

Date Issued: April 5, 2024

File: CS-003093

Indexed as: Goulet-Hillier v. Wal-Mart Canada Corp. and others, 2024 BCHRT 103

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:

Elizabeth Goulet-Hillier

**COMPLAINANT**

AND:

Wal-Mart Canada Corp. and Devin Cross and Rabia Bedi

**RESPONDENTS**

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**REASONS FOR DECISION**  
**APPLICATION TO DISMISS A COMPLAINT**  
Section 27(1)(d)(ii)

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Tribunal Member:

Ijeamaka Anika

On their own behalf:

Elizabeth Goulet-Hillier

Counsel for the Complainant

Odette Dempsey-Caputo (application only)

Counsel for the Respondents:

Maggie Campbell and Jaime H. Hoopes

## I INTRODUCTION

[1] Elizabeth Goulet-Hillier entered a store owned and operated by Wal-Mart Canada Corp. [Walmart] to shop in December 2020, during the Covid-19 pandemic. She was not wearing a mask. Ms. Goulet-Hillier says she has a disability-related barrier to wearing a face mask.

[2] At the time of Ms. Goulet-Hillier's visit, Walmart had a mandatory mask-wearing policy in response to the COVID-19 pandemic. Mr. Cross (assistant store manager) and another staff person approached Ms. Goulet-Hillier and informed her that she was required to wear a mask. Ms. Goulet-Hillier says even though she informed Mr. Cross that she had a disability-related barrier to wearing a mask, Mr. Cross asked her to either purchase a face shield or leave the store. Ms. Goulet-Hillier left the store. The following day, Ms. Goulet-Hillier called Ms. Bedi (store manager) to complain about her interaction with Mr. Cross. Ms. Goulet-Hillier says Ms. Bedi told her that medical exemptions were not permitted unless a police officer or by law officer checked the documents first and that Ms. Bedi threatened to call the police if Ms. Goulet-Hillier returned to the store. Ms. Goulet-Hillier says that Walmart discriminated against her in services on the ground of disability contrary to s. 8 of the *Human Rights Code*.

[3] Walmart denies discriminating. It applies to dismiss the complaint against Mr. Cross and Ms. Bedi [the **Individual Respondents**] under s. 27(1)(d)(ii) of the *Code*. Walmart argues that proceeding against the individual respondents would not further the purposes of the *Code*.

[4] For the following reasons, I allow the dismissal application. To make this decision, I have considered all the information filed by the parties. In these reasons, I only refer to what is necessary to explain my decision. I make no findings of fact.

## II BACKGROUND

[5] The background is taken from the materials filed by the parties. Where there are disputes in the evidence, I indicate it below.

[6] Walmart owns and operates retail stores across British Columbia.

[7] On March 18, 2020, the Province of BC declared a state of emergency because of the COVID-19 pandemic. On August 12, 2020, Walmart implemented a mandatory face covering policy for its stores [the **Policy**]. The Policy included the following:

- a. All employees and customers were required to wear face coverings in store subject to exemptions for medical or religious reasons,
- b. Customers who expressed that they could not wear a face covering due to religious beliefs or medical conditions were exempted from masking. Where a customer made such a disclosure, the staff member was to respond with “I understand” and thank the customer for shopping with Walmart,
- c. Customers who refused or objected to wearing a mask without an exemption could not enter the store,
- d. Staff were directed not to ask a customer to explain health conditions or religious beliefs for not wearing a face covering,

[8] Walmart placed security guards and greeters at store entrances to remind customers of the masking requirements. Other employees in the store could also remind customers to wear masks.

[9] Ms. Goulet-Hillier says that she visited Walmart sometime between December 21 and 23, 2020 with her husband and granddaughter. She says the greeters at the door did not say anything to her about wearing a mask and she proceeded to shop for over two hours in the store. When she was almost done shopping, Mr. Cross and another employee approached her. She says Mr. Cross grabbed her cart and informed her loudly that she had to wear a mask. Ms. Goulet-Hillier informed Mr. Cross that she could not have anything covering her face due to her disabilities. She says she told Mr. Cross that she had a medical exemption note in her purse and offered to show him, but he refused to look at it. Mr. Cross told her that she needed to buy a face shield to continue shopping in the store.

[10] Ms. Goulet-Hillier says Mr. Cross would not listen to her or let her pay for what she had in her cart. She recorded the name and contact information of the store manager and left the store. Ms. Goulet-Hillier says Mr. Cross followed her until she left the store and as she was leaving, Mr. Cross was laughing and yelled Merry Christmas to her in a mocking tone.

[11] Walmart agrees Ms. Goulet-Hillier informed Mr. Cross that she had a disability, COPD, and was exempt from wearing a mask. Walmart says Mr. Cross told her that she could purchase a shield to wear instead. Walmart says Ms. Goulet-Hillier refused to wear a shield but did not explain why. It says Ms. Goulet-Hillier pushed her cart towards Mr. Cross, telling him that he would have to put away her items. Walmart says Mr. Cross then asked her to leave the store, wished her a great evening and she turned around to gesture at him with her middle finger.

[12] Ms. Goulet-Hillier says the following day she called the store manager, Ms. Bedi. Ms. Goulet-Hillier says she explained that Mr. Cross denied her service and refused to accommodate her disabilities. Ms. Goulet-Hillier says she informed Ms. Bedi that she had recorded part of her encounter with Mr. Cross's permission. Ms. Goulet-Hillier says that at this point, Ms. Bedi raised her voice and told her that recording Mr. Cross was illegal. Ms. Goulet-Hillier says Ms. Bedi informed her that medical exemptions were not permitted unless a police officer or bylaw officer checked the document first. She says Ms. Bedi informed her that she was not welcome back to the store and if she returned, they would call the police or bylaw officers on her.

