Decision on Exemption Application**

29. The Canada Games Council decision concerning the request for a religious exemption is a one page letter dated July 6, 2022 addressed to Tristan. It states:

The document you have provided from your church’s Pastor states that you are following your “conscience” in choosing to not be vaccinated against COVID-19. As you are aware, the vast majority of practicing Christians have no objection to COVID-19 vaccination and, as your Pastor makes clear, your choice not to be vaccinated is a personal one that is not a fundamental tenet of your religion. Human rights law is clear that a person who chooses not to be vaccinated based on personal preference does not have the right to exemption, accommodation or protection under human rights legislation.

After careful consideration and legal opinion, the Canada Games Council and 2022 Canada Games Host Society have determined that your request cannot be granted on religious grounds.

## V. Applicable Legal Principles

30. Based on the seminal case concerning freedom of religion, *Syndicat Northcrest v Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551 (“*Amselem*”), an individual seeking protection from discrimination on the basis of religion must demonstrate that he or she: (1) sincerely believes in a practice or belief that has a nexus with religion, and (2) the impugned conduct interferes with his or her ability to act in accordance with that practice or belief in a manner that is more than trivial (para. 65).

31. At the first stage of the analysis the individual must demonstrate, as stated in *Amselem* at paragraph 56, 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.

32. At the second stage of the analysis, being whether there has been an interference or infringement of that right that is more than trivial, the interference must be proven, on the balance of probabilities based on objective evidence: *S.L. v Commission scolaire des Chênes*, 2012 SCC 7, [2012] 1 SCR 235, (“*S.L.*”), para. 23.

33. If both parts of the test are satisfied, a *prima facie* case of discrimination has been established and the onus shifts to the respondent to demonstrate that the application of the Policy mandating COVID-19 vaccination has a *bona fide* and reasonable justification. That is done by meeting a three part test established by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 S.C.R. 3, [1999] S.C.J. No. 46 (“*Meiorin*”) and *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, [1999] S.C.J. No. 73 (“*Grismer*”). The test is:

(1) the Policy was adopted for a purpose or goal that is rationally connected to the function being performed;

(2) the Policy was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and

(3) the Policy is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.

## **VI. Issues to be Decided**

34. Based on the law cited above, the issues to be decided are:

(1) Has a *prima facie* case been established that the Policy is discriminatory based on religion?

(2) If so, does the Policy have a *bona fide* and reasonable justification?

## **VII. Analysis**

### **A. Has a *prima facie* case of discrimination been proven?**

35. As set out in *Amselem*, the first stage of the analysis is to determine whether the practice or belief at issue is sincerely held and that it has a nexus with religion.

36. The Canada Games Council does not challenge that Tristan holds the beliefs set out in both the Bogart Statement and the Pastor Siebert Statement nor does it challenge Tristan's sincerity in holding those beliefs. Instead, it argues that to claim protection against discrimination, Tristan must demonstrate "a sufficient objective basis to show that the belief is a fundamental or important tenant of a religious faith". That argument is consistent with the reason given by the Canada Games Council for denying Tristan a religious exemption being that "your choice not to be vaccinated is a personal one that is not a fundamental tenet of your religion".

37. The Canada Games Council argues that Tristan has not demonstrated that his sincerely held beliefs have a nexus with a tenet or fundamental belief of his religion. Rather, Tristan's decision not to be vaccinated was based on his "conscience" which means it is a personal choice and not a matter of religion or creed. In support of this, it points to the Pastor Siebert Statement where he stated that Tristan was following his conscience in refusing to be vaccinated and also the statement that Baptists "do not recognize receiving or refusing the vaccine/testing as something commanded

by God". It also relies on a document entitled "Vanderbilt Faculty & Staff Health and Wellness - Immunization and Religion" which notes that a number of Christian religious denominations "have no theological objections to vaccinations" including Baptists.

38. However, the problem with the Canada Games Council's position is that it is based on an incorrect formulation of the legal test. The law does not require that the belief in question be demonstrated to be a fundamental or important tenant of a religious faith. The Supreme Court of Canada makes that clear in *Amselem*:

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), 1976 CanLII 1098 (MB CA), 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". (Para. 43) [Emphasis added].

39. The implication of this, as stated by the Arbitrator in *407 ETR Concession Co. v National Automobile, Aerospace, Transportation and General Workers Union of Canada, CAW-Canada, Local 414* (Black Grievance) [2007] O.L.A.A. No. 34, 2007 CanLII 1857 (ON LA) (Albertyn) as recently quoted in *Public Health Sudbury & Districts v Ontario Nurses' Association*, 2022 CanLII 48440 (ON LA) is that the law "...allow[s] for an almost unlimited range of individual extrapolation on core religious beliefs" (para. 122). It does not matter what religious leaders suggest or whether an individual's actions are in conformity with the position of religious officials.

40. As such, the fact that the Baptists Church may have no "theological objections" to vaccination is not determinative of the matter. Neither, necessarily, is Pastor Siebert's Statement where he says:

We do not recognize receiving or refusing the vaccine/testing as something commanded by God. A Christian has liberty in this matter, just as in other areas that God does not command or prohibit (Romans 14:13-23).

