

Indexed as: The Worker v. The District Managers, 2021 BCHRT 41

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

The Worker

COMPLAINANT[S]

AND:

The District Managers

RESPONDENT[S]

**REASONS FOR DECISION
NEW COMPLAINT SCREENING
Section 27(1)(b) and Rule 12(2)**

Tribunal Member:

Steven Adamson

On their own behalf:

The Worker

I INTRODUCTION

[1] Since November 24, 2020, people in British Columbia have been required to wear face coverings indoors, subject to certain exemptions: Ministerial Orders M425 and M012, ss. 3-4 [Orders]. Among other things, the Orders are premised on face coverings helping to prevent, respond to or alleviate the spread of COVID-19, when used with other protective measures.

[2] The Worker was contracted to do work at a District facility. He says that, when he arrived at the facility, the manager told him he had to wear a face mask. He refused to do so, saying it was his “religious creed” and that he would not wear a mask. The facility manager confirmed that the Worker could not enter without a mask. A senior District manager subsequently sent the Worker a letter terminating his contract for not wearing a mask.

[3] The Worker has filed human rights complaints against the District Managers, alleging discrimination based on religion, in violation of s. 13 of the *Human Rights Code* [Code]. The issue before me is whether the Worker’s complaints allege facts that, if proven, could be a contravention of the *Code: Tribunal’s Rules of Practice and Procedure*, Rule 12(2). This is a screening decision and, pursuant to the Tribunal’s regular process, the Respondents have not yet been notified or asked for submissions on the complaint.

[4] For the reasons that follow, I do not accept the complaints for filing. The Worker has not set out facts that could establish that his objection to mask-wearing is grounded in a sincerely held religious belief. Rather, his objection is based on his opinion that wearing a mask does not stop the transmission of COVID-19. This is not a belief protected by the *Code*.

II DECISION

[5] As discussed in *The Customer v. The Store*, 2021 BCRT 39 [*The Customer*], the Tribunal ordinarily issues its screening decisions by letter. Because of the large volume of complaints alleging discrimination in connection with the requirement to wear face coverings indoors, and the public interest in this issue, I am publishing this screening decision. For the same reasons as set out in *The Customer*, I have decided to order a limitation on the publication of the name of

the Worker, the District and its managers, to protect the individuals' privacy regarding the events that allegedly took place.

[6] The Tribunal reviews complaints upon filing to ensure that they allege a possible violation of the *Code*. In this case, the Worker must set out facts supporting: (1) his religious belief; (2) that the Respondents' conduct had an adverse impact on him regarding his employment; and (3) that his religious belief was a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33.

[7] For the following reasons, I am satisfied that the complaints do not set out a possible contravention of the *Code*. I am also satisfied that no amendment to the complaints could address the issue with the complaints.

[8] I deal first with the alleged adverse impact regarding employment. It is not clear on the face of the complaints that the Worker is an employee of the District within the meaning of *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39. Only work in employment relationships is protected under the *Code*. If the complaints were to proceed, the Tribunal would need more information about the Worker's relationship with the District. However, for the purpose of this decision, I will assume that the Worker is an employee who lost work due to the requirement that he wear a mask in the facility.

[9] I turn then to the question of the Worker's religious belief and its connection to the adverse impact. Under human rights legislation, protection of a religious belief or practice is triggered when a person can show that they sincerely believe that the belief or practice (a) has a connection with religion; and (b) is "experientially religious in nature": *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 69.

[10] The Worker describes his religious belief as follows: "We are all made in the image of God, a big part of our image that we all identify with is our face. To cover-up our face arbitrarily dishonors God". The Worker says it is his freedom of expression to show his face in the general public and his religious liberty to identify his face to others. He says the mask requirement infringes on his "God given ability to breath". The Worker does not believe that mask wearing is

effective. He says, “God makes truth of high importance that I must follow ethically and morally”, “forced mask wearing does not help protect anyone from viruses”, and, therefore, he cannot “live in that lie”. On this point, he continues (as written):

The BC health provincial health office even stated the order was not being put into place for safety reasons, but because business pushed her to enforce it. Furthermore there is no case that this is safety issue and any of the data shows no difference where masks were enforced, in fact the opposite is true that cases went up. The studies that have been on masks show no reason to wear them in general public and that has been repeated by health professional around the world.

[11] 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*:

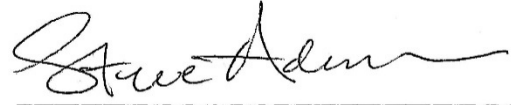
The *Code* does not protect people who refuse to wear a mask as a matter of personal preference, because they believe wearing a mask is “pointless”, or because they disagree that wearing masks helps to protect the public during the pandemic. ... (para. 14)

The Worker’s opinion that masks are ineffective is not a belief or practice protected from discrimination on the basis of religion. While the Worker states his belief that it dishonours God to cover his face absent a basis for doing so, the Workers’ complaints, in essence, are about his disagreement with the reasons for the mask-wearing requirement set out in the Orders.

[12] I am satisfied that the complaints do not set out a possible contravention of the *Code*.

III CONCLUSION

[13] The Tribunal will not proceed with these complaints.

A handwritten signature in black ink, appearing to read "Steve Adamson", written in a cursive style.

Steven Adamson, Tribunal Member