

Response to a Human Rights Complaint

Complaint # (found on notification letter sent to you by the Commission)
S2020/12/0301

For office use only
Date received

Section A

Key information about the organization or person named in the complaint (the respondent, you)

Full legal name of respondent (not the designated contact) Costco Wholesale Canada Ltd
Specify if the respondent is a corporation, partnership, sole proprietorship, or other body Corporation
Names and titles of chief executive and owners Subsidiary of Costco Canada Holdings Inc. REDACTED, Chief Executive Officer
Designated contact person (same as listed on the contact information page) REDACTED

Section B

Your response to the complaint

This is your opportunity to respond to the information in the complaint. Add extra pages if you need more space, up to the 20-page limit explained in the instructions.

This section has two parts. Part 1 is your explanation of what happened. Part 2 is a timeline of events and supporting documents.

Part 1: Main points

Explain your view of what happened:

- Cover main, high-level points here in Part 1. Put details and a timeline in Part 2 on the next page.
- Tell us which facts in the complaint you agree with, and which you do not accept and why.
- If you believe the complaint is inaccurate or not justified, give your reasons.

Please see Schedule "A"

Part 2: Details and timeline

List events in the table

List dates and details of events, in the order they happened. Include important dates, times, or people involved, as necessary.

List documents (if you have any) that relate to the complaint. These might include:

- *Internal documents* that support the facts or your position. These may include a letter of termination, a Record of Employment (ROE), warning letters, medical documents, emails, texts, or signed witness statements.
- *Documents from legal or other actions* related to the complaint or about the same issues the complaint raises. These include formal union complaints (grievances), court actions, or a notice to the Workers' Compensation Board (WCB) with case number related to the requirement to return injured workers to work.

Add extra pages if you need more space, up to the 20-page limit explained in the instructions. **Do not send the documents**, just list them here. If needed, you will have an opportunity to provide documents later in the complaint process.

Date (dd/mm/yyyy)	What happened	List supporting documents (if any)
08/02/2021	See Schedule "A"	See Schedule "A"

Section C

Other issues

Complete this section only if your situation falls into one of the categories below. If Section C does not apply to you, proceed to Section D.

- The Alberta Human Rights Commission, or another human rights commission, has already accepted a complaint on the same issue.
- The complainant and you signed a release that covers the complaint allegations.
- The complaint falls within federal jurisdiction only.

Explain which reason applies and send us supporting documents with this Response Form.

Please see Schedule "A"

Section D

How do you think the issue could be reasonably resolved?

You and the complainant will be expected to consider reasonable settlement offers.

A remedy is a way to resolve the complaint between the parties. The complainant may agree to a financial remedy, for example, compensating the complainant for lost wages or general damages, or making a charitable donation. A remedy can also be non-financial, such as an apology, a change in policy, or human rights education. A remedy can combine different things.

The goal of a remedy is to try to put the complainant in the position they would have been in if the discrimination had not happened. For more information about remedies, please see the Remedy information sheet on our website.

Please see Schedule "A"

Section E

Signature and checklist

To the best of my knowledge, the information in this response form is complete and accurate.

08/02/2021

Authorized signature for the respondent

Date (dd/mm/yyyy)

Justin Turc

Associate

Print name

Title or position

- Please check this box to represent your signature if you are submitting this form electronically.
You must also fill in the date, name, and title above.

Final check

Confirm that you have:

- filled in all sections of the form that apply to you
- signed, dated, and numbered any pages you added
- listed the total number of pages you are sending us here: 21
- included supporting documents only for Section C
- signed the form or checked the electronic submission box
- ensured we receive the form back within 30 days of the date you received it

SCHEDULE "A" TO THE HUMAN RIGHTS RESPONSE OF
COSTCO WHOLESALE CANADA LTD.

OVERVIEW

1. Except as expressly admitted herein, Costco Wholesale Canada Ltd. ("Costco") denies each and every allegation set out in the human rights complaint filed by the Complainant (File No. S2020/12/0301) (the "Complaint") and puts the Complainant to the strict proof thereof.
2. Contrary to the allegations contained in the Complaint, Costco has fully complied with the *Alberta Human Rights Act* (the "Act"). As such, the Complainant is not entitled to any of the remedies sought in the Complaint.
3. This response is made without prejudice to Costco's right to amend or supplement this response at any time in the future.

