

HUMAN RIGHTS BOARD OF ADJUDICATION

IN THE MATTER OF: A Complaint by William Webb against LHS Holdings Inc. o/a Manigaming Resort, alleging a breach of section 13 of the *Human Rights Code*;

AND IN THE MATTER OF: *The Human Rights Code*, C.C.S.M. Chapter H175, as amended.

BETWEEN:

WILLIAM WEBB,

Complainant,

- and -

LHS HOLDINGS INC. o/a Manigaming Resort,

Respondent.

INTERIM DECISION

William Webb, Complainant

Mr. Devin Johnston, for the Commission

Sandra and Lennard Carlson, for the Respondent Corporation

Karine Pelletier, Adjudicator

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Introduction

1. On or about October 27, 2014, the Complainant submitted a complaint of discrimination against the Respondent to the Commission (the "Complaint"). The Complainant alleges that the Respondent discriminated against him in the provision of services on the basis of disability, including reliance on a service animal, contrary to section 13 of The Human Rights Code ("The Code").
2. The Commission has submitted a Motion requesting that I amend the Complaint by personally adding Lennard and Sandra Carlson as Respondents (the "Motion"). This Interim Decision only relates to the Motion. The substantive matters, as they are outlined in the Complaint, will be heard at a hearing scheduled for September 21, 22 and 23, 2020.
3. The Commission provided me a copy of the Motion, along with attachments, on June 23, 2020. This same Motion had been filed with the previous adjudicator designated to hear the Complaint on June 7, 2019. With the appointment of a new Chief Adjudicator, the previously appointed adjudicator informed the parties on June 28, 2019 that the matter would be held in abeyance, pending further direction. In that

regard, I was designated adjudicator to the dispute on October 2, 2019. A pre-hearing teleconference was scheduled for June 23, 2020. It was in the context of this pre-hearing conference that the issue of this unresolved Motion was discussed. The parties were directed to provide me with the necessary documentation in support, and to make submissions on the Motion. For the purposes of this Interim Decision, I will refer to Lennard and Sandra Carlson as the “Proposed Respondents”.

4. The Proposed Respondents were given an opportunity to make written submissions on the Motion. Those submissions were received on June 30, 2020. The Complainant was also provided an opportunity to make written submissions on the Commission’s Motion by July 3, 2020. The Complainant did not make any additional submissions.

The Submissions

5. In its Motion, the Commission submits that at the time of the events that gave rise to the Complaint, Sandra Carlson was Vice-President, Shareholder and Director of the Respondent LHS Holdings Inc. o/a Manigaming Resort and Lennard Carlson was President, Shareholder and Director. The Commission further submits that the allegations, as they are outlined in the Complaint, relate to the conduct of the Proposed Respondents and their interactions with the Complainant.
6. The Commission attach to their Submission a Release, dated December 13, 2014, discharging the Respondent LHS Holdings Inc. o/a Manigaming Resort from liability relating to the Proposed Respondents’ tenure as directors, officers and employees, including under human rights legislation.
7. The Commission argues that the necessary elements are present to make the necessary finding against the Proposed Respondents, including (a) there is reliable evidence on which to make a finding of liability; (b) there is no real and substantial prejudice not capable of being cured; (c) the remedies requested by the Complainant, William Webb, involve the then-owners of business; and (d) it is in the interest of justice, given the remedies requested, that the Proposed Respondents be added as Respondents to the Complaint.
8. The Commission relies on Section 40 of The Code, which outlines that an adjudicator has the necessary authority to amend a complaint to add parties at any point prior to the completion of a hearing:

40 At any time prior to the completion of the hearing, the adjudicator may, on such terms and conditions as the adjudicator considers appropriate,

- (a) permit any party to amend the complaint or reply, either by adding parties thereto or otherwise, or;
- (b) on his or her own initiative, add persons as parties;

but the adjudicator shall not exercise his or her authority under this section if satisfied that undue prejudice would result to any party or any person proposed to be added as a party.

- 9. The Commission relies on *Nash v. Natividad*, 2019 MBHR 4, *Ross v 4888970 Manitoba Ltd.*, 2017 CanLII 149348, *Cote v. Manitoba Hydro*, 2015 MBHR 6, and *Walmsley v Brousseau Bros Ltd* (Super Lube), 2014 CanLII 31472.
- 10. Conversely, the Proposed Respondents dispute the Commission's claim that they be added as Respondents to the Complaint as they are no longer owners of the business. The Proposed Respondents advise that this issue was raised on a number of occasions since the filing of the Complaint, and that it was not addressed. Since that time, the Proposed Respondents advise that they are "no longer in the same financial position as [they] once were". They accordingly maintain that they should not be personally added as Respondents.

Analysis

- 11. The parties named in the original complaint are the parties to the Complaint. Section 40 of *The Code* permits an adjudicator to add a party on such terms and conditions as the adjudicator considers appropriate, unless "undue prejudice would result to any party or any person proposed to be added as a party".
- 12. In determining whether it is appropriate to add a proposed respondent to a complaint, the Commission has correctly outlined the four-prong test, applied by Adjudicator Pinsky in *Cote, supra*, in which the following factors are considered in deciding whether to add a party:
 - a. Is there some reliable evidence on which the tribunal could make the finding of liability against the party?
 - b. Would the proposed party suffer real and substantial prejudice not capable of being cured?
 - c. Does a potential remedy involve the party sought to be added?
 - d. Is it in the interest of justice given the remedial nature of the Code and the stage of proceedings, to add a party?

