

Your Application has been scheduled by the clerk.

Date: Mar 12, 2026 @ 10:00

Location: Civil Justice Chambers

In person: 460 - 1st S.E. Medicine Hat A.B. T1A 0A8

COURT FILE NUMBER

COURT

JUDICIAL CENTRE

APPLICANT

RESPONDENT

COURT OF KING'S BENCH OF ALBERTA

MEDICINE HAT

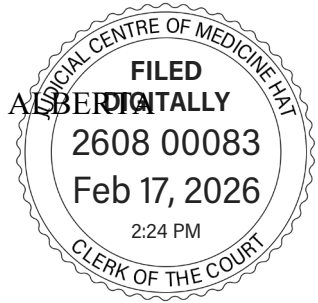
STACEY ANDERSON

REXALL PHARMACIES LTD.

and

THE ALBERTA HUMAN RIGHTS

COMMISSION



DOCUMENT

**ORIGINATING APPLICATION FOR
JUDICIAL REVIEW**

ADDRESS FOR SERVICE
AND CONTACT INFORMATION
OF PARTY FILING THIS
DOCUMENT

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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:

Time: 10:00 AM

Where: Medicine Hat Law Courts

460 First St SE

Medicine Hat, AB T1A 0A8

Before: Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

BASIS FOR THIS CLAIM

Overview

1. This is an application for judicial review of a decision of the delegate of the Chief of the Commission and Tribunals (“Delegate”) of the Alberta Human Rights Commission (“Commission”) to uphold the summary dismissal of a human rights complaint filed by Stacey Anderson (the “Applicant”).
2. On September 8, 2022 the Applicant submitted a complaint to the Alberta Human Rights Commission against Rexall Pharmacies Ltd (the “Respondent”) alleging discrimination in the area of employment on the basis of the protected characteristic of religion (the “Complaint”). The Applicant was, at the time, unrepresented by legal counsel. The Respondent submitted a response to the Complaint through legal counsel.
3. On January 30, 2025, the Director of the Commission (“Director”) issued a decision to dismiss the Complaint pursuant to section 21 of the Alberta *Human Rights Act* on the purported basis the Complaint has no reasonable prospect of success.
4. On August 20, 2025, the Chief issued the impugned decision pursuant to section 26 of the *Act*, indexed as *Anderson v Rexall Pharmacies Ltd*, 2025 AHRC 85 (the “Decision”).

Brief Factual History

Employment, Vaccination Policy and Testing Requirement

5. The Applicant, an employee of the Respondent, is unable to vaccinate against Covid due to her immutable and protected characteristic of religion.
6. On November 16, 2021, the Respondent effected a vaccination policy requiring unvaccinated employees to submit to rapid antigen testing for each shift. Employees granted human rights exemptions to vaccination on the basis of protected characteristics were paid for the time spent testing. Employees refused human rights exemptions on the basis of protected characteristics or employees who otherwise decided against vaccination were not paid for the time spent testing.

7. On November 2, 2021, the Applicant submitted a request for accommodation against vaccination on the basis of the immutable and protected characteristic of religion.
8. On November 3, 2021, the Respondent requested additional information and informed the Applicant that “we will notify you of the status of your accommodation request once a full review of the documentation has been completed”.
9. On November 6, 2021, the Applicant furnished to the Respondent additional information as per its request.
10. From November 16, 2021 to August 22, 2022, the Applicant submitted to the required testing protocol while she waited to receive the decision regarding her religious accommodation request—at which point the accommodation dialogue could begin.
11. **The Applicant received no decision at any time from the Respondent regarding her religious accommodation request.**
12. The Applicant worked approximately 184 shifts prior to which she was expected to attend early in order to discharge her obligation to submit to rapid antigen testing, and which she did, subject to the availability of a pharmacy staff member to perform the testing.
13. The Applicant was never compensated for any early attendance at any shift on account of the required rapid antigen testing.

Barrier to Full-time Employment

14. On July 25, 2022 and August 11, 2022, exchanges between the Applicant and a representative of the Respondent, Pharmacy Manager Honeyben Patel, reveal the two were in discussions concerning moving the Applicant to a full-time position, which Patel ultimately dismissed as something “the vaccine policy won’t allow”, before disclosing the plan to hire someone else instead.

Standard of Review

Applicable Human Rights Law

19. Religious discrimination in employment is an action, policy, practice, or decision that has a negative effect on an employee related to his or her immutable and protected characteristic of religion. Whether such action, policy, practice, or decision is intentional or unintentional is of no moment. Even a facially neutral policy is discriminatory if it has the effect of imposing burdens or disadvantages on a person possessing a characteristic protected under the *Alberta Human Rights Act*, RSA 2000, c A-25.5.

