

Jamieson v Halifax Regional Centre for Education, 2026 NSLB 131

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ORDER

**LB-2939
2026 NSLB 131**

**LABOUR BOARD
Nova Scotia**

BETWEEN

Mike Jamieson	- Appellant
- and -	
Halifax Regional Centre for Education	- Respondent
- and -	
Director of Occupational Health and Safety	- Director

NATURE OF MATTER

Appeal under s. 69 of the Occupational Health and Safety Act

DATE OF FILING

February 18, 2026

BEFORE

Raffi A. Balmanoukian, Vice-Chair

REPRESENTATIVES

Mike Jamieson, the Appellant
Megan Thompson and Ian C. Pickard, for the Respondent
Desiree Tan, for the Director

CASE MANAGEMENT DATE(S)

April 26, 2026
(March 19, 2026, scheduled but not held)

DATE(S) AND PLACE OF HEARING

Hearing conducted by paper review.

ORDER

Appeal dismissed.

REASONS FOR DECISION

Introduction

- [1] Michael Jamieson (“Mr. Jamieson” or the “Appellant”) appeals from a decision of the Director of Occupational Health and Safety (“OHS” or the “Director”). The decision is dated January 22, 2026 and was issued by Officer Bradley Whalen (the “Officer” or “Officer Whalen”).
- [2] The Notice of Appeal is dated January 17, 2026. At Case Management, it was clarified and not disputed that this is a typographical error and intended to read February 17, 2026. This is consistent with its filing the next day, February 18, 2026. There are no ancillary issues arising from this.

- [3] The complaint before the Director alleges that Mr. Jamieson was subject to a threat of reprisal for making a complaint to OHS. Officer Whalen found that although Mr. Jamieson may subjectively “have felt threatened or intimidated” by emails emanating from counsel for the Halifax Regional Centre for Education (“HRCE” or the “Respondent”), they were solely for legitimate business reasons and accordingly not a prohibited reprisal under the *Occupational Health and Safety Act* (“OHSA” or the “Act”). Mr. Jamieson disagrees and appeals, and attempts to draw a distinction between a prior grievance whose settlement the subject emails would purport to impugn, and the current reprisal complaint.
- [4] All parties agreed that I could proceed to hear and determine the appeal alone, and by way of paper review. All provided documentary submissions and argument, the last of which were filed on May 29, 2026.
- [5] As these reasons will develop, I agree with the Director that the impugned actions by HRCE and its counsel do not constitute prohibited reprisals, and the appeal is dismissed.

Background

- [6] It is common ground that Mr. Jamieson filed a grievance in October 2024. It was settled just before a hearing scheduled for June 2025 (The Director says nine days before). The language of that settlement includes an acknowledgement that “all matters related to the grievance have been fully resolved.” It contains a confidentiality clause “except as necessary for enforcement of the Agreement or as required by law.”
- [7] Mr. Jamieson acknowledges that settlement, and that it is binding.
- [8] During the arbitration process (2025), Mr. Jamieson alleged another instance of prohibited reprisal. I will call this the “First Reprisal Complaint.” He appealed against a decision that it would not be investigated, and that subsequent appeal was dismissed as untimely (see *Jamieson v Halifax Regional Centre for Education*, 2025 NSLB 343).
- [9] As a consequence of the first complaint and adjudicative process, HRCE’s counsel advised Mr. Jamieson’s union that it considered Mr. Jamieson to be in violation of the settlement agreement and that, if he persisted, the settlement would be void. It is this correspondence that Mr. Jamieson says is a second, prohibited, threat of reprisal. In other words, Mr. Jamieson says that by threatening to void the settlement if he pursued his first appeal, the HRCE engaged in a second prohibited act. I will call this the “Second Reprisal Complaint” and is the issue at bar.
- [10] I am prepared to accept, as Mr. Jamieson alleges, that the impugned emails constitute a separate, insular act from the (now-dismissed) First Reprisal Complaint and I am prepared to assume, for the purposes of this decision, that the Second Reprisal Complaint may not be encompassed in the settlement effected before the arbitrator. In making these comments, I emphasize that I have reviewed the OHS file as disclosed to the Board and these are working assumptions for the benefit of Mr. Jamieson. Ultimately, however, Officer Whalen found that the Second Reprisal Complaint was founded on facts occurring

for “legitimate business reasons,” and as such was not prohibited by s. 45 of the OHSA. Against that, Mr. Jamieson appeals to the Board.

