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IN THE MATTER OF THE *HUMAN RIGHTS CODE*,  
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before  
the British Columbia Human Rights Tribunal

BETWEEN:

X

**COMPLAINANT**

AND:

Hot Mess Salon

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:	Norman Trerise
On her own behalf:	X
For the Respondent:	No one appearing
Date of Hearing:	July 9, 2019
Location of Hearing:	Vancouver, B.C.

## **I INTRODUCTION**

[1] X complains that a stylist at Hot Mess Salon refused to schedule an appointment for a haircut. X says that Hot Mess Salon discriminated against her on the basis of sex in a service customarily available to the public contrary to s. 8 of the *Human Rights Code*.

[2] This matter was heard on a single day given that Hot Mess Salon did not appear. X applied for costs against Hot Mess Salon because the owner neither appeared nor advised X or the Tribunal that she would not be appearing.

[3] X also applied to amend the Respondent's name from Hot Mess Salon to Jayme Simpson, the owner of Hot Mess Salon. Unfortunately, she did so only on July 8, 2019, the day before the hearing was to commence. At the hearing, she was given the opportunity to adjourn the hearing to give Ms. Simpson an opportunity to respond to the application. X was unwilling to adjourn the hearing even though she was warned that she would not be able to bring a future application on the same issue if she chose to proceed against Hot Mess Salon. This matter is proceeding against Hot Mess Salon.

## **II FACTS**

[4] The only witness in this hearing was X.

[5] X is a transgender person identifying as a woman. She testified that she wanted to validate her identity as female. She saw an online advertisement for hair cutting and styling services placed by a stylist who worked for Hot Mess Salon.

[6] On March 5, 2018, X contacted the hairstylist online via Facebook using a man's email identifier and their exchange went like this:

X - Hi, I'm interested in buying your hairstylist services.

X - How much do you charge for a style and cut?

Stylist - I only do women's hair! I charge \$55.

X - I actually am a girl, ha, ha (it happens a lot lol). But \$55, that's not bad. I'll be in touch soon! I'm looking for a new stylist after moving to Walnut Grove from Cloverdale where everything here is way overpriced.

X – What's your availability for the week of March 14th?

X - When would I be able to come in?

[7] X did not receive a response from the stylist. Rather, X says that the stylist "blocked her" on Facebook.

[8] X was upset, being a woman and being refused something as simple as a haircut. She testified that Hot Mess Salon is a unisex salon and from that she concluded that they must provide hairstyling services to transgender people.

[9] X testified that on March 6 Ms. Simpson contacted her via Facebook. Looking, however, at the exchange, it is clear that it occurred on March 5 at 8:22 p.m. In that exchange, Ms. Simpson expressed to X:

[X], can you please give me your number. This is not okay. I would like to talk to you about this matter.

...

I'd like to apologize on her behalf. I would love to have you as a client. If you'd like to come in with my master stylist or myself.

[10] In her conversation with Ms. Simpson, X stated:

She represents your business when she or any of your employees do these kind of things. I am not sure if I'd feel comfortable in your salon knowing that Hot Mess Salon hires/contracts these type of individuals that have some sort of hate it seems towards people with a different gender identity or expression.

Ms. Simpson responded:

I'm going to have a talk with her. I have many friends and I've worked with people in my industry...I would like to give you a free hairstyle for you first visit. I would love to have you as my guest. I can book you on a

day when she isn't here if you would feel more comfortable. Thank you for bringing this to my attention. I appreciate your feedback.

[11] In the same conversation, Ms. Simpson advised X that the stylist did get locked out of Facebook.

[12] On March 6, 2018 at approximately one o'clock p.m., X was unblocked from the stylist's Facebook. She Facebooked the stylist confrontationally, stating:

So you rudely blocked me because of your hateful ways. Provide me no apology and think I'm going to give you my business? Yeah, right. If I go to Hot Mess, it won't be with you. That's for sure.

And I don't appreciate you lying to me. Little do you know, I work in the field of marketing. You don't get locked out of Facebook and Instagram, and the message I got, and sent to Jayme doesn't show up when you get "locked out" like really, own up.

[13] The stylist responded:

Whoa, I'm sorry? I didn't mean for that to come across because I didn't answer you? I actually got locked out of Facebook and Instagram for 24 hours. Do you mind if I call you?