PRELIMINARY MATTERS

The Complaint is Frivolous and Vexatious

4. Costco requests that the Commission exercise its jurisdiction to dismiss the Complaint without a hearing on the merits on the basis that it has been brought by the Complainant for reasons that are plainly and obviously frivolous and/or vexatious in contravention of section 10(2) of the Act.
5. The facts on which Costco relies in support of this request include, but are not limited to, the following:
 - (a) On the day in question, the Complainant was not genuinely seeking to access Costco's warehouse. Rather, the interaction between the Complainant and Costco, which is the subject of this Complaint, was clearly planned and premeditated as a media event. The interaction was video recorded by "The Angry Albertan", who livestreamed and posted the video, titled "Testing Costco's policies with David and Karen", on "The Angry Albertan" Facebook page and YouTube;
 - (b) The Complainant disputes the efficacy of face coverings, expresses his belief that most masks are a "petri-dish" for bacteria and viruses, and indicates that he

avoids being near people who wear masks in a November 21, 2020 CTV News Edmonton article;

- (c) In a podcast by The Angry Albertan entitled “Fireside Chat with David Dickson” the Complainant:
- (i) espouses negative personal opinions toward various COVID-19 controls and safeguards, including masks;
 - (ii) states “the exemptions are so wide, so broad, there isn’t a single person who should be wearing a mask if they don’t want to wear a mask. I mean if you want to wear a mask, there are many reasons why you should educate yourself [...] and see just why you shouldn’t be wearing a mask. But, you know if you want to do it, if it makes you feel better, fine. But bear in mind you’re going to get used to it and there will come a point where you forget you are even wearing it. You have to ask yourself the question - why are you doing it?”;
 - (iii) encourages individuals to critically consider direction from the Chief Medical Officer of Health and question whether it makes sense prior to complying; and
 - (iv) encourages individuals to stand up for their rights and questions where the “cowboys” have gone; and
- (d) The Complainant’s authored works¹ wherein he questions the significance of COVID-19, expresses personal beliefs against social distancing, lockdowns, and use of face coverings and makes the following proclamations:
- (i) “stop with the MASK Charade and do some research before you dance to the latest government marching orders”;²

¹ Including, without limitation: The Best Laid Plans. COVID-19 (Dickson, Articles, 2020); COVID 19 – Is the lock down working? (Dickson, Articles, 2020); COVID 19 - The Spread of A Virus (Dickson, Articles, 2020); How the humble Gin & Tonic may save the world from COVID 19. (Dickson, Articles, 2020); COVID 19 Risks - a Personal Message (Dickson, Articles, 2020); COVID 19 - A Personal Story Postscript (Dickson, Articles, 2020); Winter Is Coming (Dickson, Articles, 2020).

² The Best Laid Plans. COVID-19 (Dickson, Articles, 2020) page 91

- (ii) “THIS HAS TO STOP NOW. We have to go back to normal. No Masks, no social distancing, no lockdowns, no vaccine”;³ and
- (iii) “Note that these are the same experts and doctors [...] WHO say masks will help (then won’t, then will) - They WON’T!”⁴

RESPONSE TO THE MERITS

6. Throughout the COVID-19 pandemic, Costco has taken great care to protect the safety of its employees, members, and guests. In furtherance of this goal, early on in the COVID-19 pandemic, Costco required the use of face coverings in its warehouses as one of many health and safety measures it adopted. As the efficacy of face coverings became more apparent and as the threat of COVID-19 grew, in November 2020 Costco made the difficult but reasonable and justifiable decision to refuse entry to those who are not willing or able to wear a face covering, without exception.