The Issue

- [11] Does the correspondence from HRCE, reproduced below and taken as a whole and in context, constitute a prohibited reprisal or threat of reprisal within the meaning of the OHSA?

Analysis and Decision

- [12] Section 45 of the OHSA defines, and then prohibits, “reprisals” or threats thereof:

45 (1) In this Section and in Section 46, "reprisal" means an action that adversely affects an employee with respect to terms or conditions of employment or any opportunity for employment or promotion and includes dismissal, layoff, suspension, demotion, transfer of job or location, change in hours of work, coercion, intimidation, imposition of any discipline, reprimand or other penalty including reduction in wages, salary or other benefits, or the discontinuation or elimination of the job of the employee.

(2) No employer or union shall take, or threaten to take, a reprisal against an employee because the employee has acted in compliance with this Act or the regulations or an order or direction made thereunder or has sought the enforcement of this Act or the regulations or, without limiting the generality of the foregoing, because

(a) of the participation of the employee in, or association with, a committee or the employee has sought the establishment of a committee or performed functions as a committee member;

(b) of the association of the employee with a representative or the employee has sought the selection of a representative or performed functions as a representative;

(c) the employee has refused to work pursuant to subsection 43(1);

(d) the employee has sought access to information to which the employee is entitled by this Act or the regulations, or has been assigned the role of observer pursuant to Section 42;

(e) the employee has testified or is about to testify in any proceeding or inquiry pursuant to this Act or the regulations; or

(f) the employee has given information to the committee, a representative, an officer or other person concerned with the administration of this Act or the regulations with respect to the health and safety of employees at the workplace,

unless the employer or union, as the case may be, establishes that such action is solely motivated by legitimate business reasons. [emphases added]

[13] In addition, HRCE submits that Section 17(2) of the OHSA contains a prerequisite:

(2) Where an employee believes that any condition, device, equipment, machine, material or thing or any aspect of the workplace is or may be dangerous to the employee's health or safety or that of any other person at the workplace, the employee shall

- (a) immediately report it to a supervisor;
- (b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and
- (c) where the matter is not remedied to the employee's satisfaction after the employee reports in accordance with clauses (a) and (b), report it to the Division. [emphasis added]

[14] Further, HRCE submits that Section 46(1) of the OHSA provides Mr. Jamieson with two mutually exclusive paths of complaint and that he, having chosen the arbitration route, cannot make a complaint to an OHSA officer:

46 (1) An employee who complains that

(a) an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to

(i) subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7) or 50(8),
or

(ii) the regulations; or

(b) an employer or a union has taken, or threatened to take, a reprisal contrary to subsection 45(2),
may

(c) where the employee is not subject to a collective agreement under which the employee is entitled to file a grievance, within thirty days, make a complaint in writing to an officer; or

(d) where the employee is subject to a collective agreement under which the employee is entitled to file a grievance,

(i) have the complaint dealt with by final and binding arbitration under the collective agreement, or

(ii) within thirty days, make a complaint in writing to an officer, if an arbitrator has not seized jurisdiction over the matter under the collective agreement, in which case the matter shall be dealt with by the arbitrator under the collective agreement.

- [15] Finally, although no party cited this to me, and although this paper review is *de novo* before me, I consider Regulation 30.5 of the Workplace Health and Safety Regulations, NS. Reg. 52/2013 as amended to be germane:

30.5 In any appeal, the onus is on the appellant to establish, on a balance of probabilities, that the order, decision or administrative penalty should not be confirmed.

- [16] I am prepared, for the purposes of this appeal, to dispense with the issues of ss. 17 and 46 summarily. Regarding the need to comply with the prerequisites set out in s. 17(2), Mr. Jamieson's case is essentially that HRCE committed a reprisal in connection with his 'First Reprisal Complaint' when their counsel communicated in a way that was alleged to be coercive or intimidating. This is not akin to a condition of the workplace that an employee would be expected to comply with s. 17(2) in addressing (as contemplated by paragraph 16 of *Wooten v. 323195 Nova Scotia Limited*, 2014 NSLB 72). For the purposes of this decision, it is adequate to assume that Mr. Jamieson's complaint and appeal are not barred by this requirement.
- [17] Similarly, I am prepared for current purposes to proceed on the basis that Mr. Jamieson's Second Reprisal Complaint, the one at bar, is distinct from his decision to proceed by way of arbitration in his original grievance. This is consistent with common sense; once the settlement was in place, the arbitration was over. The fact that Mr. Jamieson alleges that HRCE's reaction to his "First Reprisal Complaint" constituted grounds for his "Second Reprisal Complaint" is outside what was before the arbitrator.
- [18] Accordingly, what we are left with is whether HRCE, by intimating that Mr. Jamieson's settlement would be vitiated by his pursuit of the "First Reprisal Complaint" constitutes a prohibited threat of reprisal within the meaning of s. 45 of the OHSA.
- [19] And so we come to the HRCE emails.
- [20] On October 16, 2025 – after the grievance settlement – HRCE wrote to Mr. Jamieson's union that it was aware of the First Reprisal Complaint. HRCE's counsel, Ian Pickard, said:
- Hi Jill. Please see below and attached. Mike is in violation of the grievance settlement. It appears to be moot as his appeal is not timely. We trust he will not proceed further otherwise the settlement is void.
- [21] This was forwarded to Mr. Jamieson. He took this as a threat. On October 24, 2025, Mr. Pickard replied to Mr. Jamieson's union as follows:

On behalf of HRCE its highly offensive for Mr. Jamieson to suggest HRCE Counsel contacting NSTU Counsel to raise concerns about him choosing to not abide by a grievance settlement equates to him being "threatened by his employer".

Pointing out to his Union Counsel that if Mr. Jamieson continues to act contrary to an agreement he entered into there will be ramifications is not a threat. It's a fact.

It's appropriate and fair for HRCE to expect that teachers not intentionally violate settlement agreements that they enter into. Choosing to do so does and will continue to have consequences.

[22] Mr. Jamieson then instigated the Second Reprisal Complaint. As noted, Officer Whalen concluded that they were “solely motivated for legitimate business reasons” within the meaning of s. 45(2) of the OHSA. Mr. Jamieson appeals and, to reiterate, this is the subject matter at bar.

[23] In analyzing whether these statements constituted a prohibited “threat of reprisal” within the meaning of s. 45 of the OHSA it is important – particularly given the somewhat overlapping subjects and timelines – what is being appealed against and what is not. The settlement is not appealed. Not appealed, either, is whether Mr. Pickard’s statements are correct that pursuit of the First Reprisal Complaint would or would not vitiate the settlement. What is appealed is whether the emails constitute a prohibited threat of reprisal. As noted, I am prepared to assume for current purposes that this appeal – that is, the Second Reprisal Complaint – is separate from the settled matter before the arbitrator, and is not subject either to s. 17(2) or s. 46(1) of the OHSA.

[24] The leading case on “reprisal” (or in this context, threat of reprisal) is *Wooten v. 323195 Nova Scotia Limited*, 2014 NSLB 72. It formulates a three part test, paraphrased by Vice-Chair Lafferty in *Northeastern Protection Service Inc. v. Wheatley*, 2021 NSLB 57 as follows:

[14] The Board is guided by its previous decisions and in particular the Board’s decision in *Wooten v. 323195 Nova Scotia Limited*, 2014 NSLB 72 (“*Wooten*”) which sets out three questions to ask when assessing a discriminatory action complaint. The *Wooten* test, as summarized in *MacIsaac v. Channel Maintenance Services*, 2016 NSLB 172 at para. 12, requires the Board to ask the following three questions:

1. Was the [complainant] subjected to a “discriminatory action” defined at section 45(1) of the *Act*?
2. Was the alleged discriminatory action in relation to compliance with, or enforcement of, the *Act*?
3. If there was discriminatory action, did it occur solely because of legitimate business reasons?

[25] This test has been approved and applied by the Court of Appeal in *Gannett v. Halifax Regional centre for Education*, 2026 NSCA 16.

[26] The burden is on the Appellant on the first two branches of the test. If he fails in either of them, there is no reprisal (or threat of reprisal). If he meets both, at first instance the

burden shifts to the employer to demonstrate that it was motivated “solely” by “legitimate business reasons.”

- [27] I say “at first instance” because that is the situation at the Officer level. As this is an appeal from the Officer, the burden can be said to remain with the Appellant to demonstrate to a civil standard that the Officer’s order “should not be confirmed.” For practical purposes, this is something of a distinction without a difference in a paper review – if it is demonstrated that it is more likely than not that there was a discriminatory action, or more likely than not that such an action was not solely for legitimate business reasons, Mr. Jamieson’s appeal succeeds. If the reverse is true, the appeal fails.
- [28] Once again, I am prepared to dispose of the appeal giving the benefit of certain assumptions to Mr. Jamieson. To a certain extent, assumptions are necessary as we are dealing with what Mr. Jamieson considers “threats of reprisals,” rather than actual actions that took place and which can be evaluated against a factual outcome.
- [29] I agree with Union counsel when it evaluated Mr. Pickard’s October 16, 2025 email with Mr. Jamieson as follows:
- They are alleging the settlement will be void if Mike proceeds further. I’m not sure that is the automatic impact of a breach, but he should be cautioned. [emphasis added]
- [30] I’m not sure either. In the context of a “threat of reprisal,” it doesn’t require an answer. What matters is whether saying that pursuance of the First Reprisal Complaint would result in “an action that adversely affects an employee with respect to terms or conditions of employment....” within the meaning of s. 45(1) of the OHSA. As a matter of common sense, if the effect of pursuing the First Reprisal Complaint would be that the HRCE considered the settlement resolution “void,” it would constitute an adverse effect on Mr. Jamieson’s terms and conditions of employment – at its best, the grievance would be resurrected with the ensuing uncertainty, expense, and if unsuccessful, consequences.
- [31] Similarly, I am of the view that for the purposes of this appeal, one can conclude that the impugned HRCE position would be “in relation to compliance with, or enforcement of, the Act.” It took the position it did directly in response to learning that Mr. Jamieson was pursuing the First Reprisal Complaint. As such, there was a direct linkage between Mr. Jamieson’s attempt to use a mechanism provided for in the OHSA, and the consequences that HRCE said would result if he continued. Mr. Pickard’s statement is abrupt and clear: it “is not a threat. It’s a fact.”
- [32] And so we come to what can be called the “business reasons” justification. It must be remembered that the impugned action, to NOT constitute a reprisal, must be “solely” for legitimate business reasons. It cannot be one of the reasons, or even a primary reason. It cannot be for a non-legitimate business reason. This saving provision is an exception which absolves what would otherwise be considered a threat of a reprisal. It must be read narrowly with that in mind.

- [33] It is here that Mr. Jamieson fails, for two reasons: First, as noted, although the burden of justification falls on HRCE, the burden on appeal is on Mr. Jamieson to establish to a civil standard that the Officer's order should not be upheld. Officer Whalen concluded that "it has been determined that the employer has established that the emails in question were solely motivated by legitimate business reasons and a prohibited reprisal did not occur." Officer Whalen clearly considered both the proper test and the burden on the employer at the initial level.
- [34] Second, and more fundamentally, to the extent that the burden remains at the Board level on HRCE to establish justification by sole motivation on legitimate business grounds, I am satisfied the burden has been discharged.
- [35] Certainly the impugned emails were aggressive. They were indelicately composed; an "elbows up" approach to what HRCE said would be the consequences of Mr. Jamieson's pursuit of the First Reprisal Complaint. Whether those consequences were (or could be) correct is not the point; the point is HRCE took a legal stance that the settlement covered all aspects of the grievance, and that Mr. Jamieson was in breach of the NDA contained within it. Whether the means by which that position was communicated was "nice" or not, or even downright rude, does not meaningfully detract from whether there was a sole business motivation.
- [36] It may be gainsaid that there was an intimidation element to these emails, even as communicated from counsel to counsel rather than to Mr. Jamieson directly. True enough. Mr. Jamieson is hardly a wallflower who shrinks from a dispute. The history of the grievance, First Reprisal Complaint, appeal from that disposition, Second Reprisal Complaint, and this appeal, bear that out. Aggressive language which does not devolve into abuse, coercion, or actual threats may be offensive, but does not remove its potential to be exclusively for legitimate business reasons. One may look askance at the language chosen, but it came from experienced legal counsel obviously engaged to defend HRCE interests. Litigation, like a revolution, is not a dinner party and it must be borne in mind that consequences and reprisals, while related, are not synonymous and concentric.

Additional matter: the authority that doesn't exist

- [37] A final point must be discussed. Mr. Jamieson, in his intelligent and erudite submissions, stated that "the Labour Board applies the test from Wootton (Wootton v. Nova Scotia (Department of Labour), Nova Scotia Labour Board Decision 2209)" and the purported test thereunder. Counsel for the HRCE points out that this case does not exist. I further ascertained that Board file 2209 is a completely separate matter and not germane to the issue at hand.
- [38] The "test" Mr. Jamieson says that "Wootton" stands for is also meaningfully different from that set out in Wooten. Mr. Jamieson says the test is "whether (1) the employee engaged in protected activity under the [OHSA]; (2) the employer imposed adverse treatment or consequences; and (3) there is a sufficient connection between the protected activity and the adverse action." He then goes on to argue each point.

- [39] I do not know the source of Mr. Jamieson’s assertions. I do not know if it is the product of AI-generated hogwash. But hogwash it is. No copy of this purported case was in his materials. Nor have I found one.
- [40] Reports of hallucinated cases and arguments are almost daily news in legal circles. It is incumbent upon all parties, self-represented or not, to authenticate and reproduce authorities on which they rely. Decision-makers must be confident that the materials and submissions before them truly exist and stand for the propositions argued.
- [41] The Nova Scotia Court of Appeal, the Supreme Court of Nova Scotia, the Nova Scotia Provincial Court, and the Supreme Court of Nova Scotia in Bankruptcy and Insolvency have all issued protocols on the use of generative AI in their respective Courts. All urge caution. All mandate disclosure. Ultimate responsibility for content and accuracy remains with the “human in the loop.” Misuse and abuse can lead to lack of confidence in the justice process, its integrity, and the ability of its decision-makers to rely on the representations made to them. In particular, where a self-represented litigant is not subject to regulatory or licensing oversight, it is especially important that the Board be vigilant to the integrity of the material before it. When or if generative AI is used, the authorities should be verified and reproduced, and above all its use and purpose of use disclosed to the Board and the other parties.
- [42] As I have said, the Board does not know whether or to what extent Mr. Jamieson’s “Wootton” authority was hallucinated, or how. But it was inaccurate and afforded the Appellant no credit in advancing the points he otherwise universally presented intelligently and respectfully.

Order

- [43] The decision of the Officer is upheld, and the appeal dismissed.

MADE BY THE LABOUR BOARD AT HALIFAX, NOVA SCOTIA ON THE 15TH DAY OF SEPTEMBER, 2026
AND SIGNED ON ITS BEHALF BY THE VICE-CHAIR

RAFFI A. BALMANOUKIAN
VICE-CHAIR