

**Date: 20090608**

**Docket: T-1707-08**

**Citation: 2009 FC 595**

**OTTAWA, Ontario, June 8, 2009**

**PRESENT: The Honourable Max M. Teitelbaum**

**BETWEEN:**

**RAJIV TOMAR**

**Applicant**

**and**

**THE TORONTO DOMINION BANK**  
**(Formerly Rajiv Tomar v. TD Canada Trust)**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 18(1) of the *Federal Courts Act*, R.S.C. 1985, C-7 of the decision of the Canadian Human Rights Commission (“the Commission”) dated September 24, 2008 dismissing the Applicant’s complaint. The Applicant, Mr. Rajiv Tomar, requests that his complaint be referred to the Canadian Human Rights Tribunal for further inquiry or, in the alternative, that the Commission’s decision be set aside and that the matter be returned to the Commission for reconsideration.

[2] The Applicant also seeks compensation for lost wages, a direction to the bank to provide a letter of reference for use in his future job search, and that his good name be restored in the Canadian banking community.

[3] The Applicant immigrated from India in May 2004. He had nearly two decades of experience in the banking industry and, before arriving in Canada, had taken courses related to Canadian securities regulation and wealth management. In December 2004, he completed the second part of a course on wealth management techniques and earned the designation of Financial Management Advisor.

[4] Mr. Tomar applied for jobs at various Canadian banks. He was successful in securing the position of Trainee Financial Services Representative with The Toronto-Dominion Bank (“the bank”), a position he began in September 2004. Although he was promised three months’ training, after two months he began working as a Financial Services Representative. Mr. Tomar clearly met with success in this position, and earned commendations and rewards.

[5] In January 2006, Mr. Tomar was promoted to the position of Financial Advisor. The parties dispute the extent of the responsibilities of this position, particularly the degree to which the Applicant was responsible for verifying documentation and recommending the approval of applications for loans and lines of credit. The Applicant maintains that he merely gathered the required information and documentation from applicants based on a standard checklist (*e.g.*, employment contracts, letters from employers, income and savings statements, etc.) and forwarded

the information to the branch manager. He denies that he was either trained to or responsible for verifying the accuracy or genuineness of the information and/or documents. The bank, for its part, insists that everyone in positions such as the one held by the Applicant is responsible for performing due diligence, that is, verifying the identities of applicants and ensuring that the information and documents they provide are accurate and genuine.

[6] These differences aside, the parties agree that Mr. Tomar did very well as a Financial Advisor. He was consistently rated among the top Financial Advisors in the Toronto region, and received raises, commendations, and rewards (Applicant's Record, p. 12-21).

[7] On January 11, 2007, Mr. Tomar was told to attend a meeting at head office, where he met with John Crossley, a human resources officer, and two members of the Corporate Security and Investigations department. Mr. Tomar had no prior notice of the subject of the meeting, which focused on several of Mr. Tomar's files. The bank stated that Mr. Tomar had failed to carry out due diligence activities even to a minimum standard. He had accepted, without verifying, documentation and explanations that were clearly suspect. Specifically, the bank lists, among others, the following deficiencies as representative (Respondent's Record, p. 24):

- Six mortgage loans in a three-week period had the purchasers' names changed on the Agreement of Purchase and Sale. Mr. Tomar did not inquire into these circumstances.
- Mr. Tomar did not question an employment verification letter with suspicious letterhead, and poor grammar, spelling, and spacing.
- A borrower produced two employment letters from different employers but with identical content.
- Mr. Tomar accepted, without verifying, salary claims that were inconsistent with the borrower's stated job.

- Mr. Tomar did not question a bank account statement that did not have a name on it.
- Several customers reported very large deposits at other banks; all of the statements proved to be forgeries, and Mr. Tomar did not question why the customers would have sizeable assets, yet also have credit card debts. He also did not question why the customers had not attempted to get mortgages with the banks at which they reported significant assets.

[8] The bank states that Mr. Tomar's failure to perform due diligence resulted in a loss to the bank of over \$100,000. The suspicious, and sometimes fraudulent, documentation came to the attention of the Corporate Security and Investigations department of the bank in the course of an investigation it was carrying out in another matter. In investigating the files of a different employee, the investigator noticed that several questionable clients were also present in Mr. Tomar's portfolio. In keeping with the bank's practice, an investigation was then opened into Mr. Tomar and his practices.

