

# HRT0 Finds No Discrimination In Request That Volunteer Remove Rainbow Sticker



## **Bottom Line**

In *Zanette v. Ottawa Chamber Music Society*, the Human Rights Tribunal of Ontario ("HRT0") found that requesting that a volunteer remove a rainbow sticker from his name badge did not constitute discrimination with respect to employment on the basis of sexual orientation, gender identity or gender expression under the *Ontario Human Rights Code* (the "Code").

## **Background Facts**

Mr. Zanette ("Applicant") was a long-time volunteer at the not-for-profit Ottawa Chamber Music Society ("Respondent"). On August 1, 2019, the Applicant was volunteering as an usher at a music performance and affixed a rainbow flag sticker (the "Rainbow Sticker") to his name badge as a symbol of support for the 2SLGBTQ2 community. A volunteer manager of the Respondent asked that he remove the Rainbow Sticker from his name badge, consistent with the Respondent's "Dress Code" policy ("Dress Code"). After exchanging emails with the General Manager, the Applicant complied with the request. He continued to volunteer for the rest of the music performance and did not raise the issue directly with the Respondent again.

However, the Applicant filed an application at the HRT0, alleging that the request to remove the Rainbow Sticker from his name badge constituted discrimination with respect to employment on grounds of sexual orientation, gender identity and gender expression contrary to section 5(1) of the *Code*. The Respondent denied all allegations of discriminatory conduct.

## **Analysis**

The HRT0 dismissed the application, holding that the Applicant had not shown a *prima facie* case of discrimination. The HRT0 accepted that the Applicant was a member of the 2SLGBTQ2 community, and that the request to remove the Rainbow Sticker was adverse treatment. Then the HRT0 considered whether the Applicant's *Code*-protected characteristic was a factor in adverse treatment.

Relying on evidence that the Respondent applied its Dress Code to everyone equally, the HRT0 held that the Applicant's sexual orientation, gender identity and gender expression were not factors in the adverse treatment. The HRT0 found no evidence to

suggest that the Respondent permitted any alterations to the name tags issued in the past, consistent with the Respondent's "desire to protect its brand".

The HRT0 further reasoned that wearing a Rainbow Sticker on a name tag was not an essential element of being a member of the 2SLGBTQ2 community. While the HRT0 accepted that the Applicant felt unfairly treated, it reiterated the long-established reality that it does not hold the power to deal with or remedy general allegations of unfairness.

As there was no evidence to suggest that the Applicant's sexual orientation, gender identity or gender expression were factors in the Respondent's request that he remove the Rainbow Sticker, the HRT0 dismissed the application.

## **Takeaways**

As this decision illustrates, in order to minimize risk of human rights liability, employers should ensure the consistent application of workplace policies, including dress codes. It is also imperative that the policy itself is non-discriminatory. Employers should also regularly update their policies – consulting with counsel if and as necessary – to ensure compliance with applicable human rights legislation and jurisprudence.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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