7. While public health guidance suggests there would be few, if any, individuals prevented from wearing a face covering for medical reasons, Costco understands that there may be exceptional cases where individuals are unable to briefly wear a face covering and that some members may not want to wear a face covering. As such, Costco has ensured that its members, including the Complainant, can still access Costco’s products by offering alternatives and accommodations to its members, including:

- (a) online purchases through Costco.ca;
- (b) grocery delivery and pick-up services through Instacart,
- (c) curbside pick-up for prescriptions; and
- (d) allowing immediate family members who can wear a face covering to use a member’s membership card to shop on their behalf.

8. Costco’s measures are reasonable, justifiable and lawful in the circumstances. Given the serious, and potentially fatal, threat to health and safety that COVID-19 poses, permitting any exceptions to Costco’s face covering policy would constitute undue hardship.

³ Winter is Coming (Dickson, Articles, 2020) page 7

⁴ COVID 19 - A Personal Story Postscript (Dickson, Articles, 2020)

COVID-19

9. COVID-19 is a disease caused by the novel coronavirus, SARS-CoV-2.⁵ The first cases were reported in December 2019⁶ and over 105,000,000 cases and 2,287,000 deaths have been reported worldwide.⁷ Due to the alarming rate and severity of the spread of COVID-19, the World Health Organization declared it a global pandemic on March 11, 2020.⁸

10. COVID-19 can cause a range of symptoms. Some people infected with the virus are asymptomatic, experiencing no symptoms at all. Others experience a range of the most common symptoms including: fever, body ache, dry cough, fatigue, chills, headache, sore throat, loss of appetite and temporary loss of smell.⁹ More severe COVID-19 symptoms include: shortness of breath, confusion, persistent pain or pressure in the chest, and a high temperature.¹⁰

11. Complications from COVID-19 can lead to death. Such complications include: respiratory failure, acute respiratory distress syndrome, sepsis and septic shock, thromboembolism, and multi organ failure.¹¹

12. Those infected with COVID-19 can also suffer long-term health effects including: fatigue, shortness of breath, cough, joint pain, chest pain, and respiratory and neurological symptoms. More serious long-term complications of COVID-19 can affect different organ systems in the body, including: inflammation of the heart, abnormalities in lung function, acute kidney injury,

⁵ Coronavirus disease (COVID-19), World Health Organization, online:
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19>

⁶ Coronavirus disease 2019 (COVID-19) Situation Report - 94, World Health Organization, online:
https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf?sfvrsn=b8304bf0_4

⁷ COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU), Johns Hopkins University, online:
<https://www.arcgis.com/apps/opstdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>

⁸ Timeline: WHO's COVID-19 response, World Health Organization, online:
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline/#/>

⁹ COVID-19 basics, Harvard Health Publishing, online: <https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics>

¹⁰ Coronavirus disease (COVID-19), World Health Organization, online:
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19>

¹¹ Coronavirus disease (COVID-19), World Health Organization, online:
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19>

loss of smell and taste, difficulty concentrating, memory problems, depression and anxiety.¹² As COVID-19 is new, its long term effects are not fully known.

The Impact of COVID-19 in Alberta

13. As a result of the serious impact of COVID-19 in Alberta, the Government of Alberta declared a public health emergency on or about March 17, 2020, concluding that COVID-19 was present in Alberta and its presence constituted a public health emergency as a novel or highly infectious agent that posed a significant risk to public health.

14. While COVID-19 is not yet fully understood, Alberta's Public Health Disease Management Guidelines: Coronavirus – COVID-19¹³ provides that:

- (a) COVID-19 is transmitted person-to-person via respiratory droplet (i.e. coughing and or sneezing) or close contact via direct physical contact with another person or by touching contaminated objects or surfaces and then touching one's own mouth, nose, or possibly eyes;
- (b) individuals can transmit the virus 48 hours before symptoms onset or even if they have an asymptomatic infection or when their symptoms go unnoticed;
- (c) the incubation period ranges from 1-14 days, with median estimates of 5-6 days, between infection and the onset of clinical symptoms of the disease;
- (d) the period of communicability may begin up to 48 hours before symptom onset, and throughout the symptomatic period, even if symptoms are mild or very non-specific;
- (e) older adults (>60 years) and people with existing chronic medical conditions (e.g., cardiovascular and liver disorders, diabetes, high blood pressure, kidney disease, sickle cell disease, dementia or stroke) or immune compromising conditions are more vulnerable to severe COVID-19 illness;