[9] Mr. Tomar maintains that he was not told of resources for verifying documentation, and that the final decision to approve a loan rested with the branch manager.

[10] After the meeting, Mr. Tomar was instructed not to discuss the matter with anyone and not to attend work. He was later instructed that his upcoming reward trip to Las Vegas was cancelled. Mr. Crossley called him again at the beginning of February 2007 and requested that he attend another meeting. Mr. Tomar was given a letter, dated February 8, 2007, that terminated the employment relationship. The letter stated that Mr. Tomar was being terminated for cause, without notice and without payment in lieu of notice, as he had breached the bank's Code of Conduct and

Ethics, acted contrary to the bank's interest, and failed to follow the most basic due diligence requirements.

[11] Mr. Tomar filed a complaint with the Canadian Human Rights Commission. The Commission arranged for the parties to participate in mediation, appointed an investigator to prepare an Investigation Report, offered both parties the opportunity to respond, and rendered a decision on September 24, 2008. The Commission accepted the recommendation of the investigator not to refer the matter to the Canadian Human Rights Tribunal for further inquiry. The Applicant requested that the Commission reconsider the investigation and decision, but was informed by letter dated October 27, 2008 that a review of the file had not revealed anything of concern. The Applicant applied for judicial review of the Commission's decision on November 6, 2008.

[12] The Commission appointed Ms. Bonnie Rittersporn to investigate the complaint. She issued a report dated August 15, 2008 recommending that the complaint be dismissed. On September 24, 2008, the Commission accepted the recommendation of the investigator and decided, pursuant to paragraph 44(3)(b) of the *Canadian Human Rights Act*, R.S., 1985, c. H-6, to dismiss the complaint because:

- No evidence has been adduced to support the allegation that, in relation to the conduct complained of, the complainant was treated in an adverse differential manner as compared to other employees; and
- The respondent provided a reasonable non-discriminatory explanation for its actions when it terminated the complainant's employment.

[13] Paragraph 44(3)(b) of the *Canadian Human Rights Act* provides:

(3) On receipt of a report referred to in subsection (1), the Commission [...]	(3) Sur réception du rapport d'enquête prévu au paragraphe 91), la Commission : [...]
(b) shall dismiss the complaint to which the report relates if it is satisfied	b) rejette la plainte, si elle est convaincue :
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or	(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifiée,
(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e) [ <i>i.e.</i> , beyond the Commission's jurisdiction; trivial, frivolous, vexatious or made in bad faith; or out of time].	(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41c) à e).

[14] The Commission had before it the Investigation Report dated August 15, 2008; the Summary of Complaint; the Complaint Form dated July 24, 2007; the Complainant's Response dated August 24, 2008; the Respondent's letter dated August 25, 2008; and the Respondent's Reply dated September 8, 2008. The Commission is not required to give formal reasons for its decision. Rather, as stated by Justice Edgar Sexton in *Canadian Broadcasting Corp. v. Paul*, 2001 FCA 93, "the Courts have found the Commission's reasons in the Investigation Report itself" (at para. 43).

[15] The investigator divided the investigation into two parts. She first considered whether Mr. Tomar was employed by the bank, whether his employment was terminated, and whether the termination was linked to a distinguishing characteristic related to one or more prohibited grounds of discrimination. She then considered whether the bank provided a reasonable explanation for its actions that was not a pretext for discrimination on a prohibited ground.

[16] During the first part of the investigation, Ms. Rittersporn interviewed both Mr. Tomar and Mr. Mark Crestohl, the bank's senior legal counsel. She also reviewed the complaint form, the bank's response, and Mr. Tomar's rebuttal. In addition, she reviewed further documentation, such as the Financial Advisor job description (Respondent's Record, p. 25), Mr. Tomar's employment letter of offer (which he had signed, and which included a copy of the Guidelines of Conduct and General Regulations along with a condition that Mr. Tomar comply with them) (Applicant's Record, p. 10-11), the letter of termination for Mr. Tomar (Applicant's Record, p. 28), the bank's Corporate Security Report regarding Mr. Tomar's files, the "Partial List of Deficiencies" provided by the bank, Mr. Tomar's Learning Plan (which included a list of the learning modules the Applicant had completed), the bank's relevant Lending Policies and Procedures, and the bank's internal Credit File Checklist and Questionable Employers' List. The investigator also took into account jurisprudence provided by Mr. Crestohl, which supports the proposition that bank employees are held to higher standards of honesty and integrity, and that adherence to bank regulations is a significant term and condition of employment (*Perley v. Royal Bank of Canada* (2004), C.L.A.D. No. 101). In *Perley*, a bank employee was dismissed for a similar failure to exercise due diligence.

