

Court File No: T-208-19

FEDERAL COURT

BETWEEN:

GARY CURTIS

-and-



THE BANK OF NOVA SCOTIA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicants 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 requested by the Applicant. The Applicant requests that this application be heard in Toronto.

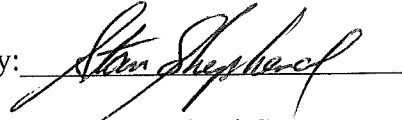
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a Solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Court Rules, 1998 and serve it on the applicant's solicitor, or when the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with notice of application.

Copies of the Federal Court Rules, 1998, 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, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU

January 29, 2019

Issued by:



Address of Federal Court
Local office: 180 Queen Street West
Suite 200
Toronto, Ontario
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AND TO: HICKS MORELY HAMILTON STEWART STORIE LLP

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Lawyers for the Respondent, The Bank of Nova Scotia

APPLICATION

This is an applicant for a judicial review of a final decision of the Canadian Human Rights Commission ("Commission") Complaint file No. 20130462 dated January 2, 2019 dismissing the application. The Commission refused to investigate the applicant's termination of employment with the Respondent, the Bank of Nova Scotia based on discriminatory bank policies and practices as per its mandate. The Commission's decision must be set aside or quashed.

The Applicant makes this application for:

1. An order declaring that :
 - (a) The Commission decision regarding to sever the allegations and to perform another discretionary 41 (1) (e) was invalid and unlawful due to non-compliance with the applicable requirements of the Canadian Rights Act.
 - (b) The Commission has no jurisdiction to amend the complaint and re-order another 41 (1) (e) objection and sever the allegations which was already decided on in 2013 and 2015 by the Commission.
 - (c) in the alternative, the decision of the Commission severing the allegations and performing another discretionary 41 (1) (e) objection with properly investigation the complaint after 5 years was unreasonable.
2. An order quashing or setting aside the final decision of the Canadian Human Rights Commission dated January 2, 2019 in Complaint File No. 20130462.
3. An order that the complaint in file No. 20130462 be sent back to the Canadian Human Rights Commission for investigation into the termination of the applicant's employment with the Respondent, the Bank of Nova Scotia, based on

discriminatory practices, by a different investigator and send the file to the Human Rights Tribunal for further inquiry.

4. In the alternative, an order that the matter in Compliant file No. 20130462 be set back to another investigator, to investigate the complaint and send the matter to Human Rights Tribunal for a hearing.
5. An order requiring the respondent to pay the applicant's their costs for this application.
6. Such further and other relief as the applicant may advise and this Honourable Court may permit.

The grounds for this application are:

1. The Commission failed to a perform an investigation into BNS's discriminatory employment practices during the termination of the applicant's employment, while it has accepted the applicant's complaint for over six (6) years, which does not meet the purpose of its mandate.
2. The commission has failed to carry out the investigation and has not interviewed the applicant and not accepted the applicant's submissions/evidences; which has been delayed for six years.
3. The commission is performing a third S41 objection that it already conducted in 2013 and 2015 and CHRC already found that the applicant's complaint was within the prescribe time limit of the last occurrence.
4. The commission showed significant lack of procedural fairness by not allowing the submissions from the applicant and did not properly interview the applicant,

which is a mandatory requirement in conducting a thorough procedurally fair and neutral investigation.

5. The Bank of Nova Scotia (BNS) has violated several sections of the Canadian Human Rights Act in its dealing with the applicant, which the Commission was made aware but ignored without investigating. BNS violated section 5, 7,8, ,10, 11, 12 and 14 of the Act against the applicant.
6. The Bank of Nova Scotia (BNS) has been destroying evidence in spite of instructions in 2013 and 2015 to preserve all document relevant to the CHRC complaint, investigation and declaratory relief.
7. BNS continues its discriminatory actions of preventing the applicant from gaining employment in the banking industry by placing a **life time ban** on the applicant through his employee file.
8. The Bank of Nova Scotia (BNS) has unlawfully placed a BCPIO flag warning on the applicant's name for seven years with the option to renew in 2019, prevented him from gaining employment in any financial institution in Canada, denying him his right to employment in his chosen field of banking to for which the applicant has multiple qualifications that he cannot use, as a result of this lifetime ban placed discriminatorily by BNS.
9. The commission failed to apply procedural fairness by not being open and transparent about its process of handling the applicant's complaint, by refusing to accept the applicant's submissions and evidences and refusing to interview the applicant.
10. The commission failed to appoint and investigator to investigate the applicant's complaint and allow the applicant a right to be heard. Ms. Pascale Legace, took the applicant's file from Gaston Boisvert team without explanation. She

appointed a new temporary part-time staff member Meghan Cavanagh on her team, to carry out the investigation in conjunction with another discretionary 41(1) (e) objection of the commission, without providing reasons contrary to the Act.