¹² COVID-19 Long-Term Effects, Centres for Disease Control and Prevention, online: <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html>

¹³ Public Health Disease Management Guidelines: Coronavirus – COVID-19, Government of Alberta, online: <https://open.alberta.ca/publications/coronavirus-covid-19>

- (f) there is no specific treatment and supportive treatment is recommended based on condition of the case;
- (g) non-medical masks and face coverings used in the community may reduce the risk of transmission of COVID-19; and
- (h) there is insufficient evidence on the duration of protection of COVID-19 vaccines and their effectiveness in preventing asymptomatic infection and reducing transmission of the virus causing COVID-19 and immunized individuals must adhere to all public health measures to minimize transmission, including staying home when sick, wearing a mask, physical distancing, practicing proper hand hygiene and respiratory etiquette.

Costco Wholesale Canada Ltd.

15. Costco is a membership warehouse club serving millions of members in Canada. Costco is dedicated to bringing its members the best possible prices on quality brand-name merchandise. Costco is a recognized leader in its field, dedicated to quality in every area of its business and respected for its outstanding business ethics. As part of this dedication, the health and safety of Costco's employees, members, and guests is paramount.

16. Under section 3(1) of the *Occupational Health and Safety Act* (Alberta), Costco has a general legal obligation to ensure, as far as it is reasonably practicable, the health and safety and welfare of:

- (a) its workers engaged in its work; and
- (b) other persons, including members, at or in the vicinity of the work site who may be affected by hazards originating from the work site.

17. Further, pursuant to Public Health Order CMOH Order 25-2020 from the Alberta Chief Medical Officer of Health, Costco must:

- (a) implement practices to minimize the risk of transmission of infection among persons working at or attending its place of business;
- (b) ensure that persons working at or attending its place of business maintain high levels of sanitation and personal hygiene; and

- (c) comply, to the extent possible, with any applicable Alberta Health guidance.

18. In furtherance of its legal obligations, and having identified COVID-19 as a potential hazard which could not be eliminated entirely, Costco undertook to control the hazards presented by COVID-19 by, among other things, implementing:

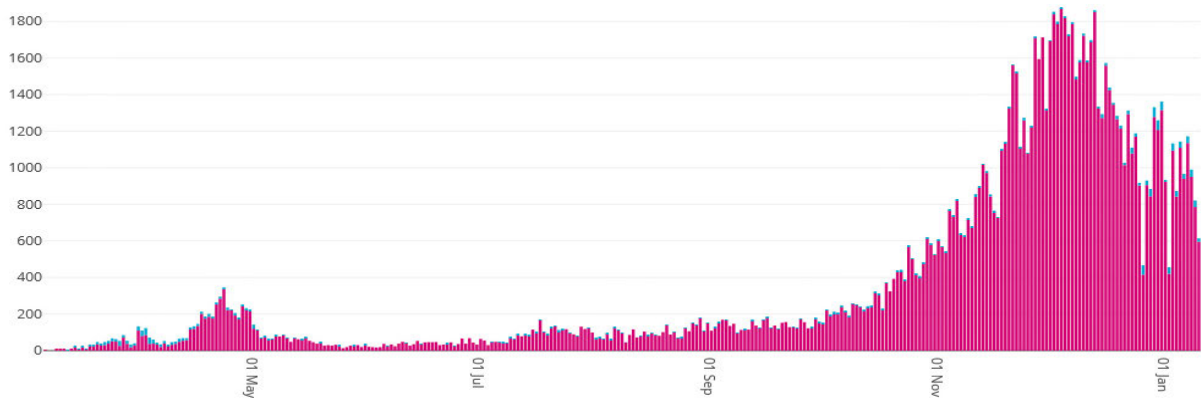
- (a) engineering controls, including installation of plexiglass at registers, in restrooms, in the pharmacy, in the tire shop, in the food court, and the installation of carts with plexiglass separating employees from members to allow for confirmation of membership on entry and review of receipts on exit;
- (b) administrative controls, including:
 - (i) increasing physical distancing, including by reducing warehouse capacity, expanding hours of operation, limiting admittances at warehouse opening, removing and re-spacing registers, implementing satellite displays of high volume items, ensuring aisles are wide enough for physical distancing, installing physical distancing floor decals and signage, removing kiosks, installing lane dividers, and directing traffic flow within the warehouse;
 - (ii) ameliorating cleaning and disinfecting practices, including with respect to carts, bathrooms, vending machines, and registers; and
 - (iii) promoting frequent and proper hygiene by training workers, implementing hand hygiene stations, eliminating common points of contact, and placing extensive COVID-19 signage in prominent locations throughout the warehouse; and
- (c) personal protective equipment, including requiring face coverings to be worn properly (covering the mouth and nose) by all workers and visitors and requiring gloves for certain circumstances, such as handling jewelry.