[17] The investigator noted that the Applicant's job description included references to Financial Advisors' duty to exercise due diligence. Specifically, the job description requires that Financial Advisors "Ensure due diligence is taken to support the accuracy of all customer transactions" (Financial Advisor job description, Respondent's Record, p. 11; Investigation Report, para. 19, Respondent's Record, p. 126). The investigator also refers to the bank's "Income Confirmation Guidelines" (Respondent's Record, p. 55-56) which include specific instructions on identifying and preventing fraud, and the policy document entitled "Know Your Customer" (Respondent's Record, p. 70-73), which provides a detailed checklist for Financial Advisors to follow in processing loan applications, along with potential signals that would warrant further due diligence steps (Investigation Report, para. 20-21, Respondent's Record, p. 5).

[18] One of the main points of contention between the parties was the Applicant's level of responsibility for the files within his portfolio. Mr. Tomar maintains that there was always a second, or even a third, level of review, thus his actions were not determinative of the approval of a loan or of the risk carried by the bank. The bank submitted that the second reviewer (in this case the branch manager) was not to review every loan, but merely a sampling (20%) to verify that the correct documents were on file. Although the bank concedes that in this case the branch manager should have identified some of the problems in the Applicant's files, they maintain that the main responsibility still rested with Mr. Tomar. The investigator inquired into disciplinary measures taken against Mr. Tomar's supervising branch manager, but the bank declined to provide detailed information that would identify the individual by name, citing privacy concerns. Mr. Crestohl did, however, confirm that a branch manager in the same position was dismissed for lack of due



diligence. (Further, the materials provided by Mr. Tomar suggest that his branch manager was, in fact, dismissed as well.)

[19] The investigator carefully examined the circumstances surrounding the Applicant's dismissal. The bank provided data from the six months on either side of the Applicant's dismissal regarding the outcome of 20 other investigations into employees who failed to exercise due diligence (reproduced at para. 32 of the Investigation Report, Respondent's Record, p. 127). She noted that of the 20 individuals investigated, 18 were dismissed. The two retained by the bank were in non-lending roles: one was white, one was a visible minority person. Of the 18 who were dismissed, 11 were white and 7 were visible minority persons.

[20] The investigator also delved into the processes used by the bank during its internal investigations. The Applicant alleges that he was targeted for investigation because he belonged to a visible minority group; he also alleges that all of the files that were identified as suspicious during the investigation were based on clients who also belonged to visible minority groups. The bank denies that it was motivated by discriminatory policies or practices in its investigation. Rather, the bank stated that it pursued its usual practice in investigating potential fraud. The investigation was carried out by the bank's Corporate Security department. A representative of the Corporate Security and Human Resources departments interviewed Mr. Tomar, and a report was produced and forwarded to Human Resources for a recommendation on how to proceed. The bank stated that the recommendation in this case was for dismissal based on all of the circumstances. Although there was never any suggestion that Mr. Tomar was complicit in the fraudulent documentation or

transactions, the degree of carelessness he had shown and the loss the bank had suffered led to the recommendation of dismissal.

[21] The Applicant claims that he did not receive sufficient training to be able to perform the duties that he is now said to have neglected. He points out that his initial training period was cut short, and that subsequent online training did not apprise him of his due diligence duties or how to perform them. The investigator, however, accepted the evidence produced by the bank in the form of Mr. Tomar's Learning Plan Transcript (Respondent's Record, p. 75-79), which shows completed learning activities, the degree of success Mr. Tomar attained (e.g., "mastered", "complete", and/or his mark), and the date the learning activities were completed. The investigator found that, in addition to Mr. Tomar's 22 years' banking experience, he had also received two months' personal training, and had completed 72 courses on topics related to his job. He was never denied training opportunities due to his race, nationality, or ethnic origin.

