

HUMAN RIGHTS ADJUDICATION PANEL

IN THE MATTER OF: A complaint under *The Human Rights Code*, CCSM c. H175

BETWEEN:

Brandi Richardson,

Complainant,

AND

Wilma Galbraith / Kirkwall Properties Ltd.,

Respondent.

APPEARANCES: Karen Sharma, Manitoba Human Rights Commission
Sandra Gaballa, Manitoba Human Rights Commission
Brandi Richardson
Wilma Galbraith, Kirkwall Properties Ltd.

BEFORE: Tracey Epp, Adjudicator

DECISION

I. Introduction

[1] On or about March 30, 2017, Brandi Richardson (the “Complainant”) submitted to the Manitoba Human Rights Commission (the “Commission”) a complaint of harassment (the “Complaint”) against Kirkwall Properties Ltd. (“Kirkwall”). The Complaint was registered with the Commission on or about April 7, 2017 and was subsequently served upon Ms. Wilma Galbraith, President of Kirkwall (“Galbraith”).

[2] The Complainant alleges that she was a tenant of Kirkwall, and that during the course of her tenancy she was harassed by Galbraith on the basis of her age, sex, source of income and family status, contrary to section 19 of *The Human Rights Code* (the “Code”). Section 19 of the Code provides that:

"Harassment

19(1) No person who is responsible for an activity or undertaking to which this Code applies shall

(a) harass any person who is participating in the activity or undertaking; or

(b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

"Harassment" defined

19(2) In this section, "harassment" means

(a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or

(b) a series of objectionable and unwelcome sexual solicitations or advances; or

(c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance."

[3] On or about November 15, 2019 I was appointed to hear and decide upon the Complaint. On February 7, 2020 I conducted an in person pre-hearing conference (the "Conference"). In attendance were Ms. Sandra Gaballa, counsel for the Commission, the Complainant, Galbraith as President of Kirkwall and two others in support of Galbraith.

[4] For the purposes of this Interim Decision, two issues were raised during the Conference. Firstly, Ms. Gaballa advised that the Commission was considering the bringing of a motion to add Galbraith as a respondent pursuant to section 40 of the Code. Secondly, service of documents on a go forward basis was discussed. In that regard, the Complainant confirmed that service of any documents could be affected upon her through Ms. Gaballa. Ms. Gaballa confirmed that she/the Commission could be served by email at her Commission email address. However, Galbraith advised that she does not have an email address, and requested that any and all communications be provided to her via regular mail. To that end, it was agreed that email communications between myself and Ms. Gaballa would be printed and mailed to Galbraith. Galbraith confirmed for the record her address for service. Galbraith was also directed to cease attempting to communicate with me directly, and instead, to direct any questions she may have to her own legal counsel should she retain same, or to Ms. Gaballa.

[5] By email dated February 20, 2020 the Commission advised that it was seeking to have Galbraith added as a respondent, and by email dated February 27, 2020 advised that Galbraith was opposed to their motion.

[6] By letter dated March 4, 2020, I ordered that the Commission provide written submissions in support of its motion by March 31, 2020, and that submissions by Kirkwall and Galbraith be completed by May 15, 2020. Counsel for the Commission provided their submissions to me via email on March 31, 2020. Neither Kirkwall nor Galbraith provided written submissions. I am satisfied that both Kirkwall and Galbraith were aware of the motion brought by the Commission, and that they were aware of their opportunity to make submissions and chose not to submit same.

II. The Motion

[7] The original Complaint is against Kirkwall only. The Commission seeks to add Galbraith as a respondent pursuant to section 40 of the Code. Section 40 of the Code provides as follows:

"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."

[8] For the reasons set out herein, I hereby grant the motion and add Galbraith as a respondent to the Complaint.

[9] In *Ross v. 4888970 Manitoba Ltd.*¹, Adjudicator Pinsky addressed the issue of a motion to add a personal respondent made on the final day of hearing during closing argument. At paragraph 96 of the *Ross* decision, Adjudicator Pinsky refers to another of his decisions in *Cote v. Manitoba Hydro*² as follows:

"96. In *Cote v. Manitoba Hydro*, 2015 MBHR 6 (CanLII) I had occasion to canvas the law on adding a party. In that case I found that the following questions were relevant 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 Human Rights Code and the stage of proceedings to add the party?

[10] The Code expressly provides that an adjudicator may amend a complaint prior to the conclusion of a hearing. The jurisdiction to make such an order is discretionary. However, section 40 of the Code specifically provides that an adjudicator shall not exercise their authority under section 40 if satisfied that undue prejudice would result to any party or any person proposed to be added as a party.

III. Is there some reliable evidence on which I could make a finding of liability against Galbraith?

[11] The Commission pleads and relies upon section 19 of the Code wherein no person responsible for an activity or undertaking to which the Code applies may harass any person participating in the activity or undertaking. Further, the Commission submits that all material times, Galbraith was the President of Kirkwall. In addition, the Commission submits that the allegations in the Complaint specifically involve Galbraith and no other person. The Commission

¹ [2017] M.H.R.A.D. No. 2

² [2015] MBHR 6 (CanLII)

therefore submits that the allegations, if proven, could support a finding that Galbraith contravened the Code and further, that there is reliable evidence on which I could make a finding of liability against Galbraith.

[12] The test as enunciated in *Cote* is whether or not there is *some* reliable evidence on which I could make a finding against Galbraith. Galbraith is the sole individual against whom the allegations of harassment are made. Galbraith is the President of Kirkwall and appeared at the Conference on its behalf.

[13] Based upon the above, I find that there is some reliable evidence on which I could make a finding against Galbraith.