Costco's Face Covering Policy

19. The Complaint arises from Costco's face covering policy, which requires that everyone visiting a Costco warehouse wear a face covering in order to prevent the spread of COVID-19 and protect the health and safety of Costco's employees, members, and guests.

20. Since May 2020, Costco has required that everyone entering its warehouses wear a face covering. Costco’s initial face covering policy, which was in effect between May 2020 and November 2020, provided an exemption for individuals who could not wear a face covering due to a medical condition.

21. However, in response to increasing COVID-19 cases, as evidenced in the below chart highlighting daily recorded COVID-19 cases in Alberta up to end of January 10, 2021,¹⁴ and the increased direction and emphasis on the efficacy of face coverings from medical and public health officials, Costco revised its face covering policy to remove the exemption for individuals who could not wear a face covering due to a medical condition in an effort to provide for greater protection of its employees, members, and guests.



22. Indeed, the importance and efficacy of face coverings in response to COVID-19 have repeatedly been highlighted, including by:

- (a) the Government of Canada in:
 - (i) stating that “masks or face coverings can prevent the spread of your infectious respiratory droplets. They may also help protect you from the infectious respiratory droplets of others”;¹⁵ and

¹⁴ COVID-19 Alberta statistics, Government of Alberta, online: <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#total-cases>

¹⁵ Non-Medical Masks and Face Coverings: About, Government of Canada, online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/about-non-medical-masks-face-coverings.html>

- (ii) encouraging individuals to “protect yourself and others, wear a non medical mask or face covering when: you’re in public and you might come into close contact with others, you’re in shared indoor spaces with people from outside your immediate household, or advised by your local public health authority”;¹⁶
- (b) the Government of Alberta in stating that
- (i) “masks offer protection to the public as source control in reducing dispersion of droplets from infected wearers. Evidence also suggests that non-medical masks can potentially reduce disease severity;”
 - (ii) “where an infected person and another person are both masked, the chance of a transmission decreases by 40-80%”;
 - (iii) “there is growing evidence that a significant portion of people who have COVID-19 do not show symptoms while infectious” and that “modelling studies estimate higher rates of transmission by individuals showing no symptoms”;
 - (iv) “policy simulations suggest that mandating indoor masks nationwide in early July could have reduced the weekly number of new cases in Canada by 25-40% in mid-August [2020]”;
 - (v) “available evidence suggests that near-universal adoption of non-medical masks in all indoor public place, in combination with complementary public health measures could successfully reduce R_0 to below 1.0, thereby stopping community spread;” and
 - (vi) “at this time, there is insufficient evidence to recommend mask exemptions for specific populations based on their medical conditions.”¹⁷
[emphasis added]

¹⁶ Non-Medical Masks and Face Coverings: About, Government of Canada, online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/about-non-medical-masks-face-coverings.html>

¹⁷ Non-medical masks, Government of Alberta, online <https://www.alberta.ca/assets/documents/covid-19-non-medical-masks.pdf>