[22] The investigator reported that the parties took part in mediation. The bank offered the Applicant \$25,000 in damages, six months' outplacement assistance, a neutral letter confirming Mr. Tomar's employment with the bank, and an undertaking not to provide any reference information about Mr. Tomar (Investigation Report, para. 80, Respondent's Record, p. 12). Mr. Tomar turned down the offer, as he remains deeply convinced that he was wronged by the bank, that their actions have prevented and will continue to prevent him from ever working in the Canadian banking industry again. He demanded, in addition to what was being offered by the bank,

lost wages in the amount of \$62,500. The investigator found that the bank's offer was fair, particularly on what she found to be the merits of the complaint.

[23] The Applicant makes various arguments and submissions based on his understanding of the situation. However, they are not organized around discrete issues. I accept the Respondent's formulation of three issues based on its understanding of the Applicant's position. One deals with the applicable standard of review. The other two can be paraphrased as follows:

1. Was the Applicant denied procedural fairness?
2. Was the Commission's decision unreasonable?

[24] The appropriate standard of review with respect to breaches of procedural fairness is correctness (*Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, [2001] 1 S.C.R. 221 at para. 65). A reviewing court owes no deference to the decision-maker when reviewing questions of procedural fairness. Simply put, the process must be fair.

[25] With regard to the Commission's decision not to refer Mr. Tomar's complaint to the Canadian Human Rights Tribunal, it has long been established that the applicable standard of review is reasonableness (*Richards v. Canada (Minister of Public Safety and Emergency Preparedness*, 2007 FC 1100, aff'd 2008 FCA 341; *Bateman v. Canada (Attorney General)*, 2008 FC 393; *Bartkus v. Canada Post Corp.*, 2009 FC 36). As the Supreme Court of Canada recently clarified in *Dunsmuir v. New Brunswick*, 2008 SCC 9, "In judicial review, reasonableness is

concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (at para. 47).

Issue one: Rule 369 Motion by the Applicant to file additional documents

[26] Mr. Rajiv Tomar filed with the Federal Court Registry on May 14, 2009, a Notice of Motion “for the purpose to include the evidence at the time of hearing which I am sure would bring more light to this case.”

[27] Before hearing the parties on the substantive issues of the judicial review application, I asked the parties to make oral submissions.

[28] The Applicant informed the Court that the reasons why he wished to file the documents into the Court record was to “help the court to determine the character and medical condition of the applicant and how bank had acted in haste by overlooking the Law and Charter of Rights and Freedom of the country; and I (applicant) was black listed just on false accusation so that I may not able to get a job in my field of specialization and how discriminatory practices of bank have affected my personal and life of the my family.”

[29] After hearing the Applicant and counsel for the Respondent, I agreed to allow the documents to be filed and be part of the Court record.

[30] The Applicant indicated that he had filed these documents with the Human Rights Commission.

Issue two: Was the applicant denied procedural fairness?

*Applicant's Submissions*

[31] The Applicant submits that the investigation into his complaint was not carried out fairly. He says that the mediator told him, before reading his file that he “was not going to get much out of it”, and that the investigator “was pushing [him] to accept the TD bank’s offer otherwise she would dismiss the case” and that her “attitude was negative” (Factum of the Applicant, p. 4). After the Applicant rejected the bank’s offer, and after the investigation had begun, the Applicant notes that his friend, Mr. Sam Chopra, requested that Ms. Rittersporn re-open negotiations, but this request was turned down.

[32] The Applicant seems to imply that the investigator relied too heavily on the evidence of the Respondent as provided through Mr. Crestohl. In his response to the Investigation Report, Mr. Tomar lists 16 items that he believes were not addressed in the investigation, many of which continue to allege that he believes he was treated differently from white employees at the bank. He also requests further documentation (*e.g.*, the internal bank corporate security report, the contents of his learning plan) (Applicant’s Record, p. 91-93).

*Respondent's Submissions*

[33] The Respondent submits that procedural fairness requires the Commission to have an adequate basis upon which to evaluate where there was sufficient evidence to warrant the appointment of a tribunal. The investigation, therefore, must be neutral and thorough. Neutrality requires that an investigator approach the merits of a complaint with an open mind; thoroughness requires that an investigation take into account obviously crucial evidence and address the crucial submissions of both parties (*Richards v. Canada (Minister of Public Safety and Emergency Preparedness*, 2008 FCA 341; *Slattery v. Canada (Canadian Human Rights Commission)* [1994 F.C.J. No. 181 (T.D.), aff'd (1996) N.R. 383 (C.A.)). The Respondent submits that the Applicant has not pointed to any evidence that the investigator ignored and that was fundamental to the case. The Respondent further points out that the Applicant was given the opportunity to respond in writing to the Respondent's response to the allegations, and to the Investigation Report, and the Applicant availed himself of both of these opportunities.