41. Instead, the correct test to be applied is whether there is a nexus between the subjective belief in question and an overarching system of religious beliefs. That is something that must be proved based on objective evidence on the balance of probabilities. (*S.L.* , para. 23). In my view that has been demonstrated in this case.

42. The evidence shows a nexus between Tristan’s refusal to be vaccinated and his religious beliefs. Pastor Siebert outlined the basis of the “doctrine of conscience” in the Bible and in the teachings and history of the Baptist Church. Based on the Bogart Statement and the Pastor Siebert Statement, Tristan sincerely believes it is wrong, in part for religious reasons, to get a vaccine. He also believes that to act against his conscience in this matter is a sin. That is sufficient to establish the required nexus or connection to religion. The veracity of those beliefs or whether they are in accordance with the views of Church officials does not form part of the inquiry.

43. The Canada Games Council argues that if a person relies on his conscience to make a decision, then that decision it is a personal choice not one based on religious dogma. Further it observed in oral argument “that it is not much of a faith system” if a person can simply come to any decision based on their conscience.

44. But, again, as stated in *Amselem* at paragraph 47 it need not be demonstrated that the belief in question is based on a mandatory doctrine of faith. Instead:

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.

45. I do note that in the evidence there are references to Tristan’s concerns about the potential long-term side effects of the COVID vaccine. In my view, these concerns do not render his objection to vaccination a purely personal one. There can be multiple reasons for objecting to being vaccinated but as long as one of them is a sincerely based one on one’s religion as subjectively interpreted and applied, that is sufficient to meet this part of the test: *Public Health Sudbury & Districts v Ontario Nurses’ Association*, 2022 CanLII 48440 (ON LA), para. 50.

46. The second requirement to prove *prima facie* discrimination, as set out in *Amselem*, is to demonstrate that the interference or infringement with the religious belief in question is more than

trivial. In my view that has also been proven in the case. Here the Policy mandating COVID-19 vaccination directly interferes with Tristan’s belief that to take the vaccine goes against his conscience and is a sin. Requiring him to take the vaccination is a “non-trivial” interference with that belief and his freedom of religion.

47. Before moving on to the next step in the analysis, I want to address two other decisions cited to me where individuals were denied requests to avoid COVID-19 vaccine requirements based on their religious belief: *Crowle v Karate Canada*, SDRCC 22-0568 (“*Crowle*”) and *Malu v. Wrestling Canada Lutte*, SDRCC 21-0531 (“*Malu*”). In my view, neither of these decisions are of assistance in this case.

48. In *Crowle*, the requested religious exemption was denied because Ms. Crowle “failed to establish that her decision to decline a COVID-19 vaccine was based upon a sincerely held religious belief” and she also failed to establish “that the teachings of her church compelled her to refuse vaccination”. In the present case, there is no issue as to the sincerity of Tristan’s belief and I have held the evidence establishes that the decision to refuse vaccination is based on a religious as opposed to personal belief. To the extent *Crowle* stands for the proposition that an individual is required to demonstrate that her church teachings required her to refuse vaccination to obtain a religious exemption, I decline to follow it based on the reasoning in *Amselem*. As quoted above, “it is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection”.

49. In *Malu*, it was found that “Mr. Malu’s beliefs relative to the COVID-19 vaccine are personal and not supported by the Pentecostal Church. He has not provided any objective evidence to establish that his opposition to COVID-19 vaccination is linked to any Church teaching or tenant”. *Malu* is distinguishable because in this case I have found sufficient evidence that Tristan’s objection is linked to a religious belief. To the extent *Malu* stands for the proposition that it is necessary to prove that a belief is supported by religious dogma or officials, I decline to follow it. As stated in *Amselem*:

...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. (para. 56) [Emphasis added]

50. In the result, I conclude that the Policy discriminates based on religion on a *prima facie* basis. The inquiry then turns to whether the Policy mandating COVID-19 vaccination has a *bona fide* and reasonable justification.

**B. Does the Policy have a *bona fide* and reasonable justification?**

51. As set out above, justification for the infringement is demonstrated by meeting the three-part test set out in *Meoirin/Grismer*. The first two parts of the test concern (1) whether the Policy mandating vaccination for COVID-19 was adopted for a purpose or goal that is rationally connected to the function being performed and (2) whether it was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal. Both of these requirements are easily met in this case.

52. First, the evidence demonstrates that the Policy requiring COVID-19 vaccination was adopted for a purpose rationally connected to its goals. The purpose of the Canada Games Council in adopting a mandatory vaccination policy was to protect individuals during a global COVID-19 pandemic by reducing the risk of transmission of COVID-19. This purpose is rationally connected to the Canada Games Council goals as stated by Aaron Bruce, “of ensuring the health and safety of all Canada Games participants, and the people who live, work and play in the communities hosting the Games”.

53. The second part of the test is whether the Canada Games Council adopted the Policy in good faith. The evidence is that the Policy was adopted based on public health advice to prevent the transmission of disease. There is no evidence that the Canada Games Council had any motive in adopting the Policy other than protecting the health and safety of those attending the Canada Summer Games and the surrounding community and reducing the risk of disruption to the Games. This part of the test is met.

