



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Alireza Ataellahi

Applicant

-and-

Lambton County Emergency Medical Services Department

Respondent

DECISION

Adjudicator: Naomi Overend
Date: September 27, 2011
File Number: 2011-09005-I
Citation: 2011 HRTO 1758
Indexed as: **Ataellahi v. Lambton County (EMS)**

[1] On June 10, 2011, the applicant filed an Application under s.34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”) alleging discrimination with respect to employment on the basis of creed.

[2] The applicant is a part-time paramedic with the County of Lambton Emergency Medical Services Department (“Lambton EMS”). He is also a full-time paramedic with Chatham-Kent Emergency Medical Services (“Chatham-Kent EMS”). The applicant alleges that Lambton EMS discriminated against him in shift scheduling, discipline and refusing him work during winter 2010-2011 influenza respiratory outbreaks because he was not vaccinated against influenza.

[3] The applicant further alleges that Lambton EMS’s policy of requiring paramedics to be vaccinated against influenza is contrary to the Ministry of Health and Long-Term Care’s Ambulance Service Patient Care and Transportation Standards, and is different than the influenza vaccination policy in place at the Chatham-Kent EMS.

[4] In Form 1-A of his Application, the applicant explained why he believes he has been discriminated against on the basis of his creed as “I work in two different Counties as a Paramedic. In Chatham-Kent as a Full-time where there we are treated like Elsewhere in Ontario like Windsor-Essex, London, Elgin and so on but in Lambton County we are treated differently with no given reasons”. The applicant describes his creed in his Application as:

I believe that under Human Rights Code we should not be treated differently from place to place. Lambton County EMS has superseded the Ministry of Health Policy which is found be unfair, bulled with sever [sic] consequences. Their Policy about the seasonal flu vaccination is [sic] even contradicts itself. We simply ask what their objective is in this regard but that have no response to that and many other questions that I will include with this application. I [sentence incomplete]

[5] In a Case Assessment Direction issued August 5, 2011, the applicant was asked to provide written submissions explaining how the allegations in his Application relate to discrimination on the basis of creed. The applicant filed written submissions in which he

states:

If I am healthy and chose not to be vaccinated, simply because this right is given to us, I also have studied medicine and I am aware of its advantages and disadvantages. The questions are; is flu vaccination for individuals or for the public? If there is an outbreak and I am healthy according to the physicians, why am I not allowed to work? We have respiratory outbreaks throughout the year, why am I not allowed to work in winter and O.K. to work in summer during outbreaks? For any reason, if I fall under disability because I am not vaccinated it should be all year not just winter. Why other health care workers (Doctors, Nurses, Fire and Police) are not required to be vaccinated? Isn't that discriminatory?

[6] It is clear from the above submissions that the applicant is basing his decision to not be immunized on medical considerations rather than religious belief. This Tribunal has held that what identifies a creed is a set of sincerely held religious beliefs and practices. These beliefs and practices need not be based on the edicts of an established church or particular denomination. See *Huang v. 1233065 Ontario Inc.* (No. 2), 2006 HRTO 1; and *Heintz v. Christian Horizons* 2008 HRTO 22.

[7] The Tribunal has adopted the Supreme Court of Canada's test in *Syndicat Northcrest v. Amselem* 2004 SCC 47, finding that religious beliefs are those that have "a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith".

[8] In the absence of any religious beliefs and/or practices influencing his decision to not be immunized, the applicant cannot assert that he is being discriminated against on the basis of his creed.

[9] In his written submissions, the applicant suggests that he believes he is being "discriminated against" because the requirement to be immunized is not uniformly applied to all health care workers and other emergency personnel. However, the Tribunal does not have a general power to inquire into all claims of unfair treatment, but only those that are specifically based on grounds listed in the *Code*. The *Code* only

prohibits discrimination in employment when it occurs because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability and reprisals for asserting *Code* rights. Specifically, “occupation” is not an enumerated ground.

[10] In his written submissions, the applicant discusses a number of policy considerations, which this Tribunal could only consider in the context of a valid application that is within its jurisdiction (powers to decide). Likewise, he alludes to the *Charter of Rights and Freedoms*, but the Tribunal does not enforce the *Charter* except as it applies to cases otherwise properly before it.

[11] In summary, this Application raises matters that are not within the Tribunal’s jurisdiction. Accordingly, this Application is dismissed.

Dated at Toronto this 27th day of September, 2011.

_____ “signed by” _____
Naomi Overend
Vice-chair