

Date Issued: March 14, 2024

File: CS-001549

Indexed as: Smith v. Provincial Health Authority and another (No. 2), 2024 BCHRT 80

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:

Daniel Smith

**COMPLAINANT**

AND:

Provincial Health Authority and His Majesty the King in Right of the Province of British Columbia  
as represented by the Ministry of Public Safety and Solicitor General (Okanagan Correctional  
Centre)

**RESPONDENTS**

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**REASONS FOR DECISION**  
**APPLICATION TO RECONSIDER A DECISION**  
**RULE 36**

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Tribunal Member:

Edward Takayanagi

On their own behalf:

Daniel J. Smith

Counsel for the Respondent, Provincial  
Health Authority:

Devon Peck

Counsel for the Respondent, Ministry of  
Public Safety and Solicitor General:

Annie MacDonald

## I INTRODUCTION

[1] Daniel Smith filed a complaint alleging discrimination on the basis of disability because the Provincial Health Authority and His Majesty the King in Right of the Province of British Columbia as represented by the Ministry of Public Safety and Solicitor General (Okanagan Correctional Centre) did not allow him the use of his personal shoes when he was incarcerated.

[2] The Respondents applied to dismiss the complaint under s.27(1)(c) of the *Code*, arguing that the complaint had no reasonable prospect of succeeding at a hearing. I allowed the application and dismissed the complaint in *Smith v. Provincial Health Authority and another*, 2024 BCHRT 35.

[3] Mr. Smith has filed an application to reconsider the Original Decision under Rule 36 of the Tribunal's *Rules of Practice and Procedure*. This decision decides Mr. Smith's application for reconsideration. I have not found it necessary to seek submissions from the Respondents to decide this application.

[4] For the following reasons, I deny the reconsideration application.

## II BACKGROUND

[5] The background to Mr. Smith's complaint was set out in the Original Decision and I will not repeat it here: *Smith* at paras. 5-11. In brief, Mr. Smith requested the use of his own shoes, described as "Nike Airs" during his incarceration in 2019. The Respondents informed Mr. Smith he requires medical approval. Mr. Smith did not submit a health care request for his shoes and his request was denied.

[6] The issue before me in the Original Decision was whether there was no reasonable prospect Mr. Smith could establish that he suffered an adverse impact when he was denied the use of his own shoes. I was satisfied, based on the totality of the evidence, that there was no reasonable prospect Mr. Smith could establish that being denied the use of his own shoes caused an adverse impact and dismissed the complaint.

[7] In support of his reconsideration application, Mr. Smith has provided written submissions and resubmits a note dated October 13, 2020, from a Foot Clinic he attended.

### III ANALYSIS AND DECISION

[8] The Tribunal has a limited jurisdiction to reconsider its own decisions: Rule 36 of the Tribunal's *Rules of Practice and Procedure*. Specifically, the Tribunal may reconsider a decision if it is in the interests of justice and fairness to do so: *Routkovskaia v. British Columbia (Human Rights Tribunal)*, 2012 BCCA 141 at para. 23. The Tribunal exercises this power sparingly, giving due consideration to the principle of finality in administrative proceedings: *Grant v. City of Vancouver and others (No. 4)*, 2007 BCHRT 206 [**Grant**] at para 10.

[9] The burden is on the person seeking to have a matter re-opened to show that the interests of fairness and justice demand such an order: *Grant* at para. 10.

[10] The Tribunal will not reconsider a decision to address arguments that could have been made in the first instance but were not, or to hear a party reargue its case: *Ramadan v. Kwantlen Polytechnic University and another (No. 2)*, 2018 BCHRT 56 at para. 13.

[11] The Tribunal may reconsider a decision where there is new evidence that was not available at the time the party made its submission: *Gichuru v. Vancouver Swing Society and others*, 2018 BCHRT 18 at para. 22. Relevant factors include whether the new evidence could affect the result, and whether reconsideration would result in prejudice: *Gichuru* at paras. 22, 43.

[12] Here, Mr. Smith resubmits his note from a Foot Clinic and says it is new evidence that was not before the Tribunal for the dismissal application. Mr. Smith also says that in January 2024 during another period of incarceration, he experienced pain when he was prevented the use of orthotic inserts and his own shoes.

[13] I find that Mr. Smith's submissions do not present circumstances where fairness and justice require intervention in the Original Decision.

[14] First, the note from the Foot Clinic was before me for the dismissal application and I addressed it specifically in the Original Decision. I was persuaded that, in the context of the totality of the evidence, a single medical note written nearly a year after Mr. Smith's incarceration did not bring his allegation that he experienced an adverse effect out of the realm of conjecture: *Smith* at paras. 23-24.

[15] Reconsideration is not an opportunity to reargue issues that have already been determined in the Original Decision. It appears that Mr. Smith disagrees with the Original Decision and argues that the Foot Clinic note brings his allegation of adverse effect out of the realm of conjecture. The issue has already been considered and decided. It would not be in the interests of justice and fairness to interfere with that decision simply because Mr. Smith disagrees with the decision.

[16] Second, I find Mr. Smith's submission that he experienced discomfort during a separate period of incarceration could not have affected the outcome of the Original Decision. The Original Decision turned on whether there was no reasonable prospect that Mr. Smith's complaint that he suffered an adverse impact when he was denied the use of his shoes during his 2019 incarceration could succeed at a hearing. Evidence of Mr. Smith's discomfort during other periods of incarceration when he was denied the use of orthotic inserts was not an issue before me and would not have affected the outcome of the Original Decision.

[17] For these reasons, I am not satisfied Mr. Smith has met his burden of showing that it would be in the interests of fairness and justice to reconsider the Original Decision.

#### **IV CONCLUSION**

[18] I deny the application for reconsideration.

Edward Takayanagi  
Tribunal Member