IV. Does a potential remedy involve Galbraith?

[14] In *Ross*, Adjudicator Pinsky found that the requested remedies of an educational program and an amount of damages would necessarily involve the owners of the respondent in that matter. It was of import that a proposed sale of the corporate respondent had proceeded and there was a concern that if the sale closed, the complainant would potentially be without remedy.

[15] The Commission in its submissions in the case at hand advises that it will be requesting that I award remedies to secure future compliance with the Code to ensure that Kirkwall does not harass its tenants in future. Further, the Commission advises that it will be seeking compensation for injury to the Complainant's dignity, self-respect and hurt feelings. The Commission submits that each of these remedies will necessarily involve Galbraith as the "owner" of Kirkwall and the sole individual against whom the complaints are made.

[16] According to the Manitoba Companies Office records provided by the Commission in its submissions, Kirkwall is an active business corporation filed in accordance with the laws of Manitoba. Galbraith is Kirkwall's President, and sole Officer and Shareholder. I agree that any educational remedy must involve both Kirkwall and Galbraith – both as the directing mind of the corporation but also as the individual against whom the allegations of harassment are made. For that reason alone, I find that the potential remedy being sought by the Commission, that being an educational program, must involve Galbraith.

V. Is it in the interest of justice given the remedial nature of the Code and the stage of proceedings to add Galbraith?

[17] The Commission submits that section 19 of the Code provides that a person in a position responsible for an activity or undertaking, such as the owner of a rental property, must not harass others in the provision of housing, or knowingly permit or fail to take steps to terminate the harassment. Further, the remedial provisions of the Code, specifically section 43(2), relate to ordering a party to "do or refrain from doing anything in order to secure compliance" with the Code.

[18] In that regard, the Commission submits that any order to ensure compliance with the Code would be meaningless unless directed at Galbraith. Further, the Commission submits that it is common practice, especially in harassment cases, to name the alleged harasser as a personal respondent.

[19] In *Bourrier v. Phil-Can Services Ltd.*³ and *Jedrzejska v. A+ Financial Services Ltd.*⁴, the individual accused of the harassing behaviour was included as a respondent from the outset. In *Scott v. Lou's Moving and Storage Ltd.*⁵ Adjudicator Goodman granted the Commission's request to add a personal respondent at the outset of the hearing. In *Ross*, supra, Adjudicator Pinsky granted the Commission's request to add a personal respondent on the final day of hearings during closing argument.

[20] The Commission submits that I am not precluded from adding parties at this stage of the proceedings and I agree. The hearing will not commence for another five weeks, and the Notice of Hearing has yet to be published. I also agree that it is commonplace to name the person alleged to have been harassing as a personal respondent.

[21] Most importantly though, I find that it is in the interest of justice, given the remedial nature of the Code, to add Ms. Galbraith as a party. While any award against Kirkwall would not be meaningless as asserted by the Commission, an award against Galbraith would certainly have more meaning and effect and would serve to enforce the remedial nature of the Code.

VI. Would Galbraith suffer undue prejudice if added as a party?

[22] In *Nash v. Natividad*⁶, Adjudicator Manning held that the "real and substantial prejudice not capable of being cured" test as enunciated in *Cote* relates to a denial of natural justice and fairness. In that regard, Adjudicator Manning considered the principles of natural justice and fairness: the requirement that an individual possess sufficient information to (1) make representations on their own behalf; or (2) appear at a hearing or inquiry; and (3) effectively prepare their own case and to answer the case they have to meet.

[23] The Commission submits that Galbraith has had knowledge of the Complaint since date of service, and I agree, as it was Galbraith who filed a reply on behalf of Kirkwall.

[24] The Commission submits that Galbraith attended the Conference at which time the Commission advised that it was considering the bringing of the within motion, and further, demonstrating knowledge of the upcoming proceedings and committing to preparing for same. Again, I agree.

[25] As a result, the Commission submits that there would be no undue prejudice to Galbraith, or any other party, if I were to grant the Commission's motion and add Galbraith as a respondent.

[26] As stated above, Galbraith has knowledge of the Complaint as she was served with same and filed a reply. Further, she attended the Conference at which time she agreed to hearing dates, amongst other things. More importantly, she was made aware of the Commission's potential motion to add her as a respondent. Further, Galbraith went on the record with her request that she be provided all communications via regular mail, at the address given by her. My letter dated March 4, 2020 advising of the Commission's motion was sent to her via regular mail on March 4, 2020 at 1230pm, as was the Pre-Hearing Conference Memo.

³ [1999] MHRBAD No. 1

⁴ [2016] MHRBAD No. 101

⁵ [1992] MHRBAD No. 1

⁶ [2018] MBHR 2

However, to be certain, I also sent both letters to Kirkwall and Galbraith via courier, which letters were delivered to the correct address on the same day at 1607hrs. Accordingly, I find that Galbraith has sufficient information to appear at the hearing dates set, prepare a defence on behalf of Kirkwall and herself, and respond to the case against them. As a result, I find that there is no undue prejudice to Galbraith if she is added as a party.

VII. Conclusion

[27] In addressing the questions as set out in *Cote*, I find that given the nature of the allegations raised and further, that all of the allegations involve Galbraith, there is some reliable evidence on which I could make a finding of liability against Galbraith. I also find that a potential remedy would involve Galbraith. I further find that it is in the interest of justice given the remedial nature of the Code and the stage of proceedings to add Galbraith as a respondent. Finally, I find that Galbraith would not suffer undue prejudice if added as a party.

[28] For all of the reasons set out above, I hereby order that Wilma Galbraith be added as a Respondent to the within proceedings.

Dated this 12th day of June, 2020.

Tracey Epp, Adjudicator