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Court File No.	Michael Kowalchuk
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FEDERAL COURT

BEAR RIVER FIRST NATION

Applicant

and

MATTHEW CURRIE and CANDIAN HUMAN RIGHTS COMMISSION

Respondents

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 18.1 OF THE
FEDERAL COURTS ACT, R.S.C. 1985, c. F-7 as amended**

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

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 Halifax, Province of Nova Scotia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any steps 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* and serve it on the Applicant’s solicitor, or where the applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

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

Date _____

Issued by _____
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APPLICATION

1. This is an application for judicial review of the Canadian Human Rights Tribunal (the “**Tribunal**”) decision in 2024 CHRT 84, dated May 14, 2024 (the “**Decision**”), concerning whether Bear River First Nation’s decision to issue and administer a *Protection of Property Act* Notice (“**PPA Notice**”) was based on Mr. Currie’s race contrary to the *Canadian Human Rights Act*. The Applicant challenges the findings, both factually and legally, that the Applicant discriminated against Mr. Currie on the basis of race and retaliated against him for filing a complaint.
2. The Applicant makes application for:
 - (a) An Order setting aside the Tribunal’s determination that Bear River First Nation discriminated against Mr. Currie on the prohibited ground of race in the provision of services, pursuant to s. 5 of the *Canadian Human Rights Act*, through the imposition and administration of the PPA Notice;
 - (b) An Order setting aside the Tribunal’s determination that by refusing to support Mr. Currie’s attendance at the community moose hunt in September 2020, Bear River First Nation retaliated against Mr. Currie, pursuant to s. 14.1 of the *Canadian Human Rights Act*;
 - (c) An Order setting aside the Tribunal’s determination that by refusing to take any action to protect Mr. Currie following the racist attacks of his neighbour, Bear River First Nation retaliated against Mr. Currie, pursuant to s. 14.1 of the *Canadian Human Rights Act*;
 - (d) An Order setting aside the Tribunal’s decision that Bear River First Nation cease its discrimination against Mr. Currie, pursuant to s. 53(2)(a) of the *Canadian Human Rights Act*;
 - (e) An Order setting aside the Tribunal’s decision that Bear River First Nation remove any obstacles to Mr. Currie entering and attending activities in the Band Office, the Cultural Centre, the Educational Centre and the Gas Bar, pursuant to subsection 53(2)(b) of the *Canadian Human Rights Act*;
 - (f) An Order setting aside the Tribunal’s decision that Bear River First Nation pay Mr. Currie, within 60 days, \$15,000 in compensation for the pain and suffering he experienced as a result of the discrimination, pursuant to s. 53(2)(e) of the *Canadian Human Rights Act*;
 - (g) An Order setting aside the Tribunal’s decision that Bear River First Nation pay Mr. Currie, within 60 days, \$2,000 in compensation for the pain and suffering he experienced as a result of the retaliations by Bear River First Nation, pursuant to s. 53(2)(e) of the *Canadian Human Rights Act*;
 - (h) An Order setting aside the Tribunal’s decision that Bear River First Nation pay Mr. Currie, within 60 days, \$8,000 in compensation for its reckless discrimination against him, pursuant to s. 53(3) of the *Canadian Human Rights Act*;
 - (i) An Order setting aside the Tribunal’s decision that Bear River First Nation pay Mr. Currie, within 60 days, \$5,000 in compensation for the reckless retaliation by Bear River First Nation against him, pursuant to s. 53(3) of the *Canadian Human Rights Act*;

- (j) An Interim Order pursuant to section 18.2 of the *Federal Courts Act* staying the Order of the Canadian Human Rights Tribunal against Bear River First Nation pending the determination of this judicial review application as the Applicant;
- (k) An Order for the Applicant's costs in this matter; and
- (l) Such further relief as this Honourable Court may deem appropriate and just in the circumstances.

