



## Novel Coronavirus (COVID-19)

### Employment & Labour

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# Mandatory Mask or Face Covering By-Law Not a Clear Violation of Human Rights

By Shreya Patel

The Human Rights Tribunal of Ontario (“HRTO”) was recently asked to assess whether a mask by-law contravened the human rights of an individual who refused to wear a mask or face covering.

The City of Toronto enacted a by-law which:

1. Required businesses that are open to the public to adopt a policy to ensure that members of the public are wearing a mask or face covering prior to permitting entry;
2. Required businesses to grant exemptions for those with underlying medical conditions or otherwise requiring accommodations; and
3. Did not permit businesses to require proof from individuals if they requested an exemption from wearing a mask or face covering.

The applicant alleged that because of the by-law, he was denied services at a number of businesses. The applicant chose to commence an application against the City of Toronto as opposed to those individual businesses that denied him services.

The applicant’s claim was that the City of Toronto discriminated against him with respect to services because of his creed and disability, contrary to the Ontario *Human Rights Code* (the “Code”).

The applicant stated that his creed prevented him from wearing a mask for the reason of preventing the spread of illness as there was no proof that masks limited the spread of COVID-19. The HRTO found the applicant’s claim to be based on a political opinion (which is not protected by the *Code*) versus a genuine sincerely held religious belief.

The HRTO acknowledged that while the applicant had a disability, the City of Toronto should not be responsible for any alleged conduct of third party businesses denying services. Accordingly, the HRTO

concluded that the application against the City of Toronto had no reasonable prospect of success because the applicant had not alleged adverse treatment by the City of Toronto, as opposed to by the various businesses.

This decision serves a timely reminder that in order to engage the protections provided under the *Code*, mere disagreement with political or scientific propositions is not enough. To successfully establish discrimination under the *Code*, an individual must be treated unfairly because of a characteristic listed in the *Code*. Further, 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. Accommodation is a shared responsibility and an individual seeking accommodation may be required to verify their accommodation needs.

## Author

**Shreya Patel**  
Associate

Shreya is an associate in our [Employment & Labour Group](#).

**Tel:** 416 777 5453  
[spatel@torkinmanes.com](mailto:spatel@torkinmanes.com)

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