

HUMAN RIGHTS ADJUDICATION PANEL

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

BETWEEN:

GWENDOLYN JAQUES,

Complainant,

- and -

PRICE INDUSTRIES,

Respondents.

INTERIM AWARD

PRELIMINARY HEARING: June 27, 2023

APPEARANCES:

Jesse Rock, Counsel for the Complainant

Sherri Walsh and Melanie Wire, Counsel for the Commission

Cindy Lazar, Counsel for the Respondents

ADJUDICATOR: Karine M. Pelletier

INTERIM AWARD

INTRODUCTION

1. This decision relates to a preliminary issue in connection with a Human Rights Complaint (the “Complaint”) dated July 29, 2015, brought under sections 14 and 19 of *The Manitoba Human Rights Code* (the “Code”).
2. The purpose of this interim decision is to address a request by the Complainant to amend her human rights complaint to add a new ground of reprisal. The Complainant made this request for the first time in December 2022, seven years after the initial filing.
3. The delay cannot be solely attributed to the Complainant. It was not until 2019 that the Board of Inquiry concluded and communicated that certain issues included in the Complaint would be referred for adjudication, reprisal not being one of them.
4. In March 2022, the Complainant wrote to the Human Rights Commission (the “Commission”) to express her concern that reprisal was not included in her initial Complaint. She requested information about the process to amend. Following several discussions and extension, she filed a request to amend in December 2022.
5. The Respondent and the Commission responded to the Complainant’s request to amend via written submissions. The Complainant filed her Reply on May 9, 2023. Shortly after receiving the Complainant’s response to the Commission and the Respondent’s replies, the Respondent and the Commission wrote to the adjudicator, objecting to a large portion of the Complainant’s response, alleging that it was not an appropriate Response, since it sought to add additional arguments and facts that were not included in the original request to amend. That issue will be addressed in the context of these reasons on the subject of

whether or not the requested amendments are permissible under the *Code* and in accordance with the test set out in the jurisprudence.

6. I also invited the parties to a preliminary videoconference hearing on June 27, 2023, to provide a further opportunity for discussion on the request to amend.
7. I note that the submissions from the parties are extensive. While I have considered all submissions, I have not referred to all of the legal arguments or case authorities within the parties' submissions but rather only those most pertinent to the real issues in dispute and to the rulings within these reasons.
8. Having reviewed the written submissions and considered the capable and thorough oral submissions from counsel, the following reflects my decision.

BACKGROUND

9. Price Industries employed the Complainant from May 2007 until she was dismissed on June 25, 2015.
10. In her July 2015 complaint, she submitted that she had been discriminated with respect to employment on the basis of her age and sex. She also alleges that she was the subject of harassment while employed and that the Respondent failed to take reasonable steps to terminate the harassment, contrary to section 19 of the *Code*. She submits that the amended complaint involves the same subject matter or substance of the original Complaint, but provides more particulars of the original complaint.
11. In part, she seeks to amend her Complaint to specifically include grounds of reprisal under section 20 of the *Code* and proposes the addition of new facts underlying the said reprisal. The Commission and the Respondent oppose the request because they are of the opinion that the amendments sought are well beyond what has been deemed in Manitoba to be acceptable and permissible.

12. As outlined above, the parties filed submissions in response to the Complaint's request to amend.
13. The Commission's complaint form prompts a complainant to provide information relating to the grounds upon which they are relying, including the provisions of the *Code* they believe were breached, and allows a complainant to outline, in their own words, how they believe there was a breach of the *Code*.
14. In the present case, the Complainant has advised that an intake officer from the Commission assisted her in describing the events that she claims led to a breach of her human rights. She also signed at the bottom of the Complaint, certifying the information provided to be correct.
15. It was this initial Complaint that led the Board of Inquiry, in 2019, to refer the matter to adjudication.
16. The Complainant's proposed amendments are extensive, offering significant amendments to two paragraphs of the Complaint and presenting two entirely new paragraphs. The Respondent argues that the proposed amendments fall into two categories: the first is relevant to the new ground of reprisal and the second includes new facts relating to two new issues (outside vs. inside sales, training and communications with Workplace Safety and Health). While the Respondent objects to the totality of the proposed amendments, they also submit that the Complainant's request to amend, under the guise of the inclusion of the new ground of reprisal, is not entirely accurate as other amendments are being sought that do not relate to the issue of any potential reprisal.
17. The Complainant's counsel did not strenuously oppose this characterization by the Respondent, advising that some of the amendments sought were intended to provide clarity on material facts, to ensure that it is factually accurate and

complete; while other amendments specifically relate to the request for the inclusion of the new ground of reprisal.

