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Assertion that Vaccination is Contrary to One's Religion is Not a Satisfactory *Code* Violation

Lajeunesse v. Region of Peel - Corporate Services Human Resources, 2024 HRTO 937

The Applicant filed an application alleging discrimination based on religious creed with respect to employment, claiming that the Region of Peel ("Region") retracted an employment offer letter contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19 ("*Code*").

HELD: Application dismissed.

DISCUSSION: The Human Rights Tribunal's jurisdiction is limited to enforcement of the *Code*, and the *Code* only prohibits actions that discriminate against people based on an enumerated ground. The Applicant must provide a factual basis beyond a bald assertion, which links their enumerated ground to the Region's action and explains why they think these actions are discriminatory in nature, *Groblicki v. Watts Water,* 2021 HRTO 461. The Applicant asserted that she is Christian Orthodox, and her sincere religious beliefs prevented her from taking vaccinations, even if the vaccine was required by the Region as a condition of employment. It was the Applicant's position that the Region failed to accommodate her creed-related request to be exempt. The Tribunal held that the Applicant's submissions were insufficient and failed to set out a factual basis that her belief was objectively required by the Christian Orthodox religion. Even though the Applicant argued that her faith instructs her to follow the teachings of scripture and make moral decisions which could affect her physical body, she did not point to or provide an objective religious precept that forbids being vaccinated. The Tribunal was not satisfied that the mere assertion that getting vaccinated is contrary to one's religion. Furthermore, the Tribunal held that the Applicant failed to provide any specific acts of discrimination within the meaning of the *Code* allegedly committed by the Region. Therefore, the Applicant's application did not fall within the Tribunal's jurisdiction. Application dismissed.

City is Not Liable where Officers Damage Property when Responding to Suicide Call

***SM v. The Corporation of the City of Victoria*, 2024 BCCRT 687**

The Applicant brought a claim against the City of Victoria ("City") for property damages caused by police officers of the Victoria Police Department during a wellness check. The City denied liability, arguing that the officers acted appropriately during the wellness check.

HELD: Claim dismissed.

DISCUSSION: The Applicant made verbal statements about ending her life, which prompted a caretaker to call 911. Two police officers from the Victoria Police Department, responded to the call, first knocking on the front door and windows then calling the Applicant to no avail. The officers made the decision to enter the Applicant's residence by force which ultimately caused damage to a window frame. Once inside, the police officers confirmed that the Applicant was not in imminent harm of taking her life and left. It is undisputed by the City that under sections 20(1)(a) and 21(4) of the *Police Act,* RSBC 1996, c. 367 the City is liable for any torts committed by its officers in the performance of their duties. Since the City may be liable in tort, the Tribunal found that the Applicant's claim is based in negligence. To prove negligence the Applicant must show, first that the City owed her a duty of care, second, the City breached the standard of care, third, the applicant suffered damage or loss, and fourth, the damage or loss was caused by the City's breach. The Supreme Court of Canada in *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 held that the standard of care for a police officer, is a reasonable police officer in a similar circumstance, noting that courts are not in the business of second-guessing the reasonable exercises of discretion by trained professionals. The City conceded that it does owe the Applicant a standard of care.

The Tribunal held that the proper conduct of a police officer during a wellness check is beyond that of an ordinary experience, and the Applicant must provide evidence to show the applicable standard. The Tribunal was not satisfied that the Applicant provided persuasive evidence to prove that the city breached its standard of care. There was no evidence to suggest that the police officers acted negligently during the wellness check, rather the testimony of the officers, documentary evidence and the 911 call report suggest the police officers conducted themselves reasonably. Claim dismissed.

Restrictive Covenant is Enforceable on Golf Course Land

***Cochrane Golf Club Limited v Cochrane (Town)*, 2024 ABCA 228**

The Cochrane Golf Club Limited ("Golf Club") applied to amend the Town of Cochrane ("Town") Land Use By-law to allow for the construction of residential condominium. To persuade the Town, the Golf Club offered a restrictive covenant to be registered against its lands if the re-designation application was approved. The application was approved, the covenant was registered, and construction began. After a few years, the Golf Club approached the Town about further commercial development, the Town responded that any development would require an amendment to the covenant. The Golf Club filed an application and sought an order from the Court that the covenant did not run with the land, and that the covenant agreement with the Town was void and unenforceable. The application was dismissed, and the chamber judge found the covenant enforceable. The Golf Club appealed.