20. The employer has a duty to accommodate the immutable and protected characteristic of religion to the point of undue hardship. The duty to accommodate has both a procedural and a substantive component, the former of which is onerous and by no means optional. Undue hardship cannot be found unless and until the employer has discharged its procedural duty to accommodate.

Decision Fails to Be Reasonable

Prima Facie Discrimination

21. The Delegate appears to have understood that “[i]n order to establish *prima facie* discrimination at a hearing, the complainant would need to demonstrate that: (1) she has a characteristic protected from discrimination under the Act; (2) she has experienced a negative or adverse impact; and (3) the protected characteristic was a factor in the negative or adverse impact”; however the Delegate failed to comprehend that the Applicant discharged all three components of the test.

Protected Characteristic

22. Indeed, the Applicant possesses the protected characteristic of religion, which she clearly articulated as preventing her from vaccinating on the bases that a) her body is the temple of the Holy Spirit and b) she is religiously unable to receive into this temple products tainted by abortion, given the biblical prohibition on murder (and the belief that abortion is tantamount to murder). Pretending those somehow fail to be religious positions strains credulity and raises the

spectre of a decision made for improper purposes.

Adverse Impact

23. Likewise, the Applicant sustained an adverse impact in which the protected characteristic was a factor when she was compelled to appear early for every shift and denied compensation, in order to satisfy the Respondent's testing requirement. Only those employees lacking protected characteristics were required to attend at the workplace for testing absent compensation.

24. The moment the Respondent distinguished between persons with protected characteristics and persons without protected characteristics, it exposed itself to liability should it misstep in determining the existence of a protected characteristic—which it did in the Applicant's case.

25. That “an employee [who] was unable to be vaccinated due to a protected ground under the *Act*...could request accommodation under the Policy by submitting a written request” is a tacit confession on the part of the Delegate that the Respondent's facially neutral policy was capable of discriminating.

26. Further, the Applicant lost out on moving up to a full-time position and instead remained in a part-time position for which her protected characteristic was at least partly the reason, if not the whole reason.

Duty to Accommodate

27. The Respondent's failures culminated in its failure to discharge the duty to accommodate, beginning with the procedural duty to accommodate. Procedural accommodation was never commenced, let alone discharged.

28. A universal process for anyone and everyone who prefers to avoid vaccination in the absence of protected human rights grounds is not human rights accommodation, which is not available to those lacking protected characteristics, as the Director admitted in its section 21 decision, and as the Delegate affirmed in its section 26 decision. The Director found and the Delegate affirmed that “there is no independent procedural duty to accommodate”. This cuts both ways. The Delegate cannot decide that the process afforded persons lacking protected

characteristics and therefore unentitled to accommodation counts as discharging the procedural duty to accommodate those possessing protected characteristics, as disclosed by the Commission's vast literature and court precedents on the procedural duty to accommodate.

29. The procedural duty to accommodate is onerous and individualized. Even if the rapid antigen testing implemented by the Respondent could have removed institutional barriers such that no possibility of discrimination remained, it would have required applying the policy equally, which the Respondent failed to do; one class of persons was compensated for the time spent fulfilling the testing requirement and the other class of persons was not.

Summary on Discrimination

30. The Applicant was forced to spend many hours satisfying a work requirement for which she was never compensated; the Applicant's protected characteristic was manifestly a factor in the adverse impact given the requirement was based on a facially neutral policy which impacted the Applicant because of her religious inability to vaccinate; and the Respondent failed to discharge its procedural duty to accommodate.

31. The Delegate erred in finding otherwise, and particularly in finding the Applicant had no reasonable chance of success.

Delegate's Continued Errant Reasoning

32. The Delegate continued throughout the Decision to demonstrate its errant reasoning.

33. That "no termination, suspension, or unpaid leave attended the discrimination" is irrelevant, since the Applicant need only establish **any** adverse impact as distinct from one of the foregoing specific adverse impacts.

34. That the Applicant "participated in rapid antigen testing...without complaint" whilst awaiting the Respondent's decision on her accommodation request is of no moment, apart from being a credit to the Applicant's patience with the Respondent's unduly lengthy delay in processing her request.

35. That the Delegate is "unaware of any authority supporting an argument that having to

attend a test without pay for that time constitutes an adverse impact” is presumably a function of the novelty of a workplace testing requirement—a first in the province’s 120-year history. However, it is trite law that employers refusing to compensate employees for attendance at mandatory functions will be in breach of employment standards. In the human rights context, this failure to compensate is clearly an adverse impact.