18. The Complainant has set out that she always believed that reprisal was a factor in the Respondent's conduct, and she is now seeking to correct her Complaint to ensure that it is specifically included.
19. The Respondent and the Commission object to the proposed amendments for the reasons set out below.

LEGISLATION

20. The relevant legislative provisions of the *Code* are the following:

Reprisals

20 No person shall deny or threaten to deny any benefit, or cause or threaten to cause any detriment, to any other person on the ground that the other person

- (a) has filed or may file a complaint under this Code; or
- (b) has laid or may lay an information under this Code; or
- (c) has made or may make a disclosure concerning a possible contravention of this Code; or
- (d) has testified or may testify in a proceeding under this Code; or
- (e) has participated or may participate in any other way in a proceeding under this Code; or
- (f) has complied with, or may comply with, an obligation imposed by this Code; or
- (g) has refused or may refuse to contravene this Code.

Amendment of complaint

24 The executive director may, on such terms and conditions as they consider appropriate, add parties to the complaint or otherwise amend the complaint at any time after it has been filed and before it has been disposed of in accordance with [section 29](#), but the executive director shall not do so if satisfied that undue

prejudice would result to any party or any person proposed to be added as a party to the complaint.

Amending complaint or reply

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 other 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.

21. The *Code* is remedial legislation, intended to be applied fairly and liberally to ensure the attainment of the objects of this statute.

ISSUES

22. The following issues must be considered:

- a. Does the adjudicator, constituted under the *Code*, have the jurisdiction to amend this Complaint?
- b. Should the Board allow the amendments sought by the Complainant on its merits?

POSITION OF THE PARTIES

For the Complainant

23. In its request to amend, counsel for the Complainant indicates that the purpose of the proposal to amend is as follows:

- To specifically include the ground of reprisal, which was not sufficiently included in the initial Complaint; and
- To elaborate upon those allegations that the Complainant believes required further clarification.

24. Counsel submits that, at the time of drafting, the Complainant was unrepresented and relied upon the Commission’s Intake Officer to draft her Complaint through discussions and written submissions. Counsel contends that the changes sought are permissible under the *Code* and that the adjudicator has the jurisdiction and discretion to amend to ensure that the Complaint reflects the allegations of reprisal.
25. Counsel relies on the decision by Adjudicator Harrison in *Pollock and Winnipeg Condominium Corp. No. 30, Re* [2011] M.H.R.B.A.D. No. 1, which was followed by Adjudicator Dawson in *Hampton and Manitoba, Re* 2019 MBHR 6 (CanLII). In *Hampton, supra*, Adjudicator Dawson summarized the three-step process described in *Pollock* as follows:
- a. The proposed amendment must fall within the scope of the original complaint;
 - b. The proposed amendment raises a valid and arguable point that has merit; and
 - c. The adjudicator ought to exercise [their] discretion in light of the facts and circumstances of the particular case.
26. Counsel argues that there is “ample evidence” that the Complainant feared reprisal for the reports she made of conduct which she deemed unprofessional, inappropriate and/or harassing. Counsel points to specific facts in the original complaint which suggest that there was intention to include allegations of reprisal. He argues that the proposed amended Complaint does not contain “new facts” but “additional details and context of incidents already alleged in the original complaint”. While the Complainant is alleging the new ground of reprisal, counsel submits that the sought amendments are neither new information nor allegations. Accordingly, counsel submits that the proposed amendments satisfy the first part of the *Pollock* test, in that they are *within the scope of the original complaint*.