HELD: Appeal dismissed.

DISCUSSION: The Court of Appeal of Alberta found that the chamber judge did not err in its decision. The Town had properly exercised its powers through Town Council, the Planning Committee and the development authority all in accordance with *Municipal Government Act*, RSA 2000, c. M-26. S.617. The Court of Appeal was satisfied that at the time the covenant was put in place, it balanced the wishes of both the Golf Course to build and the affected Town residents. The Court of Appeal highlighted that the Golf Club should not be allowed to take the full benefit of the original agreement with the Town, for which it bargained, build and sell multi-family units for an income, and then later attempt to evade its corresponding obligations. The covenant as it is in place does what it was intended to do, which is to generally prohibit further commercial intrusions onto the golf course after construction of the multi-family units. The chamber judge did not err, the covenant is workable and enforceable. Appeal dismissed.

A Councillor Tweet Violates City Code of Conduct
Councillor Danko Tweet (Re), 2024 ONMIC 11

A Complainant filed a code of conduct complaint against a City of Hamilton Councillor ("Councillor") alleging that his tweet on the social media platform X violated the City Council Code of Conduct ("Code of Conduct"). During an acceptance speech at a YWCA Gala the Complainant made anti-police comments, prompting a police organization to pull donations to the Hamilton YWCA. The Councillor retweeted a CBC article that was covering the story and added in his own commentary referring to the Complainant as an "ungrateful, self-righteous toddler." A few hours later the Councillor removed the tweet and apologized. The Complainant continued to leverage the statement made by the Councillor by retweeting it.

HELD: Councillor in violation of Code of Conduct.

DISCUSSION: The Code of Conduct contains the following provision:

SECTION 8: Conduct in office, including at council and committee

8(1) every member shall conduct him or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a member and at meetings of council and committees of council and other meetings, and in accordance with the provisions of the procedural by-law, and other by-laws of the city.

The first question for the Integrity Commissioner ("IC") was whether the communications portion of the Code of Conduct included "social media" communications. Other IC decisions including *Burton v. Inch,* 2023 ONMIC 6, concluded that "social media" communications and posts are captured by a City Council Code of Conduct. Having been satisfied that social media is captured, the IC had to determine if the tweet was within the course of the Councillors performance or required performance of his responsibilities as a member. In reviewing the tweet, the IC was satisfied that it was, as the Councillor linked his apology to his role as a Councillor when stating that his tweet was "beneath the dignity of his office." Lastly, the IC was satisfied that the Councillor's tweet exhibited "decorum", as seen in *McConnel v. Ford* 2015 ONMIC 4 even actions done without the intent to harm or with a commendable motive can still lack decorum and contravene the Code. The IC held that the Councillor's tweet was an ad hominin attack on the Complainant opposed to a critique of the article posed by CBC, and thereby fell below the level of acceptable public discourse by a member of City Council and violated section 8(1) of the Code of Conduct. Despite this finding, the IC did not impose a penalty finding due to the mitigating factor that the tweet was taken down within two hours after posting, and the Councillor had already apologized.

Board Upholds Municipal Bylaw Charge But Extends Compliance Date

McClellan v Calgary (City), 2024 ABLCSAB 13

The City of Calgary ("City") received complaints that a resident ("Appellant") had numerous inoperable vehicles on his property. In response, a municipal by-law officer issued an order to compel the resident to remove the four derelict vehicles and return the property to an acceptable state in compliance with the City's Community Standards By-law ("By-law"). The Appellant appealed the order to the Licence and Community Standards Appeal Board ("Board").

HELD: Order upheld.

DISCUSSION: The Appellant argued that he was not in violation of the By-law as the vehicles on his property were not derelict and were all roadworthy. The Appellant conceded that two of the four vehicles were damaged but stated that it was damage caused by a City-owned tree that fell during a windstorm, and the other two were going up for auction. Despite these arguments, no evidence was provided by the Appellant. The Board disagreed and was satisfied by the City's evidence that each of the vehicles had one or more flat tires, and thereby met the definition of derelict vehicle under the By-law. As a result, the Board confirmed the order issued by the City, but varied the compliance date to allow the Appellant 60 days to achieve compliance, by either removing the vehicles or making them roadworthy.