3. The grounds for the Application are:

Background:

- (a) Mr. Currie filed a complaint with the Canadian Human Rights Commission on May 15, 2019, identified as HR-DP-2806-22, and later a retaliation complaint filed on August 11, 2022, identified as HR-DP-2953-23.
- (b) By Order of the Canadian Human Rights Tribunal, Mr. Currie's complaints, HR-DP-2806-22, and HR-DP-2953-23, were joined on consent of the parties.
- (c) The allegations made and evidence presented by Mr. Currie did not support a *prima facie* case of discrimination on the basis of race. Mr. Currie did not meet the evidentiary burden as he did not establish that he was discriminated against under the *Canadian Human Rights Act*.
- (d) Mr. Currie has not experienced any acts of retaliation against him by filing a complaint with the Canadian Human Rights Commission. The allegations of retaliation made by Mr. Currie were unsubstantiated as Mr. Currie did not present any evidence of retaliatory acts of any kind during the hearing.
- (e) The Tribunal determined that Mr. Currie had established a *prima facie* case that Bear River First Nation discriminated against him based on race in when it issued an unnecessarily broad PPN preventing Mr. Currie from entering and attending activities in most public buildings in the community, and in the way it administered the PPA Notice on April 8, 2020.
- (f) Additionally, the Tribunal determined that Mr. Currie established a *prima facie* case that Bear River First Nation retaliated against him for filing his complaint when it failed to take measures to protect Mr. Currie and his family from the alleged violent actions of their neighbour and in its exclusion of Mr. Currie from the September 2020 community moose hunt.

Grounds:

- (a) Pursuant to paragraph 18.1(4)(a) of the *Federal Courts Act*, the Decision acted without jurisdiction or goes beyond the Tribunal's jurisdiction when ordering the removal of "all obstacles for Mr. Currie to access the Band Office, the Gas Bar, the Cultural Centre, and the Education Centre", despite acknowledging that overturning a PPA Notice, made under provincial legislation, was beyond its jurisdiction. Ordering the removal of all obstacles preventing Mr. Currie from accessing Band Office, the Gas Bar, the Cultural Centre, and the Education Centre as stipulated in the PPA Notice, *would* inevitably involve overturning a PPA Notice, that was lawfully issued pursuant to the Nova Scotia *Protection of Property Act*, and Bear River First Nation's Chief and Council's inherent right to govern the First Nation, pursuant to the provisions of *Indian Act*, R.S.C., 1985, c. I-5.

- (b) Pursuant to paragraph 18.1(4)(d) of the *Federal Courts Act* – Mr. Currie did not make out a *prima facie* case of discrimination or retaliation on the ground of race, and the decision-maker based their decision on an erroneous finding of facts that they made in a perverse or capricious manner without regard for the material before them.
- (c) Pursuant to paragraph 18.1(4)(d) of the *Federal Courts Act*, the Decision is internally inconsistent and is based on erroneous findings of facts that they made in a perverse or capricious manner without regard for the material before it. The Decision required a global analysis of the facts presented at the hearing, weighing the balance of all the evidence, before arriving at its findings. The Decision is unreasonable for the following reasons, among other reasons:
- a. The Decision failed to consider the totality of the evidence before the Tribunal. As a result, the decision-maker unreasonably confined the assessment of the evidence presented by Mr. Currie without thorough consideration of the evidence presented by Bear River First Nation. In doing so, the Decision failed to acknowledge the multiple warnings Bear River First Nation provided to Mr. Currie with respect to his inappropriate behavior prior to issuing the PPA Notice. Additionally, there is no mention in the Decision of Bear River First Nation’s efforts to lift the restrictions of the PPA Notice, despite both the documentary and oral evidence presented during the hearing. Oral and documentary evidence demonstrated that Bear River First Nation did indeed temporarily lift the restrictions to permit Mr. Currie to attend a community cultural event. Not to mention, Bear River First Nation stated that if Mr. Currie displayed appropriate behavior at the said community cultural event, Bear River First Nation Chief and Council would consider lifting the PPA Notice. These positive actions were entirely dismissed without reason or justification. Finally, there was no evidence to suggest that the intention of Bear River First Nation was to issue the PPA Notice indefinitely. On the contrary, the evidence supported that Bear River First Nation issued the PPA Notice to ensure the safety of its staff members in their respective workplaces *only* while Mr. Currie continued to display inappropriate behavior.
 - b. Multiple instances throughout the Decision suggest Bear River First Nation’s Band Administrator’s, Kerry Payson, decision to contact the local RCMP detachment was “disproportionate and not a reasonable response”. Seeking assistance from local RCMP members when safety concerns arise, particularly during the COVID-19 pandemic and in situations where an individual has repeatedly threatened to enter a building, from which they have been prohibited from entering, was not only rational but a measurable response. Despite the absence of evidence to support the claim, the decision-maker suggests Bear River First Nation treated Mr. Currie like a “violent criminal” and expressed “unconscious bias and stereotypes of black men as violent”. These erroneous findings formed the basis of the decision-maker’s inference that race was a factor in Bear River First Nation’s response to contact the local RCMP detachment on April 8, 2020. Furthermore, the Decision infers Bear River First Nation should be responsible for the actions of the local RCMP members. Such a conclusion is entirely unreasonable, as Bear River First Nation has no ability to control or influence the actions of local RCMP members.
 - c. The Decision fails to properly consider the altercation between Mr. Currie and his neighbour. The evidence presented during the hearing clearly demonstrated that Bear River First Nation took the allegation seriously and handled it in the same manner as