27. Regarding the second part of the test, counsel submits that the proposed amendments raise a valid and arguable point with merit. Counsel argues that it is not for the adjudicator to embark upon a substantive review of the merits of the amendments but instead consider whether the additional information discloses an arguable, meritorious point which should be considered in the larger scope of that which was alleged in the original complaint. Counsel relied on the decision in *Noble v. York University*, 2010 HRTO 878, in which the Ontario Human Rights Tribunal concluded that a complainant needs to prove on balance that there was intention to retaliate. Counsel states that the Complainant will demonstrate through its evidence that the requisite intent to retaliate can be inferred from the overall evidence. For this exercise, counsel submits that there is an arguable and valid point that has merit, and the proposed amendments should accordingly be permitted.
28. The third and final step of the test requires the adjudicator to consider whether they should exercise their discretion in light of the facts and circumstances of the particular case. Counsel highlights that adjudicators have been reluctant to interfere where there is “undue prejudice’ to the other party. Here, counsel states that there is little to no prejudice to the Respondent, as the amendments sought are merely additional detail and context to the allegations already made. Counsel says that this additional information is well within the knowledge of the Respondent.
29. For these reasons, counsel submits that the amendments should be allowed.

For the Respondent

30. Predictably, the Respondent takes the opposing view, outlining that the proposed amended Complaint attempts to weave in new allegations, which ought not be allowed. The Respondent says that it would be prejudiced if the amendments succeeded because of the delay and its inability at this late stage to respond to the allegations appropriately.

31. Counsel for the Respondent submits that the proposed amendments under consideration, in this case, are not an "extension, elaboration or clarification" of the Complaint, but rather alter the Complaint such as to create a new complaint that was not referred to the Board of Inquiry in its consideration of the investigation report. All of the amendments sought predate the filing of the Complaint, including some that are over a year before the termination of her Complainant, without any nexus to the substantive allegations in the original Complaint. Further, and importantly, there was no allegation in the original complaint relating to reprisal. Counsel remarks that the parties have engaged in the Reasonable Offer Process under the *Code*. Counsel submits that the Applicant is only attempting to enrich or enhance her Complaint to garner a better settlement from the Respondent. This, counsel submits, is not a suitable reason for an amendment to be allowed, let alone the extent of the amendments being sought in this case.
32. Counsel highlights that the amendments fall under a few different categories. Some of the amendments are untimely, referring to events that occurred several years before the filing of the complaint. Other amendments sought provide additional facts and information, raising further allegations not contained in the original Complaint. Finally, some of the amendments that are sought are entirely new facts supporting a new claim that the Complainant suffered reprisal.
33. In each case, counsel submits the amendments should not be allowed.
34. Counsel for the Respondent states that the proposed amendments do not meet the test set out in *Pollock, supra*. None of the amendments sought fall within the scope of the original complaint. Though the Complaint has sought amendments under the guise that they are merely clarification, the Respondent points out that there are entirely new issues raised which it is

unable to address due to the significant amount of time that has elapsed since the filing of the Complaint. Some of the amendments go so far as to add additional facts and allegations. As it relates to the new ground of reprisal, counsel for the Respondent argues that it was never raised or alluded to in the original complaint and does not meet the first prong of the test in *Pollock*.

35. Nor do the proposed amendments raise a valid and arguable point, claims counsel for the Respondent. The Complainant has attempted to weave in new facts to support a claim of possible reprisal by suggesting that she was terminated for having raised issues with Workplace Safety and Health in 2014. There was no such suggestion in the original Complaint and there is no opportunity now to verify the information the Complainant now seeks to rely upon, submits the Respondent. Accordingly, counsel submits that the proposed amendments do not raise a valid, arguable, or meritorious point.
36. Further, and importantly, the facts that gave rise to the allegation of reprisal were well known to the Complainant when she filed her complaint. Counsel states that it would not be appropriate at this late stage, more than six years after her initial filing, to permit her to amend her complaint at this late stage.
37. Given the failure of the Complainant to establish any credible reason for amending her complaint, counsel submits that there is no reason for the adjudicator to exercise their direction.