11. The commission showed no procedural fairness by allowing BNS to continuously file the same section 41(1) objections several times and CHRC additionally adding a fourth discretionary section 41(1) (e), without ever getting the respondent to account for the veracity of its alleged defence to the applicant's discrimination complaint, which has caused significant unreasonable delay in the applicant's complaint being investigated.
12. The commission showed no procedural fairness by its lack of transparency about reasons for the commission not investigating the complaint, while performing the same section 41(1) (e) objection that the commission already ruled did not apply. This appears that CHRC is trying to prevent the applicant's evidence from being heard.
13. The commission has failed to promote natural and fair justice by not conducting a thorough investigation in five years, despite repeated requested from the applicant.
14. The commission showed no procedural fairness by rejecting the applicant's submissions to amend his complaint, which only classified the reported discrimination actions into the various sections of the Act, which allows the applicant to present his full case.
15. The Commission has abused the process by doing a fourth section 41 (1) objection, which the 41(1) (e) was already completed by the commission when it ruled the reported violations were in time, in both 2013 and 2015.

16. The Commission has not disclosed the purpose of 'list of factors' provided by individual that is obviously not apprised to the facts of applicant's complaint.
17. The commission has failed to carry out its mandate for over five years, by not investigating the complaint which would determine the real prejudice and harm that the effect of discrimination has caused the complainant.
18. The commission has allowed the respondent (BNS) to continue its employment discrimination, by its assumption that since the complainant was no longer employed by the respondent, he was not vulnerable within the workplace, showing lack of neutrality in its judgment.
19. The respondent, BNS did not disclose to the commission that it had flagged the applicant's name throughout the banking and financial industry and prevented him from gaining employment in his field of profession for seven years. This discriminatory is currently ongoing for more than six years and counting while the commission has failed to correct this major discriminatory issue.
20. The respondent, BNS had coded the applicant's termination as not eligible for re-Hire and placed a lifetime ban on his name. BNS forced the applicant to resign and failed to make this disclosure to the applicant or HRSDC, Federal Court and the CHRC, as they are required to do by the Bank's human resources policy and its statutory duties a Federally Regulated Bank. The commission has done nothing to correct this major discriminatory issue.
21. The respondent, BNS, alleged that the suspension of the applicant was lawful and necessary, when BNS employee Shirley Roberts (issuer of the suspension letter April 25, 2012) confirmed in the cross-examination of her affidavit, that the suspension was neither legal nor necessary.
22. The respondent, BNS, employee Shirley Roberts confirmed in the cross-examination of her affidavit that the suspension letter she issued was not legal.

Shirley Roberts (level 7) was not authorized to sign or issue a suspension letter (on behalf of a Vice President of Scotiabank) to the applicant. Shirley Roberts admitted she never recorded the suspension in the BNS computer system, she never put the suspension letter in applicant's employee file and she never copied Human Resources Department on the suspension and only put a copy of the letter in her private file in her desk.

23. The respondent, BNS recanted its allegations that the applicant had submitted fraudulent mortgage transactions. This was disclosed to HRSDC in November 2012, which confirmed that no fraud is proven.
24. The respondent, BNS continues to discriminate against the applicant by imposing a seven year Sift alert warning with Bank Crimes Prevention Investigation Office (BCPIO) with option to renew; when BNS was aware that its allegations were false, which would nullify its claim of qualified privilege.
25. The respondent, BNS, is aware there were several people and departments responsible for approving, verifying, processing and closing the mortgage deals. However, BNS showed differential and unequal treatment, by only accusing and disciplining the applicant and nobody else, when 12 to 15 others BNS employees were involved in the processing of its mortgage deals.
26. The respondent, BNS, has been relying on its bad faith and negligent investigation which it carried out to discriminate against the applicant. BNS selected approx. 17 files based racial profiling of black of African names, which had been closed and funded.
27. The applicant wrote to the commission in 2017 to address the abuse of the 40/41 objection process being done by the Bank of Nova Scotia and the Commission, causing unreasonable delay in the investigation of the complaint and deny the natural justice of the applicant.

28. The respondent, BNS demonstrated differentiate treatment between the applicant and other BNS employees. BNS has not investigated the mortgage files of other MDM's, such as Ragavan Ramanathan, Jimmy Yeung, Mohammed Alkhatib and Danny You, nor has it BNS disciplined the underwriters, Michelle Fletcher and Anne Carver, who actually approve all files, including the files that it subsequently alleged were fraudulent.

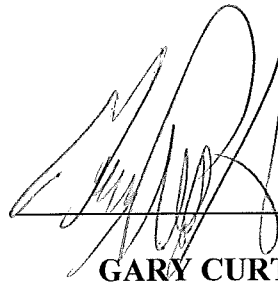
This applicant will be supported by the following material:

1. The supporting affidavit of the applicant;
2. The all submissions made to the commission by the applicant and respondent.
3. The decisions and 41 reports from the Commission;
4. The submissions of the Respondent BNS
5. The supporting affidavit and transcript of cross-examination of the respondent BNS.
6. Such further and other materials as the applicant may advise and this Honourable Court may permit.

The Applicant requests the Court to direct the Commission to send a certified copy of all the applicants' submissions in its possession that it will use toward the investigation in CHRC file #21030462 and certify all the respondent BNS's submissions in its possession that it will be using towards the investigation in CHRC file # 20130462.

All materials that were before the Commission and considered by the Commission when it made the decisions in all the previous 41 Objections filed by the Bank of Nova Scotia.

January 29, 2019



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The Respondent, the Bank of Nova Scotia

GARY CURTIS

(*APPLICANT*)

-and-

BANK OF NOVA SCOTIA

(*RESPONDENT*)

Court File No:



FEDERAL COURT

Proceeding Commenced at Toronto

NOTICE OF APPLICATION

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