it would have done with similar allegations in the past. Consequently, Mr. Currie was treated the same as any other Bear River First Nation Band member. The decision-maker's conclusions are without merit and did not support a finding that the handling of the incident with Mr. Currie's neighbour was in any way influenced by race.

- d. The decision-maker fundamentally erred in making their own determination of whether the PPA Notice was properly issued rather than determining whether Bear River First Nation Chief and Council acted with racial motivation when issuing the PPA Notice. There is a clear distinction between whether there were valid reasons for issuing the PPA Notice and assessing whether the decision to issue the PPA Notice was racially motivated. The evidence does not support that race was a factor in the issuance of the PPA Notice.
- e. The Decision's finding that there was unconscious bias at play when Bear River First Nation issued and administered the PPA Notice was entirely unreasonable. The fact pattern did not support a determination of unconscious bias, as the decision to issue the PPA Notice against Mr. Currie was a single incident rather than a pattern of repeated behavior. Accordingly, there was flawed reasoning and improper application of the test for unconscious bias that was not supported by the evidence.
- f. The Decision unreasonably suggests that evidence of a person physically touching another person or having a history of violence is required in order to justify the issuance of a PPA notice. Organizations such as Bear River First Nation have the authority to determine the expectations and parameters for a person's presence within its public establishments. Most often, PPA notices are issued to any person displaying threatening or intimidating behaviors, disrupting business of an organization, violating policies, and most importantly, need not require the individual to have caused physical harm or inflicted physical injury.
- g. The Decision omitted to consider key aspects of the evidence, leading to inaccuracies in its findings. At no time did Bear River First Nation's Chief and Council impose limitations on Councillor Carol Ann Potter's interactions with "specific segments of the community", nor was there ever any decision made by Bear River First Nation Chief and Council on this matter. Consequently, the decision-maker relied on this evidence to support erroneous findings. Additionally, Councillor Carol Ann Potter did not refuse to provide Mr. Currie with a timeline; instead, Councillor Carol Ann Potter indicated Bear River First Nation Chief and Council would address Mr. Currie's inquiry in due course, which was further supported by the evidence presented at the hearing. Contrary to the Decision, Mr. Currie did make a direct threat against Councillor Carol Ann Potter by stating "*you are going down*", as evidenced by Councillor Carol Potter's oral testimony. Finally, the silent video evidence presented at the hearing did not capture the entire interaction between Mr. Currie and Councillor Carol Ann Potter. Although, the silent video evidence did not show Mr. Currie pointing at Councillor Carol Ann Potter, it is unreasonable to suggest the absence of this, means it did not occur. As such, the decision-maker erred in relying on this to support a finding that Mr. Currie was not threatening or bullying towards Councillor Carol Ann Potter.
- h. The Decision failed to consider alternative measures that were offered by Bear River First Nation and made use of by Mr. Currie to enable him to continue to have access to services, such as arranging for others from his household to attend the Bear River

First Nation Gas Bar on his behalf to avail himself of the tax-free gas and his tobacco allotment. Oral testimony at the hearing clearly demonstrated that Mr. Currie's family members were attending the Bear River First Nation Gas Bar to pick up his tobacco on his behalf, and therefore, there was no disruption to this service. Additionally, Bear River First Nation never prohibited members of Mr. Currie's household to attend any of the restricted locations on his behalf. Evidence demonstrating Bear River First Nation encouraged this arrangement was provided during the hearing.