For the Commission

38. Counsel for the Commission also opposes the Complainant's request to amend, submitting that she now wishes to allege that the Respondent terminated her in reprisal for initiating Respect in the Workplace training and for having reported instances of harassment and gender discrimination to management of the Respondent many years before she filed her complaint. These are entirely new facts and new information that should not be allowed as they do not fall

within the scope of the original complaint; they result in undue prejudice to the Respondent; and they do not raise a valid, arguable point with merit.

39. Counsel for the Commission relied on the same case law as the Applicant and Respondent's counsel.
40. Referring to the case in *Pollock, supra*, counsel contends that the proposed amendments should not be allowed as they fall outside the scope of the original Complaint.
41. Similar to the facts in *Pollock*, the Complainant, in this case, is attempting to weave in new facts and new allegations in support of her claim of reprisal. Further, the alleged reprisal occurred before the Complaint was filed. Since the proposed amendments fall outside the scope of the original Complaint referred to adjudication, counsel submits that the Adjudicator has no jurisdiction to allow the amendments.
42. Regarding the second part of the test, the Commission states that the amendment would result in undue prejudice, as the Respondent has been deprived, for nearly eight years since the complaint was filed, to "marshal the evidence that it would need to adduce at the adjudication to respond to those allegations". Specifically, the Commission's counsel points out that, if the amendments are allowed, the parties would be required to provide response to matters that occurred in 2007 and 2008.
43. Further, the proposed amendments followed a detailed settlement offer in September 2022. At the time of the offer, the Respondent founded its offer on the basis of the allegations contained in the complaint. By attempting to amend her Complaint now, the Commission submits that the Complainant is trying to avoid, frustrate and/or delay the section 34.1(1) hearing process,

which was designed to prevent parties being put to the expense where the Respondent has made a reasonable offer to settle.

44. The Commission points out that the Complainant has known of the deficiencies in her Complaint for some time. She signed her initial complaint certifying that the information contained therein was “correct to the best of [her] knowledge”. If the Complainant wished for the complaint to include a claim of reprisal, it was open to her to have those allegations included when she filed the complaint. It was also available to include those allegations following the receipt of the investigation report on March 26, 2019 which the Commission submitted identified that reprisal was not considered part of the investigation process. Counsel for the Commission points out that section 24 of the *Code* enables the Executive Director of the Commission to amend a Complaint at the time of the issuance of the investigation report. Rather than requesting the amendments at that time, the Complainant waited an additional three years to request an amendment. On these facts, counsel submits that the amendments should not be granted, as they would result in undue prejudice to the Respondent.

45. The Commission also outlines that the proposed amendments do not raise a valid, arguable point with merit. The Commission highlights that, in her original complaint, the Complainant does not identify that her termination was related to any reprisal or based on a prohibited ground. For the Complainant to now allege that she was terminated for raising issues of harassment several years earlier is “tenuous”. Further, the Complainant’s suggestion that she was terminated for having instituted Respect in the Workplace training is also not supported by the facts outlined in her original complaint. The Commission states that the Complainant has not provided any evidence to support a possible valid, arguable point with merit.

46. For these reasons, the Commission submits that the Complainant should not be permitted to amend the complaint.

The Complainant's Response to the Replies of the Commission and the Respondent

47. The Complainant recites many of the arguments already included in her initial request to amend. Her counsel also adds additional facts which are neither included in her initial filing, nor in her affidavit, relating to alleged verbal conversations with counsel for the Commission. Her counsel also stipulates that if clarity is required in terms of certain amendments sought, it is open to amending the Complaint further.
48. Part of the concerns raised by the Respondent is that counsel has attempted to frame the issues raised by the reply, but misstated or misunderstood them, specifically on the issue of delay. The Respondent also contends that the Complaint has made new allegations which are factually incorrect, and others not before the adjudicator.

