

**FORM 301 Rule 301
Notice of Application**

Court File No.

B E T W E E N:

FEDERAL COURT

(Court Seal)

ROYAL BANK OF CANADA

Applicant

- and -

RICHARD ILLES

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

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 or, if the Applicant is self-represented, on the Applicant, 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.

Date _____ Issued by _____
(Registry Officer)

Address of
local office: 180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: **RICHARD ILLES**
49 Webb Ave.
Brantford, Ontario N3T 6S6

AND TO: **MARIA GRACE ILLES**
49 Webb Ave.
Brantford, Ontario N3T 6S6

Representative of Richard Illes

AND TO: **CANADIAN HUMAN RIGHTS COMMISSION**
344 Slater Street, 8th Floor
Ottawa, ON K1A 1E1

Tel: 888 214 1090
Fax: 613 996 9661
Email: info.com@chrc-ccdp.gc.ca

AND TO: **ATTORNEY GENERAL OF CANADA**
284 Wellington Street
Ottawa, Ontario
K1A 0H8

APPLICATION

This is an Application for Judicial Review in respect of the decision of the Canadian Human Rights Commission (the “**Commission**”) dated July 26, 2023 (the “**Decision**”) concerning a human rights complaint (the “**Complaint**”) filed by Richard Illes (the “**Complainant**”) on or around November 10, 2022 against the Royal Bank of Canada (“**RBC**”). The Decision was delivered to RBC by letter dated August 9, 2023.

The Applicant makes Application for:

1. An Order quashing and setting aside the Decision;
2. An Order substituting the Decision for a determination that the Complaint falls within the enumerated grounds in section 41(1) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (“**CHRA**”) and therefore should be dismissed;
3. In the alternative, an Order substituting the Decision for a determination that having regard to all the circumstances of the Complaint, an inquiry into the Complaint is not warranted and therefore should be dismissed;
4. In the further alternative, an Order referring the Decision back to the Commission for re-determination in accordance with directions as the Court considers appropriate;
5. The costs of this Application; and
6. Such further and other relief as counsel may advise and this Honourable Court may permit.

The grounds for the Application are:

7. RBC is a schedule 1 chartered bank under the Bank Act, SC 1991, c 46. RBC offers a range of financial products and services, including personal, small business and commercial banking.
8. The Complainant is an employee of RBC who commenced his employment in or around March 1999.

9. The Complaint concerns allegations that – in the course of settlement discussions between legal counsel regarding a prior human rights complaint by the Complainant against RBC (the “**Prior Complaint**”) – RBC, though its external legal counsel, engaged in retaliation and harassment contrary to the CHRA.

10. RBC denied the allegations contained in the Complaint. RBC also noted that on their face, the allegations relate exclusively to without prejudice settlement discussions which are inadmissible under the rules of evidence. As a result, even if true (which is denied), the Complaint is impossible to prove and is therefore “trivial, frivolous, vexatious or made in bad faith” within the meaning of s. 41(1)(d) of the CHRA.

11. In the Decision, the Commission concludes:

- (a) the Complaint met the definition of retaliation under section 14.1 of the CHRA because:
 - (i) RBC was aware of the Prior Complaint;
 - (ii) the Complaint alleges that RBC threatened to terminate Mr. Illes; and
 - (iii) the Prior Complaint appears to have been a factor because the alleged threat was made in the context of settlement discussions.
- (b) further investigation by the Commission would not assist in determining the issues;
- (c) similar issues of fact and law are being addressed in the Prior Complaint; and
- (d) an exception to settlement privilege potentially applies to the allegations contained in the Complaint.

Having so found, the Decision refers the Complaint to the Canadian Human Rights Tribunal under section 49(1) of the CHRA for further inquiry.

12. The Decision is incorrect and, in the alternative, unreasonable.

13. First, the Commission's analysis and conclusions concerning settlement privilege are general questions of law of central importance to the legal system. In turn, the Commission erred in law by concluding that settlement privilege may not apply to the allegations contained in the Complaint. The Commission's analysis and conclusions in this regard are at odds with the established binding jurisprudence. In any event, the Commission's analysis and decision are at odds with the legal principles concerning privilege that constrain the Commission.

14. Second, the Decision is not based on internally coherent reasoning, is vague and conclusory, and relies on irrelevant considerations.

15. Among other reasons, the Decision:

- (a) Fails to reach a conclusion concerning the application of settlement privilege, which is a critical legal issue directly relevant to its analysis of RBC's position that the Complaint is trivial, frivolous, vexatious and/or made in bad faith.
- (b) Does not provide any explanation for the Commission's conclusion that the Complaint relates to "similar issues of fact and law" to the Prior Complaint. Apart from relating to the same parties, there are no facts contained in the Decision that support such a conclusion.
- (c) Fails to explain how the Commission reached the conclusion that threatening termination of Mr. Iles' employment in the context of settlement discussions means that the Prior Complaint appears to have been a factor.
- (d) Begins by stating that it addresses whether the Complaint should be referred to the Tribunal given its conclusion that the allegations are substantially similar to the Prior Complaint, but goes on to consider and emphasize a variety of unrelated and irrelevant issues and factors.

16. *Federal Courts Act*, RSC, 1985, c. F-7, section 18.1.

17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

This Application will be supported by the following material:

18. Affidavit(s), to be sworn;
19. The Decision and all materials before the Commission in respect of the Decision; and
20. Such further and other material as counsel may advise and this Honourable court may permit.
21. Such other material as the honourable court may request and allow.

The Applicant requests that the Commission send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Commission to the Applicants and to the Registry:

1. The full record before the Commission, including but not limited to any supporting documentation that it relied upon in issuing the Decision.



September 8, 2023

FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Fax: 416 364 7813

Jackie VanDerMeulen (LSO: 58482E)
jvandermeulen@fasken.com
Tel: 416 865 5402

Lawyers for the Applicant