I would love to talk to you. I never meant anything at all! I got locked out of Facebook and Instagram and had no access to get on!

What is your number!

In the same exchange, the stylist stated:

I would love to do your hair! I would love to have you in my chair! I am not against anything. I never have. If anyone knows me I am the last person to be that way.

I apologize for not replying to your messages! I truly am. I am doing the best that I can as a human being to accommodate everyone. However, I can't help it if I can't log into my Facebook and Instagram.

[14] X was told by the stylist that she had received a message from Facebook saying "This message has been temporarily removed because the senders account requires verification". A copy of the Facebook message was filed as an exhibit. Despite that, the stylist was not locked

out of Instagram, according to X. She testified that in order to be locked out of Instagram it is necessary to make a serious mistake. You would need to send or receive pornographic material. She testified that it could be the case that the stylist had made such a “mistake” but she did not believe that was the case. She testified that the stylist apologized at length to her but then she blocked X out of her Facebook account again. When X attempted to get on to the stylist’s Facebook account, the account read “you cannot reply to this conversation”.

[15] X testified that when a person is locked out of Facebook they are not notified. She also testified that a person cannot be locked out of Facebook and Instagram at the same time.

[16] On March 16 at 1:56 a.m., X received a message by email from Ms. Simpson advising her that the stylist had been fired.

[17] In conversations with Ms. Simpson on Facebook on March 16, 2018, X stated:

Thank you. I do have to let you know that I did file a human rights complaint against her [the stylist] which is going to the Hot Mess Salon address if it gets accepted since I put Hot Mess in there as well since she was operating out of there. I’m going to make it very clear to them that you don’t tolerate that bull crap and you weren’t aware of what she was doing so please don’t freak out when you get it. What I would like you to do instead is forward it to her personal address if and when you receive it. I don’t want her doing this to anyone else at any other salon. Unfortunately it hasn’t been only her that have discriminated it goes to many other salons in the area as well.

[18] X testified that she told Ms. Simpson verbally that she would be filing a human rights complaint. That she wanted it to be peaceful and “you didn’t do anything wrong”.

[19] On March 17, 2018, X received a call from Ms. Simpson telling her that the salon had been broken into and that everything had been stolen, including their cash lock box and insurance receipts. Ms. Simpson told her that the things that were taken were things that only the stylist would know their location.

[20] Ms. Simpson closed the doors of Hot Mess Salon right after the human rights complaint was filed on March 9, 2018. X said that effectively that meant she had only two days to decide

whether to take the haircut that was offered. This evidence makes no sense. The Salon was obviously still open on March 17, 2018 when it was broken into. She testified that she went to Magicuts instead and got a pixie cut there. She did not testify why she did that.

[21] X testified that the stylist wrote, “Evil, untrue things about me as well. They were all on social media and were all lies.”

[22] The last message that X received from Ms. Simpson was on August 4, 2018 and Ms. Simpson ended up blocking her out of her Facebook account.

[23] X testified, “Jayme [Simpson] herself did not discriminate one bit.”

### **III ANALYSIS AND DECISION**

[24] In order to prove a complaint of discrimination Ms. X must prove she has a characteristic prohibited from discrimination, that she was adversely impacted with respect to the Respondent’s service, and that it is reasonable to infer from the evidence that her protected characteristic was a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33.

[25] Respecting the first component of the test, although X did not expressly testify that she was a transgender woman or state it in her complaint, I accept that she is transgender based on her physical presentation in the hearing, her evidence that she had entered a beauty contest and was rejected because she was transgender, and the nature of the communications between she and Ms. Simpson. Transgender is protected under the ground of sex as well as the ground of gender: *Nixon v. Rape Relief Society*, 2002 BCHRT 1.

[26] I also accept, on the evidence, that X was prevented from scheduling a hairstyling appointment with the stylist for a few hours. However, she was offered a free style and cut a mere few hours later by Ms. Simpson and by the stylist the following day. In all of the correspondence between X, Ms. Simpson and the stylist there was a clear attempt to provide X

with a style and cut. In the circumstances, I find that did not rise to the level of adverse treatment.