- (c) the Centres for Disease Control and Prevention (“CDC”):
- (i) recommends the community use of masks to prevent the transmission of COVID-19¹⁸ as COVID-19 is mainly spread through respiratory droplets;¹⁹
 - (ii) has found that masks reduce the spread of droplets from those infected with COVID-19 and also reduce the inhalation of droplets by those wearing masks²⁰ (which is especially important given that the CDC estimates that asymptomatic and pre-symptomatic people account for over 50% of the transmission of COVID-19);²¹
 - (iii) has stated that most people with underlying medical conditions can and should wear masks;²² and
 - (iv) advises that masks should be worn in public settings and anywhere that people will be around other people;²³
- (d) the World Health Organization states that:
- (i) masks are a key measure to suppress the transmission of COVID-19 and save lives;²⁴
 - (ii) masks can be used to both protect healthy individuals from contracting COVID-19 and prevent those infected with COVID-19 from further transmitting the virus;²⁵ and

¹⁸ Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2, Centres for Disease Control and Prevention, online: <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>

¹⁹ Considerations for Wearing Masks, Centres for Disease Control and Prevention, online: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>

²⁰ Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2, Centres for Disease Control and Prevention, online: <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>

²¹ Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2, Centres for Disease Control and Prevention, online: <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>

²² Considerations for Wearing Masks, Centres for Disease Control and Prevention online: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>

²³ Your Guide to Masks, Centres for Disease Control and Prevention, online: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>

²⁴ Coronavirus disease (COVID-19): Masks, World Health Organization, online: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-masks>

²⁵ Coronavirus disease (COVID-19): Masks, World Health Organization, online: <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-masks>

- (iii) masks should be worn as part of a comprehensive plan to reduce the spread of COVID-19 that also includes engaging in physical distancing.²⁶

23. The importance and efficacy of face coverings is also evident from the actions of local government authorities, which have increasingly required face coverings as an effective and appropriate control. Many local governments have mandated the use of masks, including:

- (a) on August 1, 2020, under bylaw 26M2020, *Temporary COVID-19 Face Coverings*, the City of Calgary mandated face coverings in indoor public places.²⁷ Businesses are not required to deny service under the bylaw; however, businesses can choose to deny service under their policies;²⁸
- (b) on August 1, 2020, under bylaw 19408, *Temporary Mandatory Face Coverings Bylaw, 2020*, the City of Edmonton mandated the use of face coverings in public. The City of Edmonton states that businesses are able to set their own policies regarding the provision of services to those not wearing masks and that businesses have the right to refuse service to anyone not wearing a face covering or not following their policies;²⁹
- (c) on November 24, 2020, and with the Government of Alberta's declaration of a further public health emergency, under CMOH Order 38-2020, the Government of Alberta mandated the use of a medical or non-medical mask or other face covering that covers a person's nose, mouth and chin in all indoor public places, including an indoor location where a business or entity is operating, in the Edmonton Metropolitan Region and Calgary Metropolitan Region;³⁰
- (d) on December 8, 2020, under CMOH Order 41-2020, the Chief Medical Officer of Alberta found that the measures in CMOH Order 38-2020 were insufficient to

²⁶ Coronavirus disease (COVID-19): Masks, World Health Organization, online: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-masks>

²⁷ COVID-19 – Face Coverings Bylaw, City of Calgary, online: <https://www.calgary.ca/csps/cema/covid19/safety/covid-19-city-of-calgary-mask-bylaw.html>

²⁸ Face Coverings Bylaw: Business and Operators Guidance, City of Calgary, online: <https://www.calgary.ca/csps/abs/bylaws-by-topic/face-covering-bylaw.html>

²⁹ Masks, City of Edmonton, online: https://www.edmonton.ca/programs_services/emergency_preparedness/masks.aspx#:~:text=Business%20owners%20can%20decide%20for,The%20fine%20is%20%24100

³⁰ CMOH Order 38-2020, online: <https://open.alberta.ca/publications/cmoh-order-38-2020>

protect Albertans from exposure to COVID-19 and to prevent the spread of COVID-19 and expanded CMOH Order 38-2020 by, among other things, requiring the use of a medical or non-medical mask or other face covering that covers a person's nose, mouth and chin in indoor public places throughout the province,³¹ and