[34] The Respondent concludes by reiterating its belief that the investigator was neutral and thorough, and conducted the investigation in good faith.

*Analysis*

[35] The *Canadian Human Rights Act* does not constrain an investigator in his or her conduct of an investigation. As noted by Justice Nadon in *Slattery*, "investigators, the CHRC and reviewing courts are essentially without legislative guidance regarding the conduct of investigations" (at para.

54). However, Justice Nadon reviewed a series of cases and noted one specific aspect of procedural fairness that had emerged as a requirement:

At first blush, it would appear that the CHRC, by providing the applicant with a copy of the investigator's report and by allowing the applicant to respond to the report, was in conformity with the formal wording of the requirements set out in the above cases [citations omitted]. However, underlying these requirements is the assumption that another aspect of procedural fairness – that the CHRC had an adequate and fair basis on which to evaluate whether there was sufficient evidence to warrant appointment of a tribunal – existed. (*Slattery*, at para. 48) (See also *Miller v. Canada (Canadian Human Rights Commission) (Re Goldberg)*, [1996] F.C.J. No. 735 at para. 10 (QL) (T.D.)).

[36] With specific reference to the thoroughness of the investigation, Justice Nadon was mindful of the balance to be struck between “the complainant’s and respondent’s interests in procedural fairness and the CHRC’s interests in maintaining a workable and administratively effective system” (*Slattery*, at para. 55).

[37] Did the investigator strike the appropriate balance in this case, and did her findings provide the Commission with an “adequate and fair basis” on which to evaluate whether there was sufficient evidence to warrant the appointment of a tribunal? Having carefully reviewed the thorough submissions of the Applicant to the Commission, as well as the Respondent’s materials and the Investigation Report, I am fully satisfied that the investigation was conducted in a fair and even-handed manner. I see no indication that the procedures followed in this instance were unfair to the Applicant. On the contrary, the investigator seriously considered Mr. Tomar’s complaint, and

contacted the bank on several occasions. In fact, on one occasion the investigator makes a point of mentioning that she visited the Respondent's office without prior notice and requested information (*i.e.*, the "Potential Fraud Income Verification List"), presumably to ensure that the evidence existed.

[38] The Applicant refers to perceived inequities in the way he was treated by the bank. He believes he should have received a formal "charge sheet" from the bank, be given prior notice of the investigation, and be given an opportunity to respond. However, as pointed out by the investigator, the bank followed the same established policies and procedures with respect to the Applicant as it did with all of its employees in similar circumstances. Her findings are based on a thorough investigation that required the Respondent to produce documentary evidence relevant to both Mr. Tomar individually (*e.g.*, the learning plan) and the bank as a whole (*e.g.*, guidelines, online manuals). Mr. Tomar appears to question the degree to which he was consulted in the Commission's investigation. I note two factors which lead me to conclude that Mr. Tomar was given ample opportunity to participate in a fair process. First, the number of times the investigator contacted the Respondent does not necessarily lead to the conclusion that she favoured its version of sequence of events; on the contrary, the gravity with which she viewed the circumstances and the credence she lent to the Applicant's complaint required that she follow up with the Respondent to get as thorough a view of the events as possible. Second, the Applicant provided written information and submissions to the investigator on at least two occasions. There is nothing in the process to indicate that either the investigator or the Commission did not read and consider these submissions.



[39] I am satisfied that the investigation was neutral and thorough, and provided the Commission with a fair and adequate basis on which to base its decision. No reviewable error has occurred with respect to procedural fairness.

Issue three: Was the Commission's decision unreasonable?

*Applicant's Submissions*

[40] In both his response to the Investigation Report (Applicant's Record, p. 84-93) and in a letter to the Chief Commissioner dated October 7, 2008 requesting that the Commission reconsider his complaint (Applicant's Record p. 94-96), Mr. Tomar strenuously objected to the investigator's recommendation and, subsequently, to the Commission's decision. He reiterates his position in his Factum and in his oral submissions, in which he raises issues such as his cancelled reward trips, uncompensated overtime, lack of severance pay, and his continued belief that he was terminated unfairly in a manner that has prevented him from securing other employment in the banking industry.

