

**NOVA SCOTIA BOARD OF INQUIRY**

**Date:** March 22, 2021  
**File No:** 42000-30-H18-0706

**Between:**

**Christine Shupe**

Complainant

– and –

**Beaver Enviro Depot**

Respondent

– and –

**Nova Scotia Human Rights Commission**

Party

**Chair:** Benjamin Perryman

**Written Submissions:** March 5, 2021

**Counsel:** Christine Shupe, Self-Represented  
Wyatt Redmond, Self-Represented for 2557617 Nova Scotia Ltd  
Kymerly Franklin, Counsel for Nova Scotia Human Rights Commission

**PRELIMINARY DECISION**

**Overview**

1. Human rights complaints can only be made against legal persons, either natural persons or juridical persons (such as corporations). The complaint referred to this board of inquiry by the Nova Scotia Human Rights Commission was not made against a legal person. The named Respondent is neither incorporated nor the registered name of a corporation. The Commission now asks the Board to amend the original complaint to add a respondent that is a legal person. The Board does not have the jurisdiction to make such amendments. Accordingly and regrettably, this complaint must be dismissed without an inquiry into its merits.

**Background**

2. Three years ago, the Complainant, Christine Shupe, filed a human rights complaint with the Nova Scotia Human Rights Commission, alleging that she was discriminated against and sexually

harassed by her former employer. The Commission investigated the complaint and decided to refer it to a board of inquiry.

3. The complaint and related appointment to a board of inquiry lists the Respondent employer as Beaver Enviro Depot. The complaint materials state that Wyatt Redmond is the owner of Beaver Enviro Depot and allege that he discriminated against and sexually harassed the Complainant. The complaint does not name Mr. Redmond personally as a respondent.

4. After reviewing the complaint materials, the Board asked the Commission to provide the Registry of Joint Stock Companies registration information for Beaver Enviro Depot.

5. The Commission advised the Board that it did not have any registration information in its files and that a subsequent search did not yield any results for Beaver Enviro Depot. The search did find a numbered company, related to the business name Beaver Retention Recycling Centers, that is controlled by Mr. Redmond.

6. At a pre-hearing teleconference, the Board raised, on its own motion, whether Beaver Enviro Depot was a legal person and whether the complaint could proceed.

7. Mr. Redmond advised that he had previously operated a business under the name Beaver Enviro Depot. He stated that in 1996 he incorporated 2557617 Nova Scotia Ltd of which he is the sole director. This numbered corporation is associated with the registered name Beaver Retention Recycling Centers. Mr. Redmond further stated that he was given “permission” to continue to operate under the name Beaver Enviro Depot because of “good will” in that name. He acknowledged that the Complainant was previously employed by 2557617 Nova Scotia Ltd.

8. The Complainant stated that her place of former employment was signed as Beaver Enviro Depot. She further stated that the Commission prepared the complaint form that she signed, including the naming of the Respondent as Beaver Enviro Depot. The Complainant expressed concern that this issue was not caught and addressed earlier.

9. The Board invited the parties to make written submissions as to whether the Board could continue with this inquiry in light of the fact that the named Respondent is not a legal person nor

the registered name of a legal person.

10. On March 5, 2021, the Commission applied to the Board to “correct the Respondent’s name entry on the complaint form.” The Commission asks the Board to “amend the complaint and add in the correct legal name of the Respondent’s business.”

11. Neither the Complainant nor the Respondent made submissions on the Commission’s application.

### **Issues**

12. These circumstances raise two issues:

- i) Can a board of inquiry amend a complaint that has been referred by the Commission?
- ii) If so, should the Board amend the name of the Respondent in the circumstances of this case?

### **Analysis**

*Can a board of inquiry amend a complaint that has been referred by the Commission?*

13. The Commission candidly acknowledges that the Board does not have jurisdiction to amend a complaint. Indeed, in *Nova Scotia (Environment) v Wakeham*, 2015 NSCA 114 at para 48 [*Wakeham*], the Court of Appeal stated:

Just to be clear and to avoid any confusion on this point, a board of inquiry does not have the ability to amend complaints to something that is different than what was referred to it. Her determination that she had the power to amend the complaint was a clear departure from the law regarding the respective roles of a board of inquiry and the Commission.

14. A board of inquiry may “approve changes that particularize or clarify existing elements in a complaint” but cannot approve changes that would “substantively alter the complaint”: *Wakeham* at para 28.

15. The Commission argues that *Wakeham* is not determinative of its application to amend for

two reasons. First, the Board's interpretation of the *Human Rights Act*, RSNS 1989, c 214 is subject to a reasonableness standard of review. Second, the amendment the Commission is seeking is not a material change to the complaint. Neither of these reasons are compelling.

16. It is true that the standard of review applicable to an administrative decision-maker's interpretation of their enabling statute is normally reasonableness. But this does not invite administrative decision-makers to will jurisdiction into existence that is not otherwise in their enabling statute.

17. As the Court of Appeal explained in *Wakeham*, a human rights board of inquiry is a statutory tribunal. Its powers and privileges are derived only from the express provisions of the *Human Rights Act*: *Wakeham* at para 23.

18. The Commission has not cited any provision in the *Human Rights Act* that grants the Board jurisdiction to amend a complaint, even to correct an improperly named respondent. This is in contrast to other jurisdictions that expressly authorize the amendment of parties to a complaint or implicitly authorize the alteration of a party's name to correct a defect in form or technical irregularity: See e.g. *Canadian Human Rights Tribunal Rules of Procedure*, s 8(3); *Stacey v Choose Life Canada*, 2001 BCHRT 44 at para 28.