ANALYSIS

(a) The Appropriateness of the Reply

49. The Respondent and the Commission have both raised issues regarding the appropriateness of the Response of the Commission.
50. The function of a response to the reply is intended to be in direct response to the materials provided by the other parties. It is not intended to introduce new evidence or new allegations which were not included in the initial application.
51. I agree that some of the concerns raised by the Respondent and the Commission are well founded. The Response includes restatements or reframing of the Respondent and Commission's positions which are not entirely consistent with what was included in their initial replies. Further,

there are additional facts and allegations that ought not find their way, for the first time, in the Response. However, I will not go so far as to suggest that the entirety of the Response must be deemed inadmissible. The Response does contain specific answer and defence to some of the materials which are set forth in the Commission and the Respondent's respective Replies, which are in direct response to the Application, including the issue of delay and the Complaint form which she certified when she filed her initial Complaint. However, to the extent that the Response raises new issues or is unresponsive to the matters raised in the Replies, these matters will not be considered as part of this Order.

(b) The Request to amend the Complaint

52. In determining a request to amend a complaint, an adjudicator will generally consider the nature of the proposed amendments, the reasons for the amendments, the timing of the request to amend, and the prejudice to the respondent. As noted in the authorities cited by counsel, an adjudicator has the authority to amend a complaint to add a ground of reprisal where there is a common thread linking the amendment to the original complaint or a common factor underpinning both the new and original allegations. A complaint may be open to refinement and fine-tuning, to the extent that the substance of the original complaint is respected.
53. When considering a request to amend a complaint, the adjudicator will consider the issue of the form and substance of the complaint and engage in a balancing exercise when it decides whether or not to exercise its discretion to permit an amendment to a complaint.
54. As noted by adjudicator Harrison in *Pollock, supra*, an adjudicator's ability to amend is narrowly framed, yet:

Section 40 must not be interpreted in a vacuum. That section and the scope of an adjudicator’s amending power must be interpreted in light of the other provisions in the Code from which the adjudicator derives his or her jurisdiction and in the context of the Code as a whole.

Under the Code, an adjudicator is charged with the responsibility of adjudicating “the complaint”. Thus, under clause 29(3)(a), the Commission requests that the minister designate a member of the adjudication panel to adjudicate “the complaint”. Subsection 32(1) states that on receiving such a request, the minister must designate a member of the adjudication panel to hold a hearing and decide the validity of “the complaint”. Pursuant to section 33 of the Code, the adjudicator is provided with a copy of the “the complaint” and, where applicable, the reply. Section 42 provides that subject to the other provisions of the Code, “every adjudicator has exclusive jurisdiction and authority to determine any question of fact, law, or mixed fact and law that must be decided in completing the adjudication and in rendering a final decision respective the complaint.

55. Adjudicator Harrison reviewed relevant case law and concluded that “the complaint” must be interpreted broadly, and that the power to amend a complaint enables the adjudicator to “ensure that the substance of the allegations which have been raised by the complainant can be fully and properly addressed at the adjudication. I adopt the reasoning of adjudicator Harrison that an adjudicator’s amending jurisdiction under section 40 of the Code is not to approve amendment which would substantively alter the complaint or add new or different complaints that do not fall within the

substance of scope of the initial complaint which has been referred for adjudication.

56. The parties agree that the principles outlined in the jurisprudence submitted apply. Specifically, in *Pollock* and in *Hampton, supra*, a three-step process for considering whether or not to allow amendments was elaborated:
- a. The proposed amendment must fall within the scope of the original complaint;
 - b. The proposed amendment raises a valid and arguable point that has merit; and
 - c. The adjudicator ought to exercise [their] discretion in light of the facts and circumstances of the particular case.
57. The first issue raised by the parties is whether I have the necessary jurisdiction under the *Code* to address the request to amend the Complaint. I heard very little by way of opposition to the jurisdictional capacity of an adjudicator to consider a request to amend, given the language contained in the legislation. The objection was primarily concentrated on whether or not I should be exercising my discretion to amend in these circumstances, on these facts. The case law I was asked to review related to specific examples where adjudicators were asked to exercise their discretion. Every request to amend a complaint must turn on the particular facts and the surrounding circumstances of the case in which it is made. The circumstances before me are quite different from those before the adjudicator in the cases presented. However, they also support my conclusion that an adjudicator has the jurisdiction to amend, which is an exercise of discretion, with regard to the proposed amendments.
58. Turning, therefore, to the facts of this case, having regard to the test outlined in *Pollock, supra*, and *Hampton, supra*. As it relates to the first part of the test, an important consideration is whether or not the proposed amendments are part of the continuum of the original complaint. In the present case, multiple

amendments are sought, including ones that are editorial or provide additional facts upon which to ground the initial allegations. Some allegations would properly fall under a new ground of reprisal. When this issue was raised with counsel for the Complainant on June 27, 2023, he accepted that some of the amendments were editorial, intended to support the allegations already included in the original Complaint. In contrast, others were related to the new ground of reprisal. Each will need to be addressed in turn.