- (e) on December 11, 2020, under CMOH Order 42-2020, the Chief Medical Officer of Alberta found that the measures in CMOH Order 38-2020 were still insufficient to protect Albertans from exposure to COVID-19 and to prevent the spread of COVID-19 and rescinded CMOH Order 38-2020 but maintained the requirement to use a medical or non-medical mask or other face covering that covers a person's nose, mouth and chin in all indoor public places throughout the province.³² Further, Government of Alberta guidance provides that private businesses may set their own policies, including requiring individuals to wear masks while attending their business, as long as they also meet the minimum provincial requirements and encourages businesses to provide alternatives to patrons unable to wear masks.³³

24. Face coverings are highly effective and an essential component of Costco's response to COVID-19, which poses a serious, and potentially fatal, threat to health and safety. Costco's implementation of stringent standards, including requiring everyone who enters Costco's warehouses to wear a face covering, without exception, is both a reasonably justified and necessary measure to prevent the spread of COVID-19 in Costco's warehouses and protect the health and safety of Costco's employees, members, and guests for reasons which include, but are not limited to:

- (a) the nature of Costco's business and Costco being a provider of essential goods and services;
- (b) the frequency of physically distanced interactions between employees, members and guests; and

³¹ CMOH Order 41-2020, online: <https://open.alberta.ca/publications/cmoh-order-41-2020>

³² CMOH Order 42-2020, online: <https://open.alberta.ca/publications/cmoh-order-42-2020>

³³ Government of Alberta, online: www.alberta.ca/masks.aspx

- (c) the increasingly dire risks and consequences associated with the spread of COVID-19, as rates of infection, hospitalization and deaths continue to rise to record levels.

25. Individuals who are not willing or able to wear a face covering present an unacceptable safety risk to Costco's employees, members, and guests. Costco's face covering policy is consistent with Government of Alberta guidance, which has provided that private businesses may set their own face covering policies, including requiring individuals to wear face coverings while attending their business, as long as they also meet the minimum provincial requirements.

26. While members who refuse to wear a face covering are not permitted to enter Costco's warehouses, Costco has ensured that these members, including the Complainant, can still access Costco's products by offering the following alternatives and accommodations to its members:

- (a) online purchases through Costco.ca;
- (b) grocery delivery and pick-up services through Instacart, a third-party delivery service. Costco members can shop Costco Same-Day Delivery on Costco's website to have items picked up and delivered by Instacart shoppers, with a minimum order of \$35 before taxes.³⁴ Shoppers can conveniently schedule the delivery of their order in a 1-hour delivery window, with delivery options available in as little as two hours;³⁵
- (c) curbside pick-up for prescriptions; and
- (d) allowing immediate family members who can wear a face covering to use a member's membership card to shop on their behalf.

27. These alternatives allow members who refuse to wear a face covering to access Costco's products and services while still protecting Costco's employees, members, guests, and the community at large from COVID-19.

28. The revised face covering policy introduced by Costco in November 2020 is consistent with advice from medical and public health officials and with Costco's legal obligations to its

³⁴ Same-Day Delivery, Costco Grocery, online: <https://www.costco.ca/CanadaGroceryDeliveryRedirect>

³⁵ Same-Day Delivery, Costco Grocery, online: <https://www.costco.ca/CanadaGroceryDeliveryRedirect>

employees, members, and guests. COVID-19 poses a serious, and potentially, fatal, threat to the health and safety of Costco's employees, members, guests, and the community at large. In these dire circumstances, permitting any exceptions to Costco's face covering policy would constitute undue hardship.

29. Costco disputes that the Complainant suffers from a medical condition which prevents the Complainant from complying with Costco's mask policy and puts the Complainant to the strict proof thereof. Notwithstanding the foregoing, Costco offered reasonable accommodation to the Complainant, which was refused.

30. Costco's face covering policy, and the accommodations offered by Costco in relation thereto, are otherwise reasonable, justifiable and lawful in the circumstances. The Complainant was not subjected to discrimination contrary to the Act and is not entitled to any remedies under the Act.

CONCLUSION

31. On the basis of foregoing, Costco requests that the Complaint be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF FEBRUARY, 2021