[27] I am also not able to accept that X has established a connection between her gender identity and her inability to schedule a hairstyling appointment. On the evidence, the barrier to scheduling a hairstyling treatment was being blocked from participation in the stylist's Facebook page. The conversation leading up to being blocked has X, who filed the Complaint under a male name, conversing with the stylist on her Facebook page. Ms. X enquires how much the stylist charges for a style and cut. After the stylist states her rate, X responds:

I actually am a girl, ha, ha (it happens a lot lol). But \$55, that's not bad. I'll be in touch soon! I'm looking for a new stylist after moving to Walnut Grove from Cloverdale where everything here is way overpriced.

What's your availability for the week of March 14th?

When would I be able to come in?

[28] Thereafter, X is blocked out of the stylist's Facebook page. She responded by searching the stylist on the internet and found out that she worked out of Hot Mess Salon.

[29] X then was in touch with Ms. Simpson and advised her that the stylist had discriminated against her based on gender and gender identity. Ms. Simpson responded with an apology and offered X a free style and cut. Subsequently, the stylist contacted X via Facebook to apologize and she too offered X a style and cut.

[30] Neither the stylist nor Ms. Simpson appeared to give evidence in this proceeding. Ms. Simpson's reasons for not appearing seem fairly obvious. Hot Mess Salon had gone out of business. The stylist was originally named in the complaint but the complaint was withdrawn against her. I draw no inferences against either individual considering that neither had any incentive to defend themselves because they had no personal stake in the complaint.

[31] The only evidence that X submitted in support of her inability to book a style and cut with the stylist is that she was blocked out of the stylist's Facebook page and eventually her Instagram. X would have me conclude that this was due to her being transgender. It is certainly

possible that that was the case. However, it appears that Ms. Simpson, on behalf of Hot Mess Salon, supported that the stylist was indeed locked out of Facebook.

[32] In order for the complaint to succeed it would be necessary for the Tribunal to draw the inference that her gender was at least a factor in her being prevented from making an appointment to have her hair styled and cut. I am unable to draw such an inference for the following reasons.

[33] I have the evidence of X that she is satisfied that the stylist was not actually locked out of Facebook. Unfortunately, her reasons for reaching that conclusion are not supported by any expert evidence with respect to the use of Facebook or Instagram. Combine that with apparent efforts by the stylist to have a conversation with X and to book her in for a style and cut and then an attempt by Ms. Simpson to do the same, and I am not in a position to conclude that the events of March 5 were precipitated by X's gender. It is just as probable that they were precipitated by the stylist's expressed inability to respond to X via Facebook.

[34] As regards X being blocked subsequently on Instagram and Facebook, X interacted in an extremely hostile manner to the stylist when she attempted to apologize for not replying to X's messages. She also was hostile to Ms. Simpson over what she perceived to be the stylist's motives. I find there is no significance to X being blocked from the account in the circumstances.

[35] The evidence does not support on a balance of probabilities that either the stylist or Hot Mess Salon declined to provide X with a style and haircut. Both offered to do so. For whatever reason, X elected to get her hair cut at Magicuts.

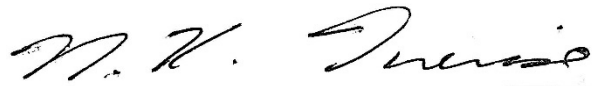
[36] I find X has failed to establish a connection between her inability to get a style and cut from the stylist or Hot Mess Salon and her transgender status.

[37] The result is that X has failed to prove discrimination on the basis of her transgender status. The Complaint is dismissed.



#### IV COSTS

[38] X seeks costs against Ms. Simpson based on the fact that Ms. Simpson did not participate in the process leading up to the hearing and did not attend the hearing. She argues that Ms. Simpson prolonged the process by not responding to the Tribunal or the case manager when they inquired whether she would be attending the hearing. During the process, I expressed to X my dissatisfaction with Ms. Simpson in not having the courtesy to advise the Tribunal and X that she would not be attending the hearing. After careful consideration, however, the basis for an award of costs under s. 37(4) of the *Code* is improper conduct during the course of the hearing. I conclude that Ms. Simpson's conduct does not rise to the level of improper conduct. Any party may decline to participate in the hearing. There is no obligation on them to notify anyone of that decision. I comment, however, that it is very disrespectful of Ms. Simpson to have behaved in that fashion. In my view, however, it does not rise to the level of improper conduct contemplated by s. 37(4) of the *Code*. The application for costs is dismissed.

A handwritten signature in black ink, appearing to read "N. H. Trerise", is written above a horizontal line.

Norman Trerise, Tribunal Member