59. As it relates to the editorial amendments, which are the ones which seek to elaborate upon the original Complaint, I find that some of the amendments sought have a nexus to the original allegations, while others raise entirely new issues (outside vs. inside sales and Workplace Safety and Health, for instance). It is also important to note that some of the allegations predate the Complaint and are not directly related to the allegations in the Complaint.
60. The proposed amendments are contained in several new paragraphs. I have only briefly summarized the amendments for this interim decision to ensure a clear understanding of the conclusions reached. At paragraph 16 of the Complaint, additional facts and allegations regarding an executive of the Employer and events alleged to have transpired in 2015. In this paragraph, significant additions and new allegations regarding outside and inside sales that were not raised in the original Complaint. In paragraphs 19 and 20, the allegations are entirely new, relating to the addition of the ground of reprisal. Here, the Complainant alleges she had discussions with Workplace Safety and Health. At the new paragraph 22 of the Complaint, she seeks to add that she believes to have been terminated due to reprisal for having raised concerns in 2014 with Workplace Safety and Health and for initiating respect in the workplace training. These amendments include additional allegations about the alleged knowledge, actions and demeanour of various Employer representatives.

61. While an adjudicator will often permit amendments that relate to and/or clarify allegations contained in the original complaint, an adjudicator should be reluctant to allow amendments to complaints in the nature of entirely new or unrelated allegations as contained in the initial filing, particularly in situations where a complainant seeks to raise, by way of an amendment, claims that would otherwise be considered to be untimely. I am referring to section 23(1) of the *Code*, which requires that a complaint be filed within one year after the day of the alleged contravention or the last incident in the series of incidents to which the complaint relates, unless the complainant satisfies the executive director to extend the time for filing if there would be no undue prejudice to anyone affected by the delay (section 23(2) of the *Code*).
62. Here, the Complainant generally raised some issues about inside sales and outside sales at the time of filing. However, those issues were related to the issue of the differential treatment each category of employees endured, and specifically that there was a distinction between the outside sales and inside sales employees. In her request to amend, she claims that the roles were “substantially similar”, and she, for the first time, claims that she was denied promotions on the basis of sex. Similarly, the original complaint does not contain any allegations regarding discussions with Workplace Safety and Health. These issues were raised for the first time when she filed her request to amend in December 2022.
63. The facts that the Complainant seeks to add to her Complaint cannot be fairly characterized as mere amendments. The proposed amendments raise new and distinct allegations of discrimination and harassment. There is no suggestion in the Complaint regarding her inability to be promoted, or the alleged career progression of inside sales representatives. There is also no suggestion of the nature and extent of the alleged actions of select employer representatives. If allowed, the proposed amendments would add new and expanded allegations,

all of which were already known to the Complainant when she filed her Complaint.

64. However, even if I were satisfied that it would be appropriate to allow the proposed amendments, permitting these amendments after such a length of time since the original events would result in substantial prejudice to the Respondent in the form of fading memories, lost records and evidence. Amendments must be brought within a reasonable delay for these reasons. The Complainant was aware of the contents of her Complaint when she filed in 2015. She signed the document, with full knowledge of what it contained. She has not explained the delay, beyond stipulating that she always believed the issue of reprisal to be included in the Complaint. She does not make any representation regarding the other amendments she seeks, other than stating that she was unrepresented at the time. Yet, she was assisted by an intake officer and, at various times, on her own admission consulted with legal counsel. At any time, she could have set out her concerns in writing. She also had the opportunity to thoroughly review and ensure the accuracy of the Complaint when she filed in 2015. She had an opportunity to review her Complaint on many occasions over the course of the last eight years since she filed. In these circumstances, it seems unlikely that the Complainant omitted these allegations because she was not represented.
65. And so, while there may be an argument that there is a possible nexus between the editorial amendments sought to be included and the original Complaint, the delay in raising these allegations and the timing of the request militates against granting the amendments. In all of the circumstances, I am not persuaded that it would be appropriate to require the Respondent to defend against new allegations, some of which stem back more than a year prior to the filing of the Complaint or that were not at all contemplated in the

original Complaint, which allegations the Complainant did not seek to raise until her request to amend many years later, in 2022.

