



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Rishi Sharma**

**Applicant**

**-and-**

**City of Toronto**

**Respondent**

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## DECISION

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**Adjudicator:** Jessica Connell  
**Date:** November 27, 2020  
**File Number:** 2020-41978-I  
**Citation:** 2020 HRTO 949  
**Indexed as:** **Sharma v. Toronto (City)**

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**APPEARANCES**

Rishi Sharma, Applicant                    )  
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  )  
  )

Self-represented

City of Toronto, Respondent                )  
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Fred Fischer, Counsel

## INTRODUCTION

[1] This Application arises in the context of the COVID-19 pandemic. In response to the pandemic, the respondent the City of Toronto (the “City”) enacted By-Law 541-2020 (the “By-Law”). The By-Law requires businesses and other establishments that are open to the public to adopt a policy to ensure that no member of the public is permitted entry to, or otherwise remains within, any enclosed space unless they are wearing a mask or face covering: By-Law, s. 1(a). For the purposes of this Decision, I will refer to a mask or face covering collectively as a “mask”.

[2] The applicant alleges that the City discriminated against him with respect to services because of his creed and disability, contrary to the *Human Rights Code*, R.S.O. 1990 c. H. 19, as amended (the “Code”). The essence of the Application is that, because of the By-Law, the applicant has been denied service at a number of businesses.

[3] In his Application, the applicant alleges that he is unable to wear a mask for the following reasons:

1. Creed. My creed disagrees with covering my face for unsubstantiated claims. Claims that masks prevent or stop the spread of Sars-Cov-2 (otherwise commonly known as coronavirus) is not substantiated by scientific evidence (e.g. peer-reviewed randomized control trials). Instead, City of Toronto only loosely references anecdotes of "masks being effective" -- this is not evidence. My creed requires that I do not blindly accept what government or agencies claim, mandate or enact into laws (or by-laws). Instead, it is my civic duty to be critical of government and their decisions. By-Law 541-2020 makes no exception for creed.

2. Disability. My bodily functions are impaired by face coverings, as it impedes my breathing. I do not know whether not being able to wear a mask qualifies as a disability, but what I do know is that I cannot wear a mask due to bodily/biological/medical conditions. While I understand that By-law makes exemptions for "persons with an underlying medical condition which inhibits their ability to wear a Mask or Face Covering", those with disabilities or medical conditions should not bear the brunt explaining or proving this to businesses/establishments, as this is humiliating and anxiety-inducing. In Ontario, businesses are not permitted to inquire about an individual's medical conditions.

[4] By Case Assessment Direction (“CAD”) dated October 5, 2020, the Tribunal directed that a summary hearing be held to address whether the Application should be dismissed on the basis that there is no reasonable prospect that it will succeed. At paragraph 7 of the CAD, the Tribunal said:

It is not clear that the issues raised in the Application fall under the *Code*. It is not clear that, assuming all the allegations in the Application to be true, what the applicant alleges may be reasonably considered to amount to a *Code* violation. In order for the *Code* to apply, an applicant must possess a characteristic protected by the *Code*. It is not clear that what the applicant describes would fall within the meaning of creed, as interpreted in the Tribunal’s case law. See for example *Vezina v. Elections Ontario*, 2016 HRTO 994. It is also not clear that the applicant has a disability that prevents him from wearing a mask.

[5] At the summary hearing, the parties also made submissions about whether the Application should be dismissed because the applicant has not alleged specific acts of discrimination by the City, as opposed to conduct by the various businesses purporting to apply the By-Law. As explained more fully below, I find that the Application must be dismissed for this reason. Even if I accept all of the facts alleged by the applicant as true, and I find that the protected ground of disability is engaged, the applicant has not alleged adverse treatment by the City. The Application therefore has no reasonable prospect of success.