*Respondent's Position*

[41] The Respondent argues that the Commission accepted the Respondent's non-discriminatory explanation for dismissing Mr. Tomar for failure to exercise due diligence. In doing so, the Commission reviewed the evidence of both parties, including the Applicant's job duties and training on fraud detection, the bank's lending practices and policies, and the bank's ongoing practice of dismissing employees for failure to exercise credit due diligence. The Respondent points out that the

Applicant bears the burden of proof of establishing that the Commission's decision is unreasonable (*Bateman v. Canada (Attorney General)*, 2008 FC 393), and has not done so in this case.

### *Analysis*

[42] Subparagraph 44(3)(a)(i) of the *Canadian Human Rights Act* authorizes the Commission to refer a complaint to a tribunal for inquiry if it is "warranted". In doing so, the Commission must have "regard for all the circumstances of the complaint". It is well-established that Courts should be wary of interfering with the conclusions reached by decision-makers who are best suited to making findings of fact and weighing the evidence. Judicial interference with a decision of the Commission pursuant to s. 44(3) of the *Canadian Human Rights Act* is only justified where the Commission had exercised its power in a discriminatory, unfair, capricious, or unreasonable manner (*Slattery* at para. 80; *Aziz v. Telesat Canada*, [1995] F.C.J. No. 1475 (T.D.)).

[43] I am somewhat concerned by the degree to which the investigator relied on the data provided by the Respondent related to the number of individuals it investigated for due diligence inadequacies for six months on either side of the time it dismissed Mr. Tomar. The investigator observes that, of the 20 individuals investigated, "only eight ... were visible minorities persons, one of whom was not terminated from the bank. The remaining 12 employees are white, 11 of whom were terminated from the respondent's employ for lack of due diligence and or gross negligence" (Investigation Report, para. 31, Respondent's Record, p. 127). The investigator refers to this chart in her findings (Investigation Report, paras. 37-39) and summary (Investigation Report, paras. 75-76). I note, however, that, without benchmark data regarding proportionality of representation at the

bank of individuals from visible minority groups, and without knowing whether the decisions to dismiss the individuals were made by the same decision-maker, the information does not necessarily lead to the findings put forward by the investigator.

[44] That said, I do not mean to suggest that there is latent or inherent discrimination in the bank's practices. On the contrary, even discounting both the data and the investigator's reliance on it, I am satisfied that the investigator had ample evidence on which to base her findings that the bank did not discriminate against Mr. Tomar on a prohibited ground. The bank followed established procedures in investigating the Applicant's portfolio; and the decision to dismiss the Applicant was made based on an appraisal of the losses suffered by the bank, the Applicant's actions that led to those losses, and an informed decision based on past practices about what response would be proportional. Furthermore, the bank did not only focus on the Applicant's role in the losses, but applied the same procedure and proportional response to the Applicant's branch manager.

[45] For his part, the Applicant had confirmed in writing that he was familiar and would comply with the bank's ethical and regulatory guidelines; his job description included a reference to his responsibilities in the area of due diligence; and he completed multiple online courses related to his duties. Although Mr. Tomar has suggested that he was targeted for investigation based on his race, the bank actually only initiated an investigation after the Applicant's files coincided with files being scrutinized in a different investigation. Mr. Tomar in fact met with impressive success during his tenure at the bank, and I see no basis for the allegation that his current circumstances are a result of the bank's wish to punish him, a member of a visible minority community, for this success.

[46] Given my conclusion that the investigation was neutral and thorough, and that the Commission's reliance on the Investigation Report was not misplaced, I am satisfied that the decision of the Commission was reasonable, based on the evidence before it. It fell within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47).

### *Conclusion*

[47] The Applicant brings up several other matters in his submissions. For example, he seeks compensation for lost wages and an order for specific performance by the bank. These matters, however, are beyond the scope of the Court's jurisdiction on an application for judicial review.

[48] On the matters properly before the Court, I hereby dismiss the application for judicial review. Although I acknowledge the financial difficulty this matter has caused for the Applicant, in keeping with common practice in these matters, I do so with costs which I fix at the sum of \$250.00.

[49] The Respondent requests an order to amend the style of proceedings to reflect its legal name: "The Toronto-Dominion Bank." This request is granted and the style of cause shall be amended accordingly.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is denied with costs in the amount of \$250.00.

**THIS COURT ALSO ORDERS AND ADJUGES that** the style of cause be amended to read RAJIV TOMAR Applicant and THE TORONTO-