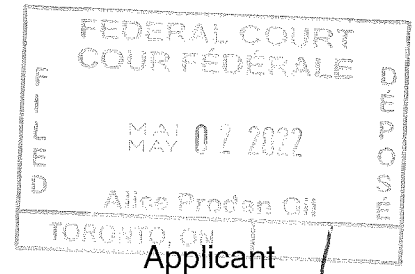


Court File No. T-887-22

FEDERAL COURT

BETWEEN:

MARCUS WILLIAMS



-and-

THE BANK OF NOVA SCOTIA

Respondent

NOTICE OF APPLICATION

Pursuant to Section 18.1 of the Federal Courts Act R.S.C. 1985, c.F-7, s. 18.1 and Rule 300 of the Federal Courts Rules, SOR 98-106

TO THE RESPONDENT:

TAKE NOTICE THAT a proceeding has been commenced by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this Application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application or to be served with any documents in the Application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the Applicant's solicitor WITHIN 10 DAYS after being served with this notice of Application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 2, 2022

Issued by: _____

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APPLICATION

Overview

1. This is an Application for Judicial Review in respect of a decision of the Canadian Human Rights Commission dated March 28, 2022 and issued March 31, 2022, requesting that the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into a complaint.

2. In rendering the decision, the Commission was dealing with a complaint filed by the Applicant, Marcus Williams (the “Complainant”), under the Canadian Human Rights Act, which was filed on November 15, 2017.

3. Marcus Williams was an employee of the Respondent, The Bank of Nova Scotia. In the complaint, Marcus Williams complains that he was a victim of discrimination, contrary to the *Act*, on the basis of race, national or ethnic origin, colour, age and sex.

Marcus Williams worked as a casual status CARDS officer working 37.5 full-time hours every week for the Bank of Nova Scotia commencing on February 9, 2015, until the termination of his employment contract on October 26, 2017.

4. On June 12, 2019, the CHRC issued its decision, pursuant to section 41(1) of the Canadian Human Rights Act, to deal with my Complaint. The full text of the decision is as follows:

Having considered the Complaint Form, the Report for Decision and the submissions of the parties, the Commission decides, pursuant to s. 41(1) of the Canadian Human Rights Act, to deal with this complaint. The Commission notes that the complainant was employed by the respondent for a period of approximately two years and eight months, working on a full-time basis with casual employee status. The complainant had satisfactory performance evaluations. During this period of employment, the complainant submitted applications for 15 posted contract term or non-casual positions, all of which were at, or one level above, the level of the position in which he was employed.

He was not offered an interview in respect of any of these applications. Several other positions at, or one level above, the level of the position in which the complainant was employed were filled without a posted competition during the same period. The complainant's employment was terminated by the respondent for reasons which the respondent is alleged to have variously described as "lack of work" and "discontinuance of a function," shortly after the complainant had requested a pay increase. These reasons for termination are difficult to reconcile with the hiring activity of the respondent, as noted above. Discrimination is rarely overt, and often manifests itself in subtle ways. It is the Commission's view that it is not plain and obvious that the complainant's allegations are mere bald assertions.

5. November 17, 2020, the Deputy Chief Commissioner and Commissioner of the Canadian Human Rights Commission wrote a letter to the Chairperson of the Canadian Human Rights Tribunal stating that "Upon review of the Complaint Form, the Investigation Report (the "Report"), and the post-disclosure submissions of the parties, the Commission decides pursuant to subparagraph 44(3)(a)(i) of the Canadian Human Rights Act ("CHRA") to request the Chairperson of the Canadian Human Rights Tribunal (Tribunal) to institute an inquiry into this complaint, because having regard to all the circumstances, an inquiry is warranted.

With respect to the application of paragraph 41(1)(e) of the CHRA, the Commission notes that in many instances the allegations appear, on their face, to encompass a continuous pattern of discrimination. For example, the chart which appears at paragraph 34 of the Report notes that the complainant applied for a total of 187 internal job positions in other departments. 113 of these applications occurred between February 2015 and November 14, 2016; an additional 87 of these applications occurred between November 15, 2016, and October 15, 2017. There is no meaningful lapse of time apparent between the two subsets of allegations, which are virtually identical in every other respect. As such, all of the allegations related to the 187 internal job positions in other departments appear to form part of a continuous pattern of discrimination, to

which the time limitation established by paragraph 41(1)(e) of the CHRA does not apply. The same reasoning applies to the allegations related to yearly financial bonuses, the lack of pay increases and the 20 CARDS officer staffing decisions. Severing portions of the allegations related to each of these matters is not appropriate where what is being referenced is an allegedly continuous pattern of discrimination.

