
This is a confidential document intended only for the parties to the complaint and the AHRC Director of the Commission. The purpose of this document is to summarize the Complaint and Response, and make a recommendation to the AHRC Director under the *Alberta Human Rights Act*. It is not a decision by either the AHRC Director or a Human Rights Tribunal and cannot be referred to at a tribunal hearing.

From: REDACTED **File:** S2020/12/0301
To: REDACTED **Date:** September 10, 2021
AHRC Director

Subject: David Dickson v. Costco Wholesale Canada Ltd.

All information that was provided by the parties was reviewed. Only information considered relevant to the complaint is attached to this memo and is being forwarded to the AHRC Director.

Complaint Summary

1. The Complainant, David Dickson, made a human rights complaint, which was accepted on November 17, 2020. Dickson stated that Costco Wholesale Canada Ltd., discriminated against him in the area of **goods, services, accommodation and facilities** on the grounds of physical disability, contrary to section 4 of the *Alberta Human Rights Act* (the Act).
2. Dickson stated that on November 16, 2020, he was refused entry to the Costco location on Winterburn Rd in Edmonton. A manager whose first name was Ken, stopped Dickson at the door and told him he would be required to wear a mask. Dickson stated he was exempt from wearing a mask and provided a copy of his exemption letter to staff but was ignored. A second manager named Dave was called over and who repeated that Dickson would be required to wear a mask. He was presented the option of wearing a shield but felt that as AHS and the City of Edmonton bylaw clearly stated that a shield is not a replacement for a mask he should not have to wear one. He also explained that he was unable to wear one.
3. One of the managers told Dickson that he could use “instacart” instead but Dickson stated that it wasn’t an equivalent service as he can’t get his eyes examined or select his own produce. He also could not take advantage of in-store pricing, product samples etc.
4. Dickson stated that two other people came in without a mask or shield to cancel their membership while he was there, and were allowed to enter the store.

5. Dickson said he was concerned about this interaction being misrepresented and asked for someone to record the interaction. He provided this recording to the Commission.
6. Dickson provided a medical note dated May 6, 2020 which states that he “has prior health conditions whose symptoms are exacerbated by wearing a mask.”

Response Summary

7. Justin Turc, Legal Counsel for Costco, provided a response on its behalf of the Respondent on February 8, 2021. He stated that throughout the COVID 19 pandemic, Costco has taken great care to protect its employees, members and guests. It has required use of masks among the safety measures it has adopted.
8. Between May and November of 2020, Costco’s face covering policy included an exemption for individuals who could not wear a face covering for medical reasons. In response to the increasing number of cases, the efficacy of face coverings becoming more apparent, and direction from public health officials, Costco revised its policy to remove the exemption in November 2020.
9. For those who do not wear masks, Costco has provided alternatives, including online shopping, grocery delivery and pickup services and curbside pick-up for prescriptions. As well, Costco allows immediate family members who can wear a face covering to use a member’s membership card to shop on their behalf.
10. Costco stated that it is required to provide a safe environment for its workers and members. As well, pursuant to the Public Health Order it must implement practices to minimize the risk of transmission of infection. As a result, Costco has installed plexiglass barriers, set up physical distancing requirements, implemented cleaning and disinfecting practices, promoted hygiene with its staff and members, and required personal protective equipment.
11. Costco stated that face coverings are highly effective and an essential component of their 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.
12. Costco stated that on the day in question, the incident was pre-meditated as a media stunt, as it was recorded and then posted on Facebook and YouTube. Further, the respondent outlines the complainant’s comments in a podcast and in several publications where he states personal opinions against covid-19 controls and safe guards including masks. The respondent alleges a violation of section 10 of the *Act* and requested that due to the reasons mentioned above the complaint should be dismissed as frivolous and vexatious.

Additional Information

13. Costco confirmed that while the face covering policy was in effect, Costco required any individuals entering the warehouse to wear a face covering, whether they were coming to the warehouse to shop or access membership services, including cancellation of membership. As alternatives to entering the warehouse, members could cancel their membership by: calling Costco's call center; or requesting curbside assistance outside the warehouse.

Recommendation

It is recommended that the complaint be dismissed.

Reasons for Recommendation

1. Under human rights law, a complainant must show that they have a characteristic protected from discrimination under the *Act*, must have experienced a negative or adverse impact, and the protected characteristic must have been a factor in the negative or adverse treatment.
2. Under human rights law, service providers are obligated to provide reasonable accommodation to service recipients who require it because of a mental or physical disability, to the point of undue hardship.
3. Dickson's medical note states that wearing a mask exacerbates adverse symptoms due to Dickson's previous health conditions and the Respondent did not accommodate his request to shop in its store without wearing a mask.
4. However, even if that is the case, there is still the question of whether denying the requested accommodation would have created an undue hardship. Assessing whether there is an undue hardship requires considering whether an accommodation would have created onerous conditions for Costco, including whether accommodating Dickson creates a risk to health and safety, and who bears that risk.
5. In this case, the information supports that accommodating Dickson would have created a safety risk for the Respondent's staff and other customers. Costco created and followed a mask policy that was consistent with public health recommendations aimed at preventing the spread of Covid-19. To not require someone to wear a mask places others at risk, and the requirement that all customers wear a mask was reasonable and justifiable.
6. In addition, Costco met their obligations under the duty to accommodate, because they offer alternatives to in-store shopping. This is reasonable accommodation for people who cannot wear a mask, as human rights law does not require that perfect or preferred accommodation be provided. Requiring customers to wear a mask for in-store shopping is reasonable and justifiable, both because the policy and practice of requiring a mask

follows public health guidelines, and the policy is in place to protect the health and safety of others.

7. Costco requested that this complaint be dismissed on the basis that it has been brought forward by the complainant for reasons that are frivolous and vexatious.
8. In this case, while the complaint was not dismissed as a contravention of section 10(2) of the *Act*, it is important to note that process provided for in the *Act* is not provided to use as a part of personal disputes, or as part of a campaign of hurtful behavior directed toward the Respondent.
9. Finally, Dickson raises the issue of the City of Edmonton mask bylaw, which allows for exemptions without proof of a disability. The Commission has jurisdiction with Respondent only under the *Act*; the Commission has no jurisdiction with respect to whether the Respondent's actions were consistent with a municipal bylaw.