13. It is important to note that this test is not intended to be applied mechanically or by rote. The overarching considerations, as outlined in the legislation, is whether it is appropriate to add a proposed respondent, having regard to whether undue prejudice would result to any party or any person proposed to be added as a party. This requires an adjudicator to consider what is just and fair for a hearing and resolution of the complaint.
14. With these principles in mind, I turn to an assessment of the *Cote* factors.
 - a. *Is there some reliable evidence on which the tribunal could make the finding of liability against the party?*
15. The Complainant alleges that he was discriminated against in the provision of a service by the Respondent, in contravention of Section 13 of *The Code*. At the time of the alleged incident, the Proposed Respondents were President and Vice-President, Shareholders and Directors of the Respondent. The Proposed Respondents have since sold the business, and executed a Release which discharges the Respondent from liability relating to their tenure as directors, officers, and employees of the Respondent, including under human rights legislation.
16. Having regard to the allegations as they are outlined in the Complaint, I have no hesitation in concluding that the substance of the Complaint relates to the interactions as between the Complainant and the Proposed Respondents. In other words, it is the conduct of the Proposed Respondents that is central to the matters as they are outlined in the Complaint. A “Respondent” as it is defined in *The Code* means a person alleged in a complaint to have contravened this Code.
17. Although the Proposed Respondents are no longer owners of the Respondent LHS Holdings Inc. o/a Manigaming Resort, I agree with the Commission’s submission that they retain liability for claims arising from their previous ownership. Upon reviewing the allegations in the Complaint, it is my view that the allegations against the Proposed Respondent, if proven, could amount to a contravention of *The Code*.
18. In the circumstances, I accept that there is reliable evidence on which the adjudicator could make a finding of liability against the Proposed Respondents.
 - b. *Would the proposed party suffer real and substantial prejudice not capable of being cured?*
19. The second test is whether the party would suffer any real and substantial prejudice in being added as a party that is not capable of being cured.

20. The Proposed Respondents have raised the issue of their current financial predicament, advising that they are not in the same financial position as they were four years ago, when the Complaint was filed. They have also raised the issue that they have advised the Commission for some time that they are no longer proprietors of the Respondent. The Commission submits that the Proposed Respondents have been aware of these proceedings since the Complaint was filed and have continued to be in contact with the Commission throughout. Further, the Commission contends that the Proposed Respondents possess sufficient information to make representations, appear at a hearing and effectively prepare their case.
21. The fact that there will be financial cost to the Proposed Respondents if they are named as Respondent is a situation potentially faced by all respondents, regardless of when they become a party to a complaint. Having regard to the Complaint, where the alleged conduct of the Proposed Respondents is central to the issues to be determined, financial costs associated with having to defend a Complaint is not sufficient to constitute real and substantial prejudice.
22. I do not find that there is any real and substantial prejudice as a result of adding the Proposed Respondents as Respondents to the Complaint. The Proposed Respondents were Vice-President and President, Shareholder and Director of the Respondent and involved since the Complaint was filed. Further, they have known about the allegations since the beginning of the Complaint. This is not a circumstance where the Proposed Respondents would be caught unaware of the allegations against them shortly before a hearing was to commence.

c. Whether a potential remedy involves the party sought to be added

23. The Commission submits that it is necessary to add the Proposed Respondents as there are allegations against that party which, if proven, could amount to a contravention of *The Code* that would potentially involve a remedy against the Proposed Respondents sought to be added.
24. I find that there are compelling legal reasons to add the Proposed Respondents as Respondents to the Complaint, given that the nature of the alleged conduct may make it appropriate to award a remedy specifically against the Proposed Respondents, if an infringement of *The Code* is found.

d. The interest of Justice

25. This Tribunal has held that it would not be fair, just and expeditious to add a respondent unless there are facts alleged that, if proven, could support a finding that the proposed respondent violated the complainant's rights. In addition, the Tribunal will consider whether the addition of a proposed respondent as a party would cause

substantial prejudice to that party's ability to make full answer and defense that cannot be alleviated by procedural orders of the Tribunal.

26. In *Ross*, Arbitrator Pinsky found that it was in the interest of justice to add the owner who was aware of the complaint as a respondent, notwithstanding the stage of the proceedings, given the remedial nature of *The Code*.
27. In the present case, the Complaint was filed many years ago. While I am sympathetic to all parties for the length of time that it has taken for this matter to proceed to hearing, I am satisfied that, in these circumstances, the Proposed Respondents have been aware and involved in these matters, notwithstanding the fact that they were not specifically named as Respondents.
28. On a review of all the circumstances, it is my view that it is in the public interest to add the Proposed Respondents as Respondents.

Conclusion

29. For the following reasons, I find that at the relevant time that gave rise to the Complaint, the owners of the facility and the assets of LHS Holdings Inc., o/a Manigaming Resort, were Sandra Carlson and Lennard Carson. In a situation such as this, where the individual conduct of the Proposed Respondents is a central issue to the Complaint, coupled with the factors considered herein, the circumstances warrant granting the Commission's Motion.
30. As a result, I allow the Complaint to be amended to add the Proposed Respondents as Respondents, pursuant to Section 40 of *The Code*. The style of cause is amended accordingly.

DATED July 22, 2020



Karine Pelletier
Adjudicator