- i. The Decision improperly finds that Bear River First Nation Chief and Council were unlikely influenced by the November 15, 2018, event in issuing the PPA Notice. Evidence presented during the hearing revealed the existence of files maintained in the Band Office on Band members. More particularly, the Band Administrator, Kerry Payson, gave evidence affirming the existence of a file containing detailed notes of the interactions between staff persons and Mr. Currie. Dismissing this evidence was improper and, despite the decision-maker's finding to the contrary, this event did in fact form part of the necessity in issuing the PPA Notice against Mr. Currie.
- j. The decision-maker improperly relies on Mr. Currie's inconsistent testimony. On multiple occasions throughout the hearing, Mr. Currie denies receiving a "valid" PPA Notice and claims he was unaware the restrictions of the PPA Notice were in effect on April 8, 2020. The decision-maker overlooked the glaring inconsistency of Mr. Currie's claim that he never received a "valid" or "legally enforceable" PPA Notice, or that he was "unaware" of the PPA Notice's restrictions, given that Mr. Currie appealed the decision to issue the PPA Notice just days after receiving it.
- k. The decision-maker made findings that it appears an RCMP officer drug Mr. Currie out of the car and compelled him to turn off the engine and remain inside his car on April 8, 2020, despite acknowledging the absence of the video to support this allegation. It raises questions about how such findings can be made in the absence of supporting evidence.
- l. The Decision unreasonably considers that "Mr. Currie never did anything to reasonably make staff feel threatened or unsafe", despite evidence led during the hearing to the contrary. The decision-maker erred by not placing themselves in the position of the individuals during these events. Making such a determination requires both objective and subjective analysis, yet the decision-maker neglected to consider the perspectives of the individual persons during their interactions with Mr. Currie and the events leading up to the decision of Bear River First Nation Chief and Council to issue and administer the PPA Notice.
- m. Throughout the Decision, the decision-maker relies on false misrepresentations, and consequently makes erroneously findings that Mr. Currie was alienated from his culture and community when he was "not able to attend Mr. Kerwyn's high school graduation located at the Band Office". Mr. Kerwyn graduated from Annapolis West Education Center in Annapolis Royal, Nova Scotia, which is outside of Bear River First Nation, and beyond the limitations of the PPA Notice. Contrary to the Decision, Bear River First Nation did not deny Mr. Currie access to Mr. Kerwyn's graduation. If Mr. Currie was not able to attend Mr. Kerwyn's graduation, it was for reasons beyond the restrictions of the PPA Notice; thus, at no fault of Bear River First Nation.

- n. The Decision unreasonably considers that Bear River First Nation discriminated against Mr. Currie in its exclusion of Mr. Currie from the September 2020 community moose hunt. Evidence presented at the hearing clearly demonstrated that Bear River First Nation did not exclude Mr. Currie from the September 2020 community moose hunt, but rather did not support Mr. Currie’s attendance. Both documentary and oral evidence demonstrated that the PPA Notice had no bearing on Mr. Currie’s ability to attend and participate in the community moose hunt if he chose to do so.
 - o. The Decision erroneously discerns the basis on which the Tribunal awarded damages to Mr. Currie for pain and suffering. Mr. Currie did not provide any evidence whatsoever to support his claim that the issuance and administration of the PPA Notice was the direct result of his health conditions. The evidence at the hearing fails to establish a link between the PPA Notice and the fact that “Mr. Currie now relies on at least nine medications a day” or “his quality of life is not a quarter of what it was due to his pain and suffering”.
- (d) The foregoing errors were made without jurisdiction or beyond the Tribunal’s jurisdiction, denied procedural fairness to the Applicant, erroneously relied on factual material, were errors in facts or were otherwise unreasonable, and thus there are permissible grounds for review under s. 18.1 of the *Federal Courts Act*.
 - (e) Such further and other grounds as counsel may advise and this Honourable Court permit.
4. This application will be supported by the following material:
- (a) The Complaints;
 - (b) The Decision of the Canadian Human Rights Tribunal;
 - (c) The Certified Tribunal Record; and
 - (d) Such further and other material as counsel may advise and this Honourable Court should permit.

The Applicant requests the Canadian Human Rights Tribunal to send a certified copy of the record upon which its decision was based to the Applicant and to the Registry within 20 days.

The Applicant requests this matter be heard in Halifax, Province of Nova Scotia.

DATED AT HALIFAX, NOVA SCOTIA, the 12th of June, 2024.



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FEDERAL COURT

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