



British Columbia's
**Office of the Human Rights
Commissioner**

APRIL 12, 2022

Dr. Bonnie Henry
Provincial Health Officer
PO Box 9648, STN PROV GOVT
Victoria, BC, V8W 9P4

Via Email: Bonnie.Henry@gov.bc.ca

Dear Dr. Henry,

Thank you for your considered response to my letter of March 16 regarding the end of the provincial mask mandate. Numerous complex and competing factors must be balanced in pursuit of public health policies, and I truly appreciate your willingness to continually re-examine both the data and the ethical considerations that underpin your decisions.

Although I understand the reasoning you have given for ending temporary public health measures, in my view the balance of human rights considerations continues to favour a mask mandate. I wish to offer some responses to the points raised in your March 31 letter in the spirit of bringing greater clarity to the issue.

Centring the rights of marginalized people

Each of us is working toward a conception of the public good. Where a public health approach tends to consider the aggregate health of the population, my task is the protection of the rights of the minority when those rights are threatened by the actions of the majority. Thus, while it is encouraging that the population-level threat of serious outcomes from COVID-19 is reduced, it is not the proportion of people at risk but the rights of the marginalized that are relevant to a human rights analysis.

The data you shared confirms that deep inequities remain. Elderly people continue to be at much higher risk as evidenced by the graph you provided showing a record number of hospitalizations of people over sixty during the most recent wave. In your letter you note that there is a population of people for whom the vaccine is less effective. This population is neither insignificant in numbers nor in rights' entitlement; indeed, there are 25,000 Canadians on hemodialysis alone.¹ Those with compromised immune systems and a less robust response to the vaccine are forced to weigh their safety against their right to equal participation in society (including sending their children to school and getting safely to their workplaces or medical appointments via public transit, for example).

Although I understand that vaccination is the most effective medical intervention at our disposal, the data you provided shows that one-third of those who died from the virus between December 11 and January 10 were fully vaccinated. The fact that most people experience only mild symptoms has no bearing on our responsibility to those who continue to die and face significant illness. Furthermore, vaccination rates and marginalization are interconnected. Although B.C. does not publish disaggregated demographic data except in relation to First Nations and Métis identity, evidence from peer jurisdictions suggests there are continuing inequities in vaccine access and uptake among numerous marginalized groups.² Moreover, the

¹ The Kidney Foundation of Canada (2020) "Facing the Facts." <https://kidney.ca/KFOC/media/images/PDFs/Facing-the-Facts-2020.pdf>

² "Calls grow for a renewed push to increase third doses as pandemic indicators rise." *The Ottawa Citizen*. March 23, 2022.

end of the vaccine mandate, waning effectiveness of vaccines without boosters and a lower immune response to vaccines in some populations compromises the effectiveness of vaccines as a protective mechanism.

For these reasons, I maintain that the exclusive use of vaccines as a defense against the virus will result in disproportionate harm to those who are already marginalized.

Masks continue to be a valuable public health tool

In an April 1 opinion piece, you argued that the layers of public health protection are like layers of warm clothing that we shed when winter turns to spring.³ I worry, however, that this metaphor fails to capture the communal nature of masking and other public health interventions. If my layers of clothing help keep other people warm, the calculation in removing them is quite different.

Similarly, wearing a mask is a simple and effective way to protect oneself and others from transmission of the virus.⁴ We share this burden because masks are most effective when worn not only by those who are vulnerable to the virus but also by those who may be spreading it. Making masks optional serves to individualize the decision, leaving vulnerable people with the responsibility to advocate to others for their rights and their health. This is an unjust and unnecessary burden to place on those who already bear the burden of increased risk, particularly in a world that is increasingly polarized about COVID protections. And it is particularly troubling in the case of public transit and schools, two indoor environments that many people cannot avoid regardless of health status.

Your letter also raised several concerns regarding the negative effects of a mask mandate, and I wish to respond to these in turn through the lens of balancing competing rights. You note that a mandate is mildly intrusive and associated with some inequities; I consider these to be comparably minor concerns next to the protection that masking provides to the most medically vulnerable. You raise how mask mandates stoke division in society; I respond that the loud voices of a misinformed minority should not tip the scales when weighed against the rights of marginalized groups, and moreover, that medically vulnerable individuals shouldn't have to bear the weight of countering this misinformation on an individual basis. You argue that requiring masks will have little additional benefit because exposure can no longer be prevented and reducing harm is now the primary goal. But the fact that masks continue to be required in health care settings and that you continue to recommend mask use elsewhere (including on public transit) shows that they remain an effective public health measure.

Finally, you highlight the social and psychological harms that can come from imposing an indefinite public health restriction. I want to echo the analogy that some have drawn between masks and seatbelts. Seatbelt laws are not seen as a public health restriction; instead, they are seen as a protection for the wearer and others in the vehicle around them. They are a minor inconvenience to bear for the benefit they provide. Viewing masking through the lens of protection rather than restriction can shift our perspective on whether they cause psychological harm. And any psychological harm that may be caused must be balanced against the more profound harms to the rights of marginalized people to participate in society and enjoy their human rights to the fullest extent possible. Those who [face other harms from mask wearing for Human Rights Code protected grounds](#) (such as those who are unable to put on or take off their own masks) should be accommodated to the point of undue hardship.

That said, the time will come when the balance will shift in favour of lifting mask mandates. While we are still in an unpredictable global pandemic, masks should be required to protect those most at risk. I support the need for clear criteria around the removal of public health restrictions but given rising hospitalizations, rapid evolutions in the virus around the world⁵, a changing and patchwork landscape of COVID protections,

<https://ottawacitizen.com/news/local-news/calls-grow-for-a-renewed-push-to-increase-third-doses-as-pandemic-indicators-rise>

³ "The goal amid COVID is to never need a mask mandate or event limits again." *Victoria News*. April 1, 2022.

<https://www.vicnews.com/opinion/henry-the-goal-amid-covid-is-to-never-need-a-mask-mandate-or-event-limits-again/>

⁴ "Masks." BC Centre for Disease Control. <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/prevention-risks/masks>.

⁵ "Two years later, coronavirus evolution still surprises experts." *National Geographic*.

<https://www.nationalgeographic.com/science/article/two-years-into-the-pandemic-covid-19-still-surprises-experts>



increased local and global travel, and Dr. Tam's recent confirmation that Canada is in a sixth wave, ending the mask mandate now is premature and poses too big a risk for those most vulnerable. As noted above, I am particularly concerned about the lifting of the mandate in schools and on public transit, where many medically vulnerable people and their close contacts cannot avoid going regardless of their vulnerabilities.

I appreciate and share your continued call for kindness. In my first policy statement on COVID-19 in March 2020, I wrote that the pandemic raises fundamental questions of who we want to be as a society, and I asked rhetorically if we are community of people who respect each other's rights and fulfil our responsibilities in relation to one another or not. I hope that we will each continue to prioritize collective care. However, those who are most vulnerable among us shouldn't have to depend on the kindness of others to respect their fundamental rights. For this, they should be able to depend on the responsible exercise of governmental power.

Thank you again for your response and consideration of the human rights analysis. I would be pleased to discuss these matters further if that would be useful.

Sincerely,



Kasari Govender
Human Rights Commissioner

CC: The Honourable Adrian Dix, Minister of Health, (HLTH.Minister@gov.bc.ca)
Dr. Brian Emerson, Deputy Provincial Health Officer, (Brian.Emerson@gov.bc.ca)
Dr. Daniele Behn Smith, Deputy Provincial Health Officer, (Daniele.BehnSmith@gov.bc.ca)