54. The third part of the test considers whether the institution of the Policy was reasonably necessary to accomplish its legitimate purpose. Specifically, the inquiry under this part is whether the Canada Games Council cannot meet its goal of ensuring the health and safety of all Canada

Games participants, and the people who live, work and play in the communities hosting the Games while accommodating Tristan's participation at least without undue hardship.

55. When considering whether an individual can be accommodated without undue hardship factors like cost and health and safety are taken into account: Section 11(2) *Ontario Human Rights Code*, 1990, c. H.19.

56. The Canada Games Council asserts that Tristan cannot be accommodated without undue hardship as:

...the risk to the health and safety of the other participants, staff, volunteers and spectators of the Games created by permitting the unvaccinated appellant to participate constitutes an undue hardship to the CGC which cannot be accommodated. This is particularly so in light of the new wave of the COVID-19 pandemic we now face.

57. It points to the case *Extencicare Lynde Creek Retirement Home and UFCW, Local 175*, April 4, 2022 as support for the proposition that a mandatory vaccination policy is a reasonable measure to protect health and safety even where governments or public health authorities have reduced or eliminated vaccination and other COVID-19 related requirements.

58. In response, it is argued on behalf of Tristan that unlike the Canada Games Council, government and public health authorities are now removing COVID-19 vaccination requirements and mandates; with the circulation of new variants of the virus COVID-19 infections are rising despite vaccination rates; that the Canada Games Council has not consulted with Niagara Region Public Health since early June 2022 on the Policy or its application; and that only receiving two doses of COVID-19 vaccine, which is how the Policy is being applied by the Canada Games Council, is out of step with current public health guidance as to what is considered "fully vaccinated".

59. I have considered that COVID-19 infection rates are increasing even among vaccinated individuals and that vaccine mandates and other public health measures intended to limit the spread of COVID-19 are being lifted by governments and public health authorities in other contexts. I have considered that it is likely that the athletes against whom Tristan would compete are vaccinated and I also have also considered that the Policy, as being applied, only requires two

doses of COVID-19 vaccine which is out of step with current public health guidance on how to protect against infection. However, I have weighed those considerations against the evidence of rising COVID-19 infections in the area, the nature of the relevant sport which involved intense and prolonged physical contact, and that this is a youth competition and maintaining a safe and healthy competition environment for young people is of paramount concern. I have concluded that, on balance, the risks to health and safety for other youth competitors are such that that Tristan's participation cannot be accommodated without undue hardship.

60. I come to this conclusion with some difficulty as the evidence before me related to whether it is possible to accommodate Tristan without undue hardship is less than ideal. What is lacking is local public health advice specifically about whether it would have been possible to accommodate an athlete in Tristan's position, given the nature of the sport of wrestling, using other public health measures such as quarantine, testing or masking.

61. In the end, this deficiency was not sufficient to overcome the other considerations outlined above. It could, however, in other contexts, for example, where the nature of the sport does not involve close physical contact.

62. Based on the above, all three parts of the *Meoirin/Grismer* test have been met and so it has been demonstrated that the application of the Policy is *bona fide* and reasonably justified in this case.<sup>1</sup>

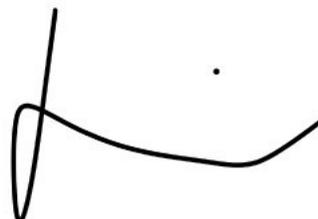
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<sup>1</sup> It was also argued as part of this appeal that Tristan was entitled to a medical exemption based on the letter provided by Dr. James Adams. The Canada Games Council, as part of the application process to obtain a medical exemption, required a form to be filed out by a physician. Sean Bogart's evidence was the Dr. Adams "was no longer allowed" to complete paperwork related to COVID-19 and so the form was not submitted. As no completed application was submitted, the Canada Games Council made no decision on the exemption. Given that the Code provides that this proceeding is a "review" of a decision giving rise to a dispute (see Article 6.11), I conclude I have no jurisdiction to consider a matter in the absence of a prior decision. As a result, I have no jurisdiction to consider the medical exemption issue in this case. If I am wrong on that, I would not be inclined to grant a medical exemption in any event based on the evidence in support of the exemption before me being Dr. Adam's letter. That letter alone is inadequate to support an exemption as it merely refers to Tristan having some unspecified medical condition that prevents him from taking the vaccine. The fact the Doctor cannot, or will not, fill out any further documentation about this condition and COVID-19 contributes to the conclusion that this evidence is inadequate.

### VIII. Conclusion

63. For the above reasons, the appeal of the decision of the Canada Games Council to refuse the requested religious exemption is denied.

**Dated August 11, 2022 at the City of Calgary, in the Province of Alberta.**

A handwritten signature in black ink, consisting of a vertical line on the left, a curved line that loops back to the left, and a horizontal line that ends in a small upward curve on the right.

Per: 

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Julie G. Hopkins, Arbitrator

Appearances:

Sean Bogart – Representative for Tristan Bogart

Dean Dolan – Counsel for Canada Games Council