This leaves two additional categories of allegation: the allegations with respect to 15 job postings (between May 12, 2015, and February 17, 2016), as well as the allegations with respect to nine CARDS officers moved to a new department. Given that there is chronological overlap between the entire time frames of these allegations and the earliest of those which the Commission has found above to form part of a continuous pattern of alleged discrimination, and given that these allegations are based on the same issues, there is sufficient nexus to indicate that the allegations with respect to 15 job postings (between May 12, 2015, and February 17, 2016), as well as the allegations with respect to nine CARDS officers also form part of a continuous pattern of alleged discrimination. As such, the Commission requests the Chairperson of the Tribunal to institute an inquiry into all of the allegations of this complaint, because having regard to all the circumstances, an inquiry is warranted.”

6. December 7, 2020, Justice McHaffie issued his decision regarding the Bank of Nova Scotia’s Judicial Review application filed on July 22, 2019, in which he dismissed the application for judicial review on the ground that it was premature.
7. October 21, 2021, Justice Fothergill issued his decision regarding the Bank of Nova Scotia’s second Judicial Review application filed on December 16, 2020, in which he determined two issues in favor of the Applicant and that one issue required reconsideration, and stated that:

The application for judicial review is allowed in part. The Commission’s decision to refer Mr. Williams’ human rights complaint to the Tribunal in its entirety, including those aspects that its investigator considered to be untimely, is remitted to the Commission for reconsideration.

In all other respects, the application for judicial review is dismissed.

8. December 7, 2021, a revised final Canadian Human Rights Commission Package was forwarded to the decision maker for the one issue that required reconsideration.
9. March 31, 2022, a different Commissioner of the Canadian Human Rights Commission writes to a different Chairperson of the Canadian Human Rights Tribunal stating that:

Before rendering its decision, the Commission reviewed the Complaint Form dated April 10, 2018; the Report for Decision dated September 11, 2020, and attachments; the submissions of the parties filed in response to the Report for Decision of September 11, 2020, (the Respondent's dated October 23, 2020, and the Complainant's undated); the decision of the Federal Court rendered on October 21, 2021; the submissions of the parties following the decision of the Federal Court (both dated November 29, 2021), and an e-mail chain between the Respondent and Commission staff between November 15, 2021, and December 7, 2021, regarding the length of the parties' submissions in response to the decision of the Federal Court. After examining this information, the Commission decides, pursuant to subsection 41(1) of the Canadian Human Rights Act, to deal only with the allegations which occurred after November 15, 2016, because: the allegations occurring prior to November 15, 2016, should be severed from the remaining allegations and not dealt with because they occurred more than one year before the Complaint was submitted and it would be prejudicial to the Respondent to be required to deal with them. The Commission further decides, pursuant to paragraph 44(3)(a) of the Canadian Human Rights Act, to request that the Chairperson of the Canadian Human Rights Tribunal ("Tribunal") institute an inquiry into the allegations that occurred after November 15, 2016, because having regard to all the circumstances of the complaint, further inquiry is warranted.

The Complainant alleges that the Respondent discriminated against him on the basis of his colour, race, national or ethnic origin, sex and age in employment by treating him in an adverse differential manner and by terminating his employment on October 26, 2017. The Complainant was classified as a casual employee throughout his employment, and despite submitting almost 200 applications for permanent positions, he was not hired for any of them. He alleges that he was also denied year end bonuses and benefits and that he did not receive pay increases, all of which he would have received if he had been hired for any of the positions for which he applied.

The Commission referred this Complaint in its entirety to the Tribunal for further inquiry. This was contrary to the recommendation in the Report for Decision, which had been to sever the allegations which arose prior to November 15, 2016, and to refer only the allegations which occurred after that date to the Tribunal.

The Respondent sought judicial review of the Commission's decision and on October 21, 2021, the Federal Court allowed the Respondent's application in part. The Court concluded that the Commission had failed to address the Respondent's argument that it would be significantly prejudiced if the entire Complaint, including events that occurred more than one year prior to the date the Complaint was submitted, were referred to the Tribunal. The Court also determined that the Commission did not sufficiently explain its reasons for departing from the recommendation in the Report for Decision that only the timely aspects of the Complaint should be referred to the Tribunal. Those two issues were referred back to the Commission for reconsideration. The Federal Court determined, however, that the Commission's conclusions that the Complaint is not vexatious or frivolous were reasonable and do not require further consideration.

