

NOVA SCOTIA COURT OF APPEAL
Citation: *Shupe v. Redmond*, 2022 NSCA 7

Date: 20220121
Docket: CA 506198
Registry: Halifax

Between:

Christine Shupe

Appellant

v.

Wyatt D. Redmond, 2557617 Nova Scotia Ltd., Attorney General of Nova Scotia,
Nova Scotia Human Rights Commission and Nova Scotia Human Rights
Commission Board of Inquiry

Respondents

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: By written submissions (last submissions filed on January 11, 2022) in Halifax, Nova Scotia

Subject: *Human Rights Act*, R.S.N.S. 1989, c. 214. Jurisdiction of a board of inquiry to add a party to a complaint

Summary: From January through March of 2018, the Appellant Christine Shupe worked as a bookkeeper at a business that described itself publicly as “Beaver Enviro Depot”. The Respondent Wyatt Redmond operated the business. Ms. Shupe alleges that throughout her term of employment Mr. Redmond sexually harassed her. Mr. Redmond denies the allegation. Ms. Shupe filed a complaint with the Nova Scotia Human Rights Commission, which appointed a Board of Inquiry under the *Human Rights Act* of Nova Scotia.

The Complaint, drafted by the Commission, named “Beaver Enviro Depot” as the “Respondent”. “Beaver Enviro Depot” was a business name, not a legal entity. Ms. Shupe’s employer

was 2557617 Nova Scotia Ltd. The Commission applied to the Board of Inquiry to add 2557617 Nova Scotia Ltd. as a Respondent. The Board held it had no jurisdiction to make the amendment. The Board then dismissed the Complaint because the Respondent (Beaver Enviro Depot) was not a legal entity.

Ms. Shupe appealed to the Court of Appeal.

Issues: Did the Board of Inquiry err in law by ruling it had no jurisdiction to add 2557617 Nova Scotia Ltd. as a Respondent?

Result: Section 33(e) of the *Human Rights Act* expressly gave the Board of Inquiry jurisdiction to add a party “specified by the board”. The Board’s ruling that it had no jurisdiction is wrong in law.

The Court of Appeal allowed the appeal, overturned the dismissal of the Complaint, permitted the amendment to add 2557617 Nova Scotia Ltd. as a Respondent, and remitted the Complaint as amended to the Board of Inquiry.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 9 pages.

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Commission Board of Inquiry

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Judges: Bourgeois, Hamilton and Fichaud JJ.A.

Appeal Heard: By written submissions (last submission filed on January 11, 2022) in Halifax, Nova Scotia

Held: Appeal allowed per reasons for judgment of Fichaud J.A., Bourgeois and Hamilton JJ.A. concurring

Counsel: Andrea MacNevin for the Appellant
Andrew Christofi for the Respondents Wyatt Redmond and
2557617 Nova Scotia Limited
Jason Cooke and Ashley Hamp-Gonsalves for the Respondent
Nova Scotia Human Rights Commission
The Respondent Attorney General of Nova Scotia not
appearing
The Respondent Nova Scotia Human Rights Commission
Board of Inquiry not appearing

Reasons for judgment:

[1] From January through March of 2018, the Appellant Christine Shupe worked as a bookkeeper at a business that described itself publicly as “Beaver Enviro Depot”. The Respondent Wyatt Redmond operated the business. Ms. Shupe alleges that, throughout her term of employment, Mr. Redmond sexually harassed her. Mr. Redmond denies the allegation. Ms. Shupe filed a complaint with the Nova Scotia Human Rights Commission which appointed a Board of Inquiry under the Nova Scotia’s *Human Rights Act*.

[2] This appeal concerns the Board of Inquiry’s jurisdiction to add a respondent to the complaint.

Background

[3] In August 2018, Ms. Shupe approached the Nova Scotia Human Rights Commission about the alleged harassment from earlier that year. Under the *Human Rights Act*, R.S.N.S. 1989, c. 214 and authorities, the Commission is the gatekeeper of the complaints process. This means the Commission’s staff drafts the complaint and files it with the Commission, investigates, explores settlement, determines whether to appoint a board of inquiry for an investigation and presents the complaint to the appointed board.

[4] After interviewing Ms. Shupe, the Commission’s staff prepared her Complaint dated August 17, 2018. Ms. Shupe signed it. On September 18, 2018, the Complaint was formally filed with the Commission.

[5] The Complaint’s title names “Beaver Enviro Depot” as the “Respondent”. That was because “Beaver Enviro Depot” was the publicly exhibited name of the business. The Complaint’s text names “Wyatt Redmond” as “the owner of the Depot”. The Complaint says that, from January through March 2018 while Ms. Shupe was “working at the Beaver Enviro Depot”, “Wyatt Redmond” or “Wyatt” engaged in numerous acts of sexual harassment that are detailed in the Complaint.

