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BULLETIN

ANTI-MASKERS AND HUMAN RIGHTS: DOES THE CODE PROTECT ME?

The British Columbia Human Rights Tribunal (the “Tribunal”) has received a significant number of complaints since October 2020 alleging discrimination in connection with the requirement to wear face coverings while indoors to help prevent the spread of COVID-19. Individuals in BC have been required to wear face coverings indoors, subject to some exemptions, since November 24, 2020.

Complaints made to the Tribunal go through a screening process before they are accepted. Generally speaking, the Tribunal does not publicize its screening decisions. However, due to the significant number of complaints the Tribunal has received alleging discrimination in connection with face covering requirements and the public’s interest in the issue, the Tribunal recently published two screening decisions that confirm that the *Human Rights Code* (the “Code”) does not protect people who refuse to wear a mask as a matter of personal choice. In *The Worker v. The District Managers*, [2021 BCHRT 41](#) and *The Customer v. The Store*, [2021 BCHRT 39](#), the Tribunal concluded:

The *Code* does not protect people who refuse to wear a mask as a matter of personal preference, because they believe wearing a mask is “pointless”, or because they disagree that wearing masks helps to protect the public during the pandemic.

In the first case, the Worker alleged that the District discriminated against him on the basis of religion, in violation of section 13 of the Code, when the District terminated the Worker’s contract after he refused to wear a face mask while working at a District facility. The Worker had been told that he would need to wear a face mask, but he refused to do so saying it was his “religious creed”.

The Tribunal concluded that the complaints did not set out a possible contravention of the Code as the Worker had not pointed to any facts that could support a finding that wearing a mask is objectively or subjectively prohibited by any particular religion. Instead, his objections to wearing a mask were due to his opinion that wearing a mask does not stop the transmission of COVID-19. The Tribunal stated “[t]he Worker’s opinion that masks are ineffective is not a belief or practice protected from discrimination on the basis of religion”.

In the second decision, the Customer claimed that the Store discriminated against her on the basis of physical and mental disability, in violation of section 8 of the Code, when the Store’s security guard informed her that she would have to put on a mask in order to enter the store.

This occurred prior to the government mandate requiring masks to be worn inside public spaces. The Customer claimed that she was exempt from wearing a mask because they “cause health issues”. However, she would not elaborate on the issues.

The Tribunal concluded that the Customer had not set out a possible contravention of the Code. Although she had set out an adverse impact regarding a service, in that she could not enter the store without a mask, she had not set out facts, that if proven, could establish that she had a physical or mental disability that was a factor in the adverse impact.

The Customer stated that wearing a mask makes it “very difficult to breath” and “causes anxiety”, but she refused to say whether or not she had a disability. She argued that her health conditions were private and she could not be compelled to disclose them to the store or the Tribunal. The Tribunal noted that while one’s health is a private matter, they are required to bring forward the “facts relating to discrimination” if they are asking for human rights-related accommodation.

Therefore, the Tribunal concluded that the Customer’s refusal to explain whether she had a disability and how that disability impacted her ability to wear a mask meant that she had not set out facts which could, if proven, establish discrimination.

These decisions confirm that the Tribunal will be reviewing complaints filed by individuals refusing to wear masks carefully to determine whether there is any possible connection to a prohibited ground in the Code.

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