19. I note that subsection 39(2) of the *Human Rights Act* does state: "No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity." However, this provision arises in the context of prosecutions under the Act. It does not appear to create a general curative power for the Board, particularly in light of *Wakeham* and the express enumeration of the Board's powers in section 34 of the Act.

20. Citing the Canadian Human Rights Tribunal's decision in *Tran v Canada (Revenue Agency)*, 2010 CHRT 31, the Commission submits that the Board can amend a complaint where the amendment has a nexus to the original complaint and therefore does not create a new complaint. The Commission submits:

[T]he Commission is not seeking a material change or even anything new to the complaint form. We are asking the Board of Inquiry to clarify and correct a mistake that will not change anything about the actual complaint. It will however clarify and name the Respondent properly and legally, which is required for us to continue with the Inquiry.

21. As already mentioned, the Canadian Human Rights Tribunal has express authority to add parties to a complaint by virtue of its procedural rules that are authorized by its enabling statute. The *Human Rights Act* does not include an equivalent authorization for this Board.

22. While I agree with the Commission that the proposed amendment will not change the alleged grounds of discrimination, it will substantively change the complaint. The Commission is seeking to delete a respondent that is not a legal person and add a respondent that is a legal person. This is a substantive change because the inquiry cannot otherwise proceed. It is not merely a request to particularize or clarify an existing element of the complaint.

23. The Board lacks jurisdiction to amend a complaint once it is referred by the Commission to an inquiry. This means that the Commission's application must be dismissed.

*Should the amendment be granted?*

24. Since the Board lacks jurisdiction to amend a complaint, it is not necessary to answer the second question of whether an amendment should be granted. That said, if I am wrong about the Board's jurisdiction, I would have granted the amendment request.

25. The Complainant is self-represented. When she approached the Commission to file a complaint, she stated that her employer was Beaver Enviro Depot. This is understandable since that is purportedly the name on the exterior of her place of former employment.

26. The improper naming of the respondent employer appears to have resulted from the Commission's failure to investigate whether Beaver Enviro Depot was a legal entity. Presumably this could have been easily confirmed by the Complainant's pay stubs or tax slips. It most certainly would have been confirmed by a search of the Registry of Joint Stock Companies.

27. In my view, it is reasonable to expect the Commission to perform this type of due diligence given its expertise, resources, and responsibility for the human rights complaint process. This is especially so given that many human rights complainants are self-represented.

28. As the Court of Appeal explained in *IWK v Nova Scotia (Human Rights Commission)*, 2014

NSCA 18 at para 5, it is the Commission that supervises the entirety of the complaint process:

It is a curiosity of the *Human Rights Act* process that the filing of a complaint is completely controlled by the Commission. One cannot contact the Commission and obtain a “complaint form” and file a “complaint”. Potential complainants are given “intake forms” which they complete. These are then reviewed by Commission staff and, if considered appropriate, the potential complainant is then provided with a complaint form for filing.

In other words, it is the Commission, not a complainant, who drafts the complaint, including naming the appropriate respondent(s).

29. Had the Commission performed standard due diligence to ensure that Beaver Enviro Depot existed at law, it would have discovered that the correct respondent is 2557617 Nova Scotia Ltd. It would not have presented an improperly drafted complaint to the Complainant for signing. This situation would have been avoided.

30. Absent some countervailing interest, a self-represented litigant should not be disadvantaged because they do not control the complaint process and do not understand the niceties of corporate legal personality. Here, there is no other interest that would warrant disadvantaging the Complainant by dismissing her complaint.

31. During the Commission’s investigation process, Mr. Redmond had notice and an opportunity to respond. He was fully apprised of the nature of the complaint and its allegations. Amending the style of cause to list the actual legal entity that is involved would not change the nature of the allegations. Accordingly, 2557617 Nova Scotia Ltd would not be prejudiced in any way by being added as the proper respondent if the Board had jurisdiction to make such a change.

32. In *Stacey v Choose Life Canada*, 2001 BCHRT 44 at para 28, the British Columbia Human Rights Tribunal used a statutory curative power to amend the named respondent to a complaint in circumstances similar to this case. If the Board possessed a similar power, the circumstances here would warrant a similar result.

## Conclusion

33. In the absence of jurisdiction to amend the respondent to a complaint, the Board can only inquire into the complaint that was referred to it by the Commission. In this case, the Commission referred a complaint that was not made against a legal person.

34. Even if this Board were to find that Mr. Redmond or 2557617 Nova Scotia Ltd discriminated against or sexually harassed the Complainant, it would be unable to make any order against them because they are not listed as respondents on the complaint. The Respondent, Beaver Enviro Depot, is not a legal person against whom an order can be made. Accordingly, this complaint cannot proceed and must be dismissed.

35. This is an extremely unfortunate result. Complaints and complainants should be heard. An inquiry should not be dismissed without an adjudication of the merits. Moreover, the time taken to investigate and refer this matter to a board of inquiry (28 months) may prohibit filing a new complaint: *Human Rights Act*, ss 29(2)–(3).

36. If the Board was empowered to make rules to govern its processes or to correct defects in form, this type of situation would likely have been avoided. But the *Human Rights Act* does not give boards of inquiry such powers. Regrettably, I must dismiss this complaint even though I do not view this as a just result in the circumstances.

DATED at Halifax, Nova Scotia, this 22nd day of March, 2021.

“Benjamin Perryman”

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Board of Inquiry