36. The Delegate’s assertion that “the complainant’s opinion on the strength of her case is not determinative of whether it meets the standard to be referred to a hearing” is both a throw-away and a red herring. The Applicant’s information *demonstrates* that her case reasonably reaches the threshold of *prima facie* discrimination, which is all that matters.

37. In convincing itself the Applicant has not demonstrated *prima facie* discrimination, the Delegate has overlooked that even if 99% of the information and argumentation furnished by the Applicant is of zero value, so long as the Applicant has demonstrated a reasonable prospect of establishing sincere, subjective religious belief compelling her abstention from vaccination, **on the genuine *Amselem* standard and not on some perversion of the same**, and as long as the Applicant has demonstrated a reasonable prospect of establishing an adverse impact, “the standard to be referred to a hearing” is met.

38. On the genuine *Amselem* standard as decided by the Supreme Court of Canada, ***as distinct from a standard purported to be the Amselem standard but which adds to it and/or takes away from it***, the Applicant has clearly demonstrated a sincere, subjective religious belief compelling her vaccination abstinence.

39. In demonstrating that despite this immutable and protected characteristic, the Respondent forced her to appear up to a half hour early for every shift without remuneration—the penalty for vaccination *refusal* as distinct from **religious abstention**—the Applicant demonstrated an adverse impact connected to her immutable and protected characteristic.

40. In both cases, less is required of the Applicant at this stage, who must demonstrate only a ***reasonable prospect*** of establishing the preceding protected characteristic and attendant adverse impact. As the Delegate admits, the threshold to be met by the Applicant is extremely low: matters that have some chance of success—not even a good chance, rather more or less *any*

chance—should proceed to a hearing before the Tribunal.

41. To the extent the Commission’s decision in *Smart v University of Lethbridge*, 2024 AHRC 103 departs from *Amselem*, it is not reliable. To the extent any other Commission or Tribunal decision departs from *Amselem*, it is not reliable. To the extent any lower court decision departs from *Amselem*, it is not reliable.

42. *Smart*, a decision of the Commission and not a court precedent, is replete with legal errors and otherwise distinguishable in various ways. No “objective basis” for the religious adherent’s religious belief is necessary, as the Supreme Court of Canada ruled over two decades ago. No singular belief fallacy, however cunningly framed, displaces the principles in *Amselem*. The Commission is not at liberty to depart from high court precedent by invoking the phrase, “in human rights law...”. **Human rights law is subject to Supreme Court of Canada law.**

43. The recent Alberta Court of Justice decision in *Yee v WestJet*, 2025 ABCJ 87 removed all doubt as to the proper interpretation of *Amselem*, notwithstanding every errant Commission and Tribunal decision the WestJet defendant stooped to place before it. Justice Argento held that deference is to be given to honestly held religious beliefs; expression of non-religious concerns in no way expels honestly held religious beliefs; and connecting religious beliefs to abstention from vaccination is not onerous. *Yee* lays bare that the nexus between a religion that views the body of the believer as God’s temple and the belief that abstention from defiling that temple with certain substances is self-evident, no matter how tightly the Commission tries to shut its eyes.

44. Only a decision maker with an appallingly impoverished understanding of *Amselem* could think the reasons in the Delegate’s decision stand up to scrutiny.

45. Only by blinding itself to everything it wishes to ignore did the Delegate manage to conclude that any chance of success was foreclosed, or in the words of the Delegate, “no *prima facie* discrimination (or reasonable prospect of establishing same)”.

46. Notwithstanding its unequivocal statement that it need not consider the supplementary submissions of counsel because “the relevant law will already be considered and applied”, the Delegate failed to properly consider and accurately apply the relevant law.

47. In the end, the Delegate erred in upholding the Director's decision to dismiss the Applicant's complaint.

REMEDY SOUGHT

48. The Applicant applies to this Honourable Court for the following relief:

- a) An Order quashing the Decision;
- b) An Order directing the Alberta Human Rights Commission to refer the Complaint to the Tribunal for a hearing on the merits;
- c) Costs of this Application; and
- d) Such further and other relief as this Honourable Court deems just and equitable.

EVIDENCE TO BE USED IN SUPPORT OF THIS APPLICATION

49. The Certified Record of Proceedings, to be filed; and

50. Such further and other material as counsel may advise and this Honourable Court may order or permit.

APPLICABLE ACTS AND REGULATIONS

51. *Alberta Human Rights Act*, RSA 2000, c A-25.5;

52. *Alberta Rules of Court*, Alta Reg 124/2010.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court

makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.