## **FINDINGS**

### **Summary Hearing Test**

[6] The summary hearing process is described in Rule 19A of the Tribunal’s Rules of Procedure (“Rules”) as well as the Tribunal’s Practice Direction on Summary Hearing Requests. The purpose of a summary hearing is to consider, early in the proceeding and usually before a Response is filed, whether an application should be dismissed in whole or in part because there is no reasonable prospect that the application will succeed.

[7] The test that is applied at the summary hearing stage is whether an application has no reasonable prospect of success. At this stage, the Tribunal is not determining

whether the applicant is telling the truth or assessing the impact of the treatment they experienced. The test of no reasonable prospect of success is determined by assuming the applicant's version of events is true unless there is some clear evidence to the contrary or the evidence is not disputed by the applicant.

[8] The *Code* is only engaged where an applicant alleges adverse treatment by the named respondent because of a protected ground or grounds. In some cases, such as this one, the focus at the summary hearing is on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation. If not, then the application will have no reasonable prospect of success and will be dismissed.

### **Creed**

[9] I first consider whether the ground of creed is engaged. For the reasons that follow, I find that the applicant's objection to wearing a mask does not fall within the meaning of "creed".

[10] The applicant objects to the By-Law because he says it is not evidence-based. He says that requiring people to wear masks without offering some evidence of their efficacy at slowing or stopping the spread of COVID-19 is speculative and amounts to a heavy hammered approach.

[11] "Creed" is not defined in the *Code*, but most often engages an applicant's sincerely held religious beliefs or practices. The case law has left open the question of whether a political perspective, such as communism, that is made up of a recognisable cohesive belief system or structure might constitute a creed. However, mere political opinion does not engage creed. See *Vezina v. Elections Ontario*, 2016 HRTO 994 at paras. 9 and 11 and the cases cited therein.

[12] In essence, the applicant disagrees with the City's policy choice to enact the By-Law because he does not think that the efficacy of masks has been sufficiently proven. This does not engage creed within the meaning of the *Code*. The applicant's recourse is

to engage with the City's elected officials about his concerns, not to file an Application alleging discrimination because of creed.

## **Disability**

[13] For the reasons that follow, I find that the ground of disability is engaged.

[14] During the summary hearing, the applicant explained that, for privacy reasons, he did not particularize his disabilities in the Application and was not sure how much information he should share in the context of the summary hearing. I explained to the applicant that he needed to give specifics of the disabilities that he says impact his ability to wear a mask.

[15] This is because an applicant has the onus of proving that they have a disability within the meaning of the *Code*. While in the context of a summary hearing the Tribunal is not making any factual findings about whether an applicant in fact has a disability, they must give sufficient details for the Tribunal to determine whether the definition of disability in the *Code* and the case law interpreting that definition could be engaged.

[16] Section 10 of *Code* defines disability as follows:

“disability” means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.

[17] As can be seen from this definition, the scope of what constitutes a disability within the meaning of the *Code* is broad. The Tribunal has confirmed this in its case law. See, for example, *Vetricek v. 642518 Canada*, 2010 HRTO 757 at para. 35.

[18] During the summary hearing, the applicant provided details of two specific medical conditions. I have no difficulty in concluding that both fall within the broad definition of disability. However, because I am ultimately dismissing this Application and for privacy reasons, I do not find it necessary to disclose the applicant's specific disabilities in this Decision.

[19] Consistent with human rights law under the *Code*, the By-Law recognizes that businesses have a duty to accommodate those with disabilities. In this regard, the By-Law requires a business' policy to contain certain exemptions, including for individuals who are unable to wear masks for medical reasons:

2. (a) The policy shall include the following exemptions from the requirement to wear a Mask or Face Covering:

...

(2) persons with an underlying medical condition which inhibits their ability to wear a Mask or Face Covering;

...

(5) persons who are reasonably accommodated by not wearing a Mask or Face Covering in accordance with the Ontario Human Rights Code.