[6] The Board’s Decision under appeal (para. 7) recites the following facts that derived from Mr. Redmond’s statements at the Board’s hearing of February 5, 2021 [the February 5 hearing is discussed below, para. 11]:

- “Beaver Enviro Depot” is not a legal entity. Rather, it is a business name owned by Mr. Redmond when he formerly operated the business as a proprietorship.
- The proprietorship ended in 1996 when Mr. Redmond incorporated the Respondent 2557617 Nova Scotia Limited (“Numbered Company”).
- In January to March 2018, the Numbered Company owned the registered business name “Beaver Retention Recycling Centers”, but still operated under the former business name “Beaver Enviro Depot”. Mr. Redmond says this was for “goodwill” reasons.
- Despite any ambiguity about the business name, Mr. Redmond states the legal entity that employed Ms. Shupe from January to March 2018 was the Numbered Company.

[7] In August and September of 2018, when the Complaint was prepared, neither Ms. Shupe nor the Commission’s staff knew of the role played by the Numbered Company. Instead of naming Mr. Redmond as the “Respondent” who owned the business name, the Complaint inappropriately identified the business name as “Respondent” with Mr. Redmond and his ownership cited in the text.

[8] The Commission then investigated the Complaint for almost two and a half years. That endeavour did not include a search at the Registry of Joint Stock Companies.

[9] In early 2021, the Commission appointed Mr. Benjamin Perryman as the Board of Inquiry to hear the Complaint. I will refer to Mr. Perryman as the “Board”. The Complaint remained in its original form, naming “Beaver Enviro Depot” as the “Respondent”.

[10] According to the Board’s Decision under appeal (paras. 4-5):

- The Board reviewed the Complaint, then asked the Commission to provide information from the Registry of Joint Stock Companies for “Beaver Enviro Depot”.
- The Commission replied it had no such registration information in its file. The Commission added that a Registry search, apparently conducted after the Board’s request, yielded no result for “Beaver Enviro Depot”. However, the search identified the business name “Beaver Retention

Recycling Centers” belonging to the Numbered Company and found that Mr. Redmond controlled the Numbered Company.

[11] On February 5, 2021, the Board held a hearing by teleconference with Ms. Shupe and Mr. Redmond, both without counsel, and the Commission’s representative. The Board, on its own motion, questioned whether the named Respondent “Beaver Enviro Depot” was a legal entity and, if not, whether the Complaint could proceed. According to the Board’s Decision under appeal, during this conference Mr. Redmond related the information about the history of the business names that I have set out earlier (para. 6). The Board requested written submissions on whether the Complaint could proceed.

[12] On March 5, 2021, the Commission applied in writing to the Board to “amend the complaint and add in the correct legal name of the Respondent’s business, which is Beaver Retention Recycling Center under numbered company 2557617 Nova Scotia Limited.” Neither Ms. Shupe nor Mr. Redmond made submissions on the Commission’s application.

[13] The Board issued a written Decision dated March 22, 2021 (HRC file no. 42000-30-H18-0706). This is the Decision under appeal.

[14] The Board’s Decision dismissed the Commission’s application to amend because, according to the Board, the Board had no jurisdiction to amend the Complaint. The Board then dismissed Ms. Shupe’s Complaint because the Complaint was not lodged against a legal person. The Board’s Decision explains:

1. 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.

...

17. As the Court of Appeal explained in *Wakeham [Nova Scotia (Environment) v. Wakeham]*, 2015 NSCA 114, 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 the jurisdiction to amend a complaint, even to correct an improperly named respondent. ...**

...

22. While I agree with the Commission that the proposed amendment will not change the alleged grounds of discrimination, it will substantially 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.

...

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.

[emphasis added]

[15] The Board added that, had there been jurisdiction, it would allow the amendment:

24. ... 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. That 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.

...

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 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 a proper respondent if the Board had jurisdiction to make such a change.

...

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. ...

[16] Sections 29(2) and (3) of the *Human Rights Act* say a complaint must be filed within twelve months of the last act complained of, with a possible extension for a further twelve months. In March of 2021, when the Board dismissed Ms. Shupe's Complaint, it was too late to file a new Complaint for the alleged conduct of January to March 2018.

[17] Ms. Shupe appeals from the Board's Decision.

Issue and Standard of Review

[18] Ms. Shupe submits the Board erred in law by ruling it had no jurisdiction to add the Numbered Company as a Respondent.

[19] The *Human Rights Act* says:

Appeal

36(1) Any **party to a hearing** before a board of inquiry may appeal from the decision or order of the board to the Nova Scotia Court of Appeal on a **question of law** in accordance with the rules of court. [emphasis added]

[20] Section 33(b) of the *Human Rights Act* states "the person named in the complaint as the complainant" is a "party". Ms. Shupe was a "party". The Board heard the parties at the teleconference on February 5, 2021, and then invited written submissions, after which the Board dismissed Ms. Shupe's Complaint by a written Decision. Consequently, Ms. Shupe was a party "to a hearing". Her ground raises a question of law. Under the plain wording of s. 36(1), Ms. Shupe may pursue that ground on appeal.

