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Vaccines, masks, and human rights

A singular belief is not a protected 'creed' or 'religion'

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In response to mask and vaccine mandates arising from the COVID-19 pandemic, some employees claimed their personal belief system prevented them from wearing a mask or becoming vaccinated and that this should receive protection under human rights legislation.

As these cases continue to trickle through courts and tribunals, employers can take comfort in knowing that human rights tribunals across Canada have thus far been clear that a personal choice or secular belief is not a protected “creed” or “religion” and there is no duty to accommodate based on those choices or beliefs. The Ontario Superior Court also recently held – in *Harjee v. Ontario*, 2022 ONSC 7033 - that Ontario’s “vaccine passport” legislation was constitutional and did not violate freedom of religion under the Canadian Charter of Rights and Freedoms.

Let’s unpack this a bit further.

Religion, creed or something else?

As a starting point, human rights tribunals cannot consider a general allegation of unfairness; a complaint must relate to a specific, legislated protected ground such as sex, sexual orientation,

colour, marital status, family status, etc. Every Canadian jurisdiction protects against discrimination based on “religion” or “creed” or both:

- British Columbia, Alberta, and the federal legislation – “religion”
- Manitoba, New Brunswick, Nova Scotia, and Prince Edward Island – “religion” and “creed”
- Saskatchewan and Newfoundland and Labrador – “religious creed” and “religion”
- Ontario – “creed”
- Quebec – freedom of “conscience,” “religion,” “opinion,” and “expression”
- British Columbia, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador also protect political beliefs or opinions.

Religion-based complaints: As noted above, to succeed, a complainant must be able to show how their claim of discrimination is grounded in a religious- or creed-based belief, not merely a personal or secular belief. For example, the BC Human Rights Tribunal in *The Worker v. The District Managers*, [2021 BCHRT 41](#), rejected a complaint in which the applicant argued he [believed that it dishonoured God](#) to cover his face with a mask. The applicant was unable to show his objection to mask-wearing was grounded in a sincerely held religious belief rather than a general disagreement with mask-wearing.

Similarly, the Human Rights Tribunal of Ontario rejected a religion-based complaint because the applicant, a self-identified Christian, was unable to identify an objective Christian precept against mask-wearing: *LL v. Dollarama Inc.*, [2022 HRTO 974](#).

Creed-based complaints: Creed is not defined in any legislation but [is understood to be broader](#) than, and inclusive of, religion. In *Ortiz v. University of Toronto*, [2022 HRTO 1288](#), the Human Rights Tribunal of Ontario stated that a creed must:

- be sincerely, freely, and deeply held
- be integrally linked to a person's identity, self-definition and fulfillment
- be a particular and comprehensive, overarching system of belief that governs one's conduct and practices
- address ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence
- have some nexus or connection to an organization or community that professes a shared system of belief.

A singular belief is therefore not a creed.

For example, in *Ortiz*, an applicant argued his creed was "individual choice" and a political belief system that encompassed "informed consent and personal autonomy in medical decision making." The tribunal rejected that argument:

"The concept of individual choice (and its application, in this case, to choose not to be vaccinated) does not meet the definition of creed. Accepting that the applicant's belief may be sincerely, freely, and deeply held and accepting that it may even be linked to the applicant's identity and self-definition, there is no basis on which I could determine that it meets the other criteria required to be considered a creed.

"I note that the applicant's creed lacks an overarching systemic component. I also note that it does not address the question of human existence or that of a Creator, nor contemplate life and death. I further note that it does not form a nexus to any organization or community with a shared system of belief. In the circumstances of this case, I find that the applicant has failed to establish that "informed consent and personal autonomy in medical decision making," even if

they are sincerely held beliefs, falls within the meaning of creed under the Code. Accordingly, the Application does not fall within the Tribunal's jurisdiction and must be dismissed."

That being said, the tribunal has cautioned against using only "Western" or "mainstream" standards of religion or creed, and has recognized certain spiritual beliefs as a creed, such as Falun Gong, a modern "Chinese popular religion" founded in 1992.

Political opinion-based complaints: In *Complainant obo Class of Persons v. John Horgan*, [2021 BCHRT 120](#), the applicant argued his "political belief" meant he could not be required to be vaccinated or wear a mask. The BC Human Rights Tribunal disagreed, ruling that the protected ground of political belief does not exempt a person from following a provincial health order or rule.

Takeaway for employers

It is likely that these types of cases will continue to be litigated across Canada, both related to and independent of the COVID-19 pandemic. For now, employers can take comfort in knowing that a singular belief or personal choice is neither a creed nor a religion for the purposes of human rights legislation and there is no duty to accommodate based on those beliefs or choices.

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