

Federal Court



Cour fédérale

**Date: 20220719**

**Docket: T-510-21**

**Citation: 2022 FC 1075**

**Ottawa, Ontario, July 19, 2022**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**GISELE LEGAULT**

**Applicant**

**and**

**THE BANK OF NOVA SCOTIA o/a  
SCOTIABANK AND THE TORONTO-  
DOMINION BANK**

**Respondents**

**JUDGMENT AND REASONS**

[1] On March 22, 2021, the Applicant commenced this application for judicial review seeking “judicial review in respect of the decision from the Canadian Human Rights Commission given to the Applicant’s Federal Human Rights Complaint on November 11th, 2012”.

[2] However, the Applicant's application record contains no decision of the Canadian Human Rights Commission [CHRC]. It would appear, however, that the Applicant filed a complaint with the CHRC in 2012 in relation to her former employer, Via Rail Canada Inc.

[3] The evidence of the Respondents is that the Applicant is a customer of both Respondents. However, neither of the Respondents are aware of any complaint made by the Applicant to the CHRC in which they have any involvement, nor are they aware of any decision by a federal administrative tribunal or adjudicator involving the Applicant and either of the Respondents.

[4] The Applicant takes issue with the Respondents' respective decisions to discontinue passbook services for all of their customers in November 2020 (in the case of the Toronto-Dominion Bank) and March 2021 (in the case of Scotiabank). The Applicant requests that the Court review these decisions and order that either a grandfather clause or accommodation be created to ensure that senior citizens and disabled citizens are able to continue to use passbook services. The Applicant asserts that the CHRC's decision involving Via Rail is relevant in that it establishes that she has a disability and an inability to learn an on-line program used by Via Rail, which the Applicant asserts should be taken into account in this matter. The Applicant further asserts that the Respondents' decisions to discontinue passbook use violates section 15 of the *Canadian Charter of Rights and Freedoms*, breaches the Respondents' duty to accommodate the Applicant, violates the *Digital Charter Protection Act* (Bill C-11), constitutes a breach of contract and resulted in a denial of procedural fairness to the Applicant.

[5] The Respondents assert that this application should be dismissed as the Court is not validly seized of an application for judicial review as no reviewable decisions exist. Despite the Court's request that the Applicant address this issue during her oral submissions, she failed to do so.

[6] For the Court to be validly seized of an application for judicial review, there must be: (a) an identifiable decision or order in respect of which a remedy is sought; and (b) the impugned decision or order must be made by a federal board, commission or other tribunal [see *Canada (Governor General in Council) v Mikisew Cree First Nation*, 2016 FCA 311 at para 23]. Sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, make it clear that it is only those decisions made and actions taken by a "federal board, commission or other tribunal" that can be the subject of the supervisory jurisdiction of this Court [see *Mikisew, supra* at para 27].

[7] Section 2(1) of the *Federal Courts Act* defines a "federal board, commission or other tribunal" as follows:

<p><b>federal board, commission or other tribunal</b> means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the Constitution Act, 1867</p>	<p><b>office fédéral</b> Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la Loi constitutionnelle de 1867</p>
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[8] Accordingly, only those entities that exercise jurisdiction or powers conferred by or under an Act of Parliament or an order made pursuant to Crown prerogative can be a federal board, commission or other tribunal. As such, the Court must examine the particular jurisdiction or power being exercised in a particular case and the source of that jurisdiction or power [see *Air Canada v Toronto Port Authority*, 2011 FCA 347 at para 47; *Anisman v Canada (Border Services Agency)*, 2010 FCA 52]. Moreover, the conduct or the power exercised that is at issue must be of a public character, as an entity does not act as a “federal board, commission or other tribunal” when it is conducting itself privately or is exercising a power of a private nature [see *Air Canada, supra* at para 50].

[9] The Applicant has not identified a specific decision of a federal board, commission or other tribunal, like the CHRC, for review by the Court. To the extent that the Applicant asserts that the Respondents are federal boards, commissions or other tribunals, the Applicant has not identified a particular jurisdiction or power being exercised by the Respondents and the source of that jurisdiction or power that would render the Respondents federal boards, commissions or other tribunals. Moreover, even if the Respondents could be so characterized (which I am not satisfied is the case), I find that the Respondents’ decision to discontinue passbook services for their clients is a private business decision, for which there is no recourse by way of an application for judicial review [see *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 14-15; *Air Canada, supra* at para 60].

[10] Accordingly, I find that the Court is not validly seized of this application for judicial review and as a result, the application shall be dismissed.

[11] The Respondents have advised that they were each incorrectly identified in the style of cause - the Toronto-Dominion Bank incorrectly named as Toronto Dominion Canada Trust (TDCT) and the Bank of Nova Scotia incorreced named as Scotiabank (BNS). By way of this Judgment, the style of cause shall be amended with immediate effect.

[12] With respect to the costs of the application, the Toronto-Dominion Bank does not seek its costs. The Bank of Nova Scotia seeks its costs in the amount of \$5,000.00. I am satisfied that, as the Bank of Nova Scotia was successful on this application, it is entitled to its costs. However, I am not satisfied that the amount sought is reasonable, having regard to the amount available under the Tariff and the amount of effort expended by the Bank of Nova Scotia on this application. Accordingly, I find that the Applicant shall pay costs to the Bank of Nova Scotia in the amount of \$2,000.00.

**JUDGMENT IN T-510-21**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is hereby amended with immediate effect to correct the names of the Respondents to the Bank of Nova Scotia o/a Scotiabank and the Toronto-Dominion Bank.
2. The application for judicial review is dismissed.
3. The Applicant shall pay to the Bank of Nova Scotia costs in the amount of \$2,000.00.

“Mandy Ayles”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-510-21

**STYLE OF CAUSE:** GISELE LEGAULT v THE BANK OF NOVA SCOTIA  
o/a SCOTIABANK AND THE TORONTO-DOMINION  
BANK

**PLACE OF HEARING:** VIDEOCONFERENCE

**DATE OF HEARING:** JULY 19, 2022

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** JULY 19, 2022

**APPEARANCES:**

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