[21] The Respondents Mr. Redmond and the Numbered Company submit, as this was a preliminary decision without a ruling on the merits, the standard of review should be reasonableness.

[22] I respectfully disagree. This Court’s standard of review on a statutory “appeal” of an issue of “law” is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 36–52; *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66, paras. 4, 34–35. That is because legislative intent governs the choice of standard and the statute’s word “appeal” connotes the appellate standard, namely correctness to issues of law. This approach applies to appeals on issues of law under s. 36(1) of the *Human Rights Act: Disability Rights Coalition v. Nova Scotia (Attorney General)*, 2021 NSCA 70, paras. 96–97, *per curiam*.

[23] Correctness governs an appeal from an interlocutory (or preliminary) decision of a court on a question of law: *Innocente v. Canada (Attorney General)*, 2012 NSCA 36, para. 22. That appellate standard governs a statutory “appeal” from an administrative tribunal’s decision, even a preliminary one, on a question of law.

Analysis

[24] The merits are straightforward.

[25] Section 33 of the *Human Rights Act* says:

Parties to proceeding

33 The parties to a proceeding before a board of inquiry with respect to any complaint are

- (a) the Commission;
- (b) the person named in the complaint as the complainant;
- (c) any person named in the complaint and alleged to have been dealt with contrary to the provisions of this Act;
- (d) any person named in the complaint and alleged to have contravened this Act; and
- (e) **any other person specified by the board** upon such notice as the board may determine and after the person has been given an opportunity to be heard against joinder as a party.

[emphasis added]

[26] The Board’s reasons did not cite s. 33. Neither did the Commission’s written submission to the Board bring s. 33 to the Board’s attention. After Ms. Shupe’s factum to this Court relied on s. 33, the Commission’s factum adopted s. 33.

[27] Section 33(e) expressly gave the Board of Inquiry jurisdiction to add a party “specified by the board”, subject to the statutory conditions of notice and opportunity to be heard. Here, the Numbered Company had notice and an opportunity to be heard. The Board’s ruling that it had no jurisdiction is wrong in law.

[28] This conclusion is fully consistent with *Wakeham*, cited by the Board. This Court (2015 NSCA 114, paras. 19, 52, 66) made it clear, and it is self-apparent anyway that a board of inquiry may exercise the authority assigned to it by the *Human Rights Act*. Section 33(e) of the *Act* assigns the authority to specify an additional party provided there is notice and an opportunity to be heard.

[29] I agree with the Board’s reasons (above, para. 15) that, given the jurisdiction to amend, the Commission’s requested amendment to add the Numbered Company as a Respondent should be granted.

[30] Ms. Shupe requests that this Court add Mr. Redmond as a Respondent. The request is a tempting way to resolve any lingering ambiguity about the ownership of the business name. Certainly Ms. Shupe and Mr. Redmond deserve a clear passage to resolution of this four year old dispute. Nonetheless, I respectfully decline Ms. Shupe’s request for the following reasons:

- That application was not made to the Board, meaning the issue is not under appeal. It is a motion of first instance in this Court.
- The authorities have guarded the Commission’s function as “gatekeeper” of the process: *Wakeham*, paras. 26–27, 75–82; *Halifax v. Nova Scotia Human Rights Commission*, [2012] 1 S.C.R. 364, paras. 20–25, per Cromwell J. for the Court. The Commission has not sought to add Mr. Redmond as a Respondent.
- The existing Complaint names Mr. Redmond as the alleged perpetrator of the harassment and everyone accepts the Numbered Company, controlled by Mr. Redmond, is the employer. That should suffice to adjudicate the merits.
- Section 33(d) of the *Human Rights Act* says anyone “named” in the Complaint and alleged to have contravened the *Act* is a “party”. The Complaint names Mr. Redmond and alleges he sexually harassed Ms. Shupe which, if established, would contravene the *Act*. Consequently, he is already a “party”, though not a “Respondent”. If, as the matter unfolds, the

Commission decides that Mr. Redmond should be added as a formal Respondent, the Commission may make that application to the Board under s. 33 of the *Act*. Given these reasons, it will be clear that the Board has jurisdiction to rule on the application.

Conclusion

[31] I would allow the appeal without costs, overturn the dismissal of the Complaint and amend the Complaint to add the Numbered Company as a Respondent. To be clear, the Numbered Company, not just its business name, should be named as a “Respondent”. The Commission also may add to the text of the Complaint the allegations necessary to connect the Numbered Company to the substance of the Complaint. I would remit the Complaint as amended to the Board as presently constituted.

Fichaud J.A.

Concurred:

Bourgeois J.A.

Hamilton J.A.