[20] The accommodation process is a shared responsibility. This means that there must be a co-operative sharing of information. Many medical conditions are invisible. In order to engage the duty to accommodate, human rights law requires an individual to identify that they have disability-related needs that require accommodation. In the context of the By-Law, this means that, if questioned, an individual must identify to a business that they

have a medical condition or other reason requiring an accommodation that exempts them from the business' policy's requirement to wear a mask.

[21] It is important to note, however, that the By-Law and human rights law generally do not require an individual seeking accommodation to disclose that they have a specific medical diagnosis. In some cases, an individual seeking accommodation will be required to provide information to verify their accommodation needs. However, in the context of this case, the By-Law specifically provides that a business' "policy shall not require ... members of the public to provide proof of any of the exemptions": By-Law, s. 2.(d). Thus, once an individual identifies that they have a medical condition or otherwise requires accommodation that exempts them from a business' policy that they wear a mask, the individual ought to be permitted to access the service. A business' duty to accommodate is not infinite, but rather ends at the point of undue hardship.

[22] The applicant says that he has told businesses that he is unable to wear a mask and has been lectured, harassed, turned away and, in one instance, banned from the store. If the applicant has disclosed to businesses that he is unable to wear a mask for medical reasons and has been turned away, that is most unfortunate. Depending on the facts and what the Tribunal ultimately would determine after hearing the evidence, those businesses may have breached the *Code*. However, this issue is not before the Tribunal because the applicant has not named any of the businesses as respondents to this Application.

### **Allegations Against the City**

[23] The issue in this case is whether the Application has no reasonable prospect of success because it does not allege adverse treatment by the named respondent, that is, the City.

[24] The applicant argues that the businesses who are denying him service are misinterpreting the By-Law and/or not complying with the By-Law's spirit. He described this as "unfortunate" and "incongruent" with the By-Law. The exemptions are being "lost

in translation” and citizens like himself bear the burden. In light of these arguments, I asked the applicant to explain how the businesses’ alleged conduct can be attributed to the City. The applicant maintains that his Application is properly against the City for two reasons.

[25] First, the applicant acknowledged during his submissions that it is open to him to file applications against the businesses themselves. However, he says that it would be unfeasible to bring applications against each of the businesses due to the magnitude of service denials. If he was to bring an application against every business that has denied him service, he says it would become a fulltime job.

[26] I find that it is ultimately the applicant’s choice not to draft and file applications against the various businesses that he says denied him service. This does not provide a basis to somehow assign those businesses’ alleged conduct to the City.

[27] Second, the applicant says that it is unreasonable to bring applications against the businesses. He argues that they are allegedly behaving as they are because of the By-Law. In particular, the applicant says that the By-Law should do a better job at explaining what it means and setting expectations. In particular, he argues that the By-Law should specifically state that businesses should not deny service where an individual is properly exempt from wearing a mask.

[28] I find that there is no alleged discriminatory action by the City itself. I do not accept that the By-Law is unclear. To the contrary, the By-Law specifically requires a business’ policy to contain exemptions for those with underlying medical conditions or otherwise requiring accommodation under the *Code*. The By-Law further says that such a policy must *not* require a person claiming an exemption to provide proof. In the circumstances, the City cannot be faulted for the alleged conduct of businesses who may be incorrectly applying the By-Law. There is only the By-Law, which the applicant alleges gives rise to discrimination by *others*. See, for example, *Shuparski v. Toronto (City)*, 2010 HRTO 726 at paras. 25, 27 and 29-30.

[29] Simply put, I find that the alleged conduct of those businesses that the applicant says have denied him services cannot be laid at the City's feet. The Application against the City has no reasonable prospect of success because the applicant has not alleged adverse treatment by the City, as opposed to by the various businesses.

**ORDER**

[30] The Application is dismissed.

Dated at Toronto, this 27<sup>th</sup> day of November, 2020.

*"Signed by"*

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Jessica Connell  
Member