[13] Walmart disputes Ms. Goulet-Hillier's account of the conversation with Ms. Bedi. It says that Ms. Bedi explained to Ms. Goulet-Hillier that Walmart employees were not supposed to review medical notes from customers to confirm medical exemptions and that verification was required from a bylaw or police officer. Walmart says Ms. Bedi did not threaten to call a bylaw or police officer if Ms. Goulet-Hillier returned to the store. It also says the telephone conversation ended when Ms. Bedi asked Ms. Goulet-Hillier why she was recording employees on private property and Ms. Goulet-Hillier said words to the effect of "you watch, I'm going to put your name" in the complaint too and abruptly ended the call.

### III DECISION

[14] Ms. Goulet-Hillier has filed this complaint against Walmart as well as Mr. Cross and Ms. Bedi, personally.

[15] Walmart applies to have the complaint dismissed against the Individual Respondents on the basis that it does not further the purposes of the *Code* to proceed against them: s. 27(1)(d)(ii).

[16] Section 27(1)(d)(ii) of the *Code* grants the Tribunal discretion to dismiss all or part of a complaint if proceeding with it would not further the purposes of the *Code*. The purposes of the *Code* as set out in s. 3. They include general purposes that advance the broad public policy of fostering a society free of discriminatory barriers, as well as the specific purpose of providing a means of redress for people who have been victims of discrimination. Since the aim of human rights legislation is remedial, these purposes must be read harmoniously with s. 37 of the *Code*, which sets out the remedies available where discrimination occurs: *Carter v. Travalex Canada Ltd.*, 2009 BCCA 180 at paras. 36-37.

[17] There are strong policy reasons that favour complaints against individual respondents. As the Supreme Court of Canada has acknowledged, “the aspirational purposes of the *Code* require that individual perpetrators of discrimination be held accountable for their actions”: *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 56. This is especially true for allegations of discrimination with a high degree of personal culpability, like sexual or racial harassment: *Daley v. British Columbia (Ministry of Health)*, 2006 BCHRT 341 at para. 53.

[18] On the other hand, naming individual respondents can complicate and delay the resolution of complaints, exacerbate feelings of personal animosity, and cause needless personal distress to individuals who are accused of discrimination: *Daley* at para. 54. Because employers and institutional respondents are liable for the acts of their agents, they will be responsible for any remedy ordered by the Tribunal: *Code*, s. 44(2); *Robichaud v. Canada*,

[1987] 2 SCR 84. In those situations, the remedial aims of the *Code* may be most fairly and efficiently fulfilled without holding individuals liable.

[19] The Tribunal balances all these considerations to decide whether the purposes of the *Code* are best served by having a complaint proceed against individuals as well as an institutional respondent, or against the institutional respondent only. It has identified the following factors as relevant:

- a. whether the complaint names an institutional employer as a respondent and that respondent has the capacity to fulfill any remedies that the Tribunal might order;
- b. whether the institutional respondent has acknowledged the acts and omissions of the individual as its own and has irrevocably acknowledged its responsibility to satisfy any remedial orders which the Tribunal might make in respect of that individual's conduct; and
- c. the nature of the conduct alleged against the individual, including whether:
- d. their conduct took place within the regular course of their employment;
- e. the person is alleged to have been the directing mind behind the discrimination or to have substantially influenced the course of action taken; and
- f. the conduct alleged against the individual has a measure of individual culpability, such as an allegation of discriminatory harassment.

*Daley* at paras. 60-62.

[20] I will address these factors in turn.

[21] Walmart submits, and I accept, that they have the capacity to fulfill any remedies that the Tribunal might order against the Individual Respondents. They also submit, and I accept, that as the institutional respondent and the Individual Respondents' employer, they will satisfy

any remedial order the Tribunal might make in respect of the individual Respondents. Therefore, Walmart adopts the acts and omissions of the Individual Respondents as their own.

[22] The real issue is whether the nature of the conduct alleged against the Individual Respondents is such that it furthers the purposes of the *Code* to proceed against them directly. In my view, it is not.

[23] Ms. Goulet-Hillier's argument is that the Individual Respondents have a measure of individual culpability, and they were the directing minds behind the decision not to accommodate Ms. Goulet-Hillier contrary to the provisions of the Policy.

[24] The evidence before me supports Walmart's assertion that the Individual Respondents were acting in their capacity as store managers. In that capacity, they interacted with Ms. Goulet-Hillier regarding mask wearing and her complaint about Mr. Cross. To some extent, they may have been the directing minds behind the decision not to accommodate Ms. Goulet-Hillier. However, this was their job and nothing in the nature of that conduct (unlike, for example, cases of sexual harassment) is capable of rising to the level of personal culpability that requires individual responsibility. On the other hand, continuing to allow the complaint to proceed against the Individual Respondents has the capacity to complicate the resolution of the complaint and exacerbate feelings of personal animosity. I appreciate that Ms. Goulet-Hillier says that the individuals' conduct caused her to feel humiliated. However, if that conduct did indeed violate the *Code*, this can be addressed by a decision and remedy issued against Walmart. Any purpose served by proceeding against the Individual Respondent is, in my view, outweighed by the disadvantages.

[25] In these circumstances, the *Code's* purposes would be served by dismissing the complaints against the Individual Respondents and proceeding against Walmart. I grant the application to dismiss the complaint against the Individual Respondents under s. 27(1)(d)(ii).

#### **IV CONCLUSION**

[26] The application to dismiss the complaint against Mr. Cross and Ms. Bedi is allowed. The complaint against Walmart will proceed to hearing. I encourage the parties to take advantage of the Tribunal's mediation services.

Ijeamaka Anika  
Tribunal Member