

## Member's Quarterly

Winter 2023 Edition

## Feature

## Assessing Religious Beliefs: Employers

### Beware *There is no "one size fits all" approach*

**E**mployers are sometimes called upon to accommodate the religious beliefs of their employees. This can occur when a workplace rule or requirement conflicts with the sincere religious beliefs of employees.

Recently, the Alberta Human Rights Chief of the Commission and Tribunals (the "**Chief**") found that people claiming discrimination and accommodation based on "religious beliefs" under the *Alberta Human Rights Act* (the "**Act**") must do more than assert a sincerely held religious belief.

This request for review decision provides guidance for service providers and employers who have implemented health and safety mandates in response to COVID-19 and who have or will face related accommodation requests.

While the facts of the decision relate to restrictions implemented in response to COVID-19, the principles apply more generally.

David Pelletier (the "**Complainant**") attended Community Natural Foods (the "**Respondent**"). On arrival, he was told that he would be required to put on a face mask in order to enter the store. He objected and said that he was medically exempt from wearing a face mask. The following day, he escalated his concern to the store's General Manager, who confirmed that the Respondent's new policy was that all persons over the age of 2 years old entering the store were required to wear a face mask (the "**Policy**"). Individuals who could not wear a face mask (e.g., due to medical reasons) or chose not to wear a mask were offered alternatives, such as online shopping, home delivery, curbside pickup or the use of a personal shopper who would put together a customer's order.

Thereafter, the Complainant filed a Complaint with the Alberta Human Rights Commission and alleged that the Respondent discriminated against him regarding goods, services and accommodation on the grounds of physical disability and religious beliefs contrary to the *Act*.

Among other allegations, the Complainant alleged that the Policy infringed his religious beliefs and that the accommodations offered by the Respondent were inadequate, unreasonable and did not justify the infringement of his right to be free from discrimination.

The Commission accepted the Complaint only on the ground of disability.

The Respondent argued in response to the Complaint that the Policy was instituted in response to the COVID-19 pandemic and was aimed at protecting the health and safety of staff, customers and the public. It submitted that the Policy was justified in the circumstances, and it provided accommodations for those who could not wear face masks.

The matter was investigated by one of the Commission's human rights officers who recommended that the Complaint be dismissed. The Director of the Commission agreed with the investigation recommendation and dismissed the Complaint.

The Complainant requested a review of the Director's decision (and included arguments that the Director and Respondent failed to address his claim of discrimination on the ground of religious beliefs).



**Tom Ross**  
Q.C.  
Partner,  
McLennan Ross LLP

## Member's Quarterly

Winter 2023 Edition

### Feature continued

In considering the request for review of the Director's decision, the Chief found that the Policy was justified and that it provided reasonable accommodations, and thus he "... need not decide whether there [was] a reasonable basis in the information to establish a *prima facie* case of discrimination." However, while the decision concerned a medical exemption request, the Chief did make the following observations in respect of the question of discrimination on the ground of religious beliefs:

[36] It is clear from all of the above that an individual must do more than identify a particular belief, claim that it is sincerely held, and claim that it is religious in nature. This is not sufficient to assert discrimination under the Act. They must provide a sufficient objective basis to establish that the belief is a tenet of a religious faith (whether or not it is widely adopted by others of the faith), and that it is a fundamental or important part of expressing that faith.

The Chief also made some helpful comments on the information requirements to demonstrate a need for medical accommodation:

[26] ... where an individual files a human rights complaint, and seeks to have that complaint adjudicated by a Tribunal in order to obtain monetary and other redress, they require more than the type of note provided here. ... the Tribunal would need something more than a note that indicates the person is "medically exempt because of a medical condition." For example, there should be information that certifies that the individual has been diagnosed with a disability, the nature of the disability, and the nature and scope of the restrictions that flow from that disability. Ideally, it should set out the accommodations the individual requires.

While this decision specifically addressed a masking policy, the analysis has wider application. The Chief's comments support that service providers and employers may request objective information from individuals to establish whether a belief at issue is a religious belief protected under the Act and thus requiring accommodation.

Service providers and employers should tread carefully when faced with religious belief matters and requests. Each matter should be assessed individually on its own facts.

*Tom Ross is a partner with McLennan Ross LLP in Calgary and can be reached via email at [tross@mross.com](mailto:tross@mross.com).*