66. Given the distinct nature of the allegations and the timing of the request to amend, the request to add these editorial amendments is denied.
67. As noted earlier in this decision, case law indicates that an adjudicator does not have the jurisdiction to add new grounds to a complaint. An adjudicator cannot allow substantive amendments which would result in substantively changing the complaint or adding new grounds. There is nothing in the original Complaint that provides a factual nexus to the new ground of reprisal. Unlike *Pollock, supra*, this is not a situation where the alleged reprisal occurred after the filing of the Complaint. In this case, the reprisal allegations existed in 2015 when the Complainant proceeded with filing. It also existed in 2019, when she was informed of the Board of Inquiry's decision. The allegations are new because they bear no factual, logical, or other connection with the original Complaint. That is to say that the issue of reprisal is not simply added as part of, or in support of, or even as an extension of the facts or allegations outlined in the original complaint. Instead, there are additional facts which are added in order to support the new ground of reprisal. On its own, adding the ground of reprisal would not have any factual foundation.
68. Again, no explanation has been provided for the delay beyond the Complainant stipulating that it was always her intent to have issues of reprisal considered as part of her Complaint, adding that she also not represented at the time. In her request to amend, the Complainant claims that she believed the ground of reprisal to always be a consideration. Yet, the allegation was not included in her Complaint when she signed the form. The Complainant has admitted that the issue of reprisal was also not considered when the Board of Inquiry communicated its investigation report in 2019. She elected not to pursue any request to amend at that time, or at anytime prior. Instead, she waited a

further three years, until 2022, to seek the proposed amendment. This is not a situation which necessitates an amendment as a matter of procedural fairness. This is also not a case where the original Complaint already includes facts relating to the same ground of reprisal, such as further examples of alleged incidents, which would be considered as falling within the scope of the complaint.

69. The onus is on a complainant filling out an application with the Commission to set out the allegation(s) of discrimination, harassment and/or reprisal upon which they are relying and the specific facts that support that/those allegation(s). It is not the responsibility of the Commission or the Respondent to request these specific facts or particulars. If the Complainant was relying upon these allegations as forming part of her Complaint, she properly ought to have requested to amend promptly to set out the specifics or particulars of those allegations. She did not do so. Indeed, the Complainant provided no specifics or particulars of those allegations until 2022, many years after the alleged incidents, and well beyond the release of the Commission's investigation report, filed in 2019. At the very least, upon receipt of the Commission's report, she ought to have known that the issue of reprisal was not included.
70. I have also considered the issue of the actual prejudice to the Respondent if the amendments were allowed. The request is now many years following the filing of the original Complaint, and the allegations, in some cases, related to issues that allegedly arose years prior to the filing of the Complaint. To permit these amendments, given the significant delay and the concerns associated with the same (quality and verifiability of available evidence; availability of witnesses; memory lapse; etc.) is not appropriate at this late juncture. I find that under all of the circumstances herein, as a matter of natural justice and fairness, the new grounds alleged are too weak on their face, too remote from the

original Complaint, and brought forward too late to be advanced at this stage of the process.

71. In summary, I am unable to conclude that the amendments sought were made in a timely fashion. Further, it would not be appropriate for the fair, just and expeditious resolution of this matter to amend the Application in such a way as to add the allegations of reprisal or the editorial amendments.

72. For these reasons, the request to amend the Complaint is rejected.

Dated this 2nd day of October 2023 at Winnipeg, Manitoba

A handwritten signature in blue ink, consisting of a large, stylized 'K' followed by a horizontal line and a diagonal stroke.

K. Pelletier, Adjudicator