The first issue to be determined is the date on which the Complaint was filed. The Respondent argues that April 10, 2018, should be considered the date on which the Complaint was filed because that was the date on which the Complainant submitted his Complaint in a form that was acceptable to the Commission. However, there is no dispute that the Complainant first contacted the Commission on November 15, 2017, when he submitted an online complaint kit. He was informed that he would receive a response from the Commission within 30 days. The Complainant asserts that he had heard nothing further by February 8th, 2018, and when he contacted the Commission on that date he was informed that there was a backlog and his Complaint had not yet been processed. He was advised by a Commission staff member in late March that he would need to modify his Complaint so that it would be in a form acceptable to the Commission, and his modified Complaint was filed and accepted on April 10, 2018. It is clear that the delay of more than 4 months before his Complaint was reviewed by the Commission was entirely attributable to administrative delay by the Commission. In the Commission's view, it would be unfair to the Complainant to consider April 10, 2018, as the date on which his Complaint was filed. Accordingly, the Commission determines that November 15, 2017, should be considered as the date on which it was filed.

As directed by the Federal Court, the Commission must consider the Respondent's argument that it would experience significant prejudice if events that occurred more than one year before the Complaint was filed are referred to the Tribunal.

The Respondent explains that in early 2017 it transitioned to a centralized human resource software system. Prior to that date, all applications for internal positions were sent directly to the appropriate manager by e-mail and those communications would no longer be available. The

Respondent's practice was to not retain applications for more than one year, and it would have to search manually through thousand of postings in order to obtain information with regard to the almost 200 positions for which the Complainant applied. It would be extremely difficult to identify key witnesses, memories will have faded due to the passage of time, and almost half of the relevant managers have left the company. As a further example, the Respondent notes that only the Complainant's former direct manager would have information in relation to the year end bonuses, and he is no longer with the company.

After carefully considering the Respondent's submissions, the Commission determines that it would experience significant prejudice if it were required to respond to allegations which took place more than one year before November 15, 2017. The Commission decides, therefore, to sever and not refer to the Tribunal any allegations which arose prior to November 15, 2016.

The Commission agrees with the reasoning in the Report for Decision that the allegations of discrimination which occurred before November 15, 2016, are not linked to the timely allegations so as to create a continuous pattern of discrimination. In the Commission's view, they are a series of separate and independent events. Many different managers and recruiters were involved in the hiring processes in question and the Complainant applied for a wide variety of positions which required different qualifications. The Commission adopts the reasoning and the recommendation in the Report for Decision which support that the Commission should refer only the timely aspects of this Complaint to the Tribunal for further inquiry.

The Commission requests, therefore, that pursuant to paragraph 44(3)(a) of the Canadian Human Rights Act, the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into the allegations in this

Complaint which arose after November 15, 2016, because having regard to all of the circumstances of this Complaint, further inquiry into those allegations is warranted

10. This Application will be supported by the following material:

(a) The November 17, 2020, letter from the Deputy Chief Commissioner and Commissioner of the Canadian Human Rights Commission to the Chairperson of the Canadian Human Rights Tribunal stating that “there is no meaningful lapse of time apparent between the two subsets of allegations and all of the allegations appear to form part of a continuous pattern of discrimination, to which the time limitation established by paragraph 41(1)(e) of the CHRA does not apply”.

(b) The judicial review decision issued on December 7, 2020 by Justice McHaffie regarding the Bank of Nova Scotia’s Judicial Review application filed on July 22, 2019

(c) The second judicial review decision issued on October 21, 2021 by Justice Fothergill regarding the Bank of Nova Scotia’s Judicial Review application filed on December 16, 2020,

(d) The revised final Canadian Human Rights Commission Package that was forwarded to the decision maker regarding the complaint that was sent December 7, 2021

(e) The March 31, 2022, letter from a different Commissioner of the Canadian Human Rights Commission to a different Chairperson of the Canadian Human Rights Tribunal stating that “pursuant to subsection 41(1) of the Canadian Human Rights Act, to deal only with the allegations which occurred after November 15, 2016

(f) such further and other material that this Honourable Court permit.

11. The Applicant makes Application for:
 - a. an order quashing and dismissing the March 31, 2022 decision of the Canadian Human Rights Commission;
 - b. an order allowing the November 17, 2020 decision of the Canadian Human Rights Commission in accordance with this Honourable Court's direction;
 - c. a declaration that the March 31, 2022 decision of the Canadian Human Rights Commission is unreasonable;
 - d. a stay of the November 17, 2020 decision of the Canadian Human Rights Commission
 - e. its costs of this Application on a substantial indemnity basis; and
 - f. such further and other relief as this Honourable Court permit.

12. The reasoning in the Mach 31, 2022 decision by the Canadian Human Rights Commission is not logical to expect someone employed in a fragile employment status to initiate a complaint while still employed with the employer, and since a pattern of discrimination has been established it is logical to assume intimidation tactics would be used such as loss of employment in order to deter an employee from filing a complaint while still an employee

And since the complaint was filed on November 15, 2017 and nearly 5 years has passed and no hearing date has been scheduled, it is illogical to assume that if a complaint would have been filed by Marcus Williams while employed and nearly 5 years would have passed before there was a hearing to address the complaint allegations, it is more logical to assume that there would be retaliation used against Marcus Williams while employed such as termination.

The Bank of Nova Scotia had established a psychological hostile work environment towards Marcus Williams while employed that resulted in a poisoned work environment that did not treat him equally compared to his colleagues with the continuous discriminatory tactics used against him to deny full-time status employment, entitlement to medical and dental benefits, vacation time, pension earnings, job promotional opportunities and his basic human right to earn a livelihood was hindered.

13. The applicant can provide the job postings with names of hiring managers and e-mails sent along with the resume he used to apply for available job positions to compare against other applicants, however the Bank of Nova Scotia's claim that they cannot provide these records is peculiar and therefore requires an inquiry.

Also, it was a team of hiring managers that made the decisions of which applicants would be hired for available CARDS Officer positions that Marcus Williams had been employed for nearly 3 years and all the hiring managers for these roles were located in the same department of credit administration of the Bank of Nova Scotia as the Applicant and were not decisions made independently.

Internal job openings applied for outside of the credit administration department by the Applicant required any hiring manager interested in offering a position to the Applicant to first speak with management from his current department before approval would be given allowing them to hire him, and therefore an inference is reasonable to assume that if Marcus Williams was being treated differently compared to his colleagues, and since a hostile work environment existed in his current department there is a likelihood that managers in his current department would not give a favorable recommendation if a manager in a different department was interested in hiring him for a position.

14. The Bank of Nova Scotia would not be prejudiced if the original decision of November 17, 2020 by the Canadian Human Rights Commission to address the

allegations in the complaint beginning from February 9, 2015, since no discriminatory allegations were addressed during the Unjust Dismissal hearing and the Adjudicator determined that he did not have the jurisdiction to proceed, so in essence no decision was made as to whether the reason to terminate was for a “lack of work” or “discontinuance of a function”, as these decisions are based on administrative improprieties and not discriminatory reasons.

Therefore, the Bank of Nova Scotia would not be responding to allegations a second time in a different forum since no allegations have been addressed to date in any forum.

The grounds for the Application are:

15. A consistent pattern was used by the Bank of Nova Scotia to treat the Applicant in a different manner compared to other employees that indicates the likelihood of an inference of discrimination.
16. The November 2020 decision by the Deputy Chief Commissioner and Commissioner of the Canadian Human Rights Commission that the entire complaint warrants an inquiry supersedes the second investigator’s recommendations.
17. The recent decision of March 31, 2022 by the Canadian Human Rights Commission to change the timeline of when the allegations began and therefore a reduction in the number of allegations that warrant an inquiry compared to the original decision of November 2020 that stated there was a continual pattern of discrimination which occurred towards Marcus Williams throughout the duration of his employment with the Bank of Nova Scotia is concerning and requires a judicial review.

May 2, 2022

Marcus Williams
2 Holgate Court – Apt #C
Brampton, Ontario L6Z 1S1
905-460-4491

Court File No.

FEDERAL COURT

MARCUS WILLIAMS Applicant

- and -

THE BANK OF NOVA SCOTIA Respondent

NOTICE OF APPLICATION

(Filed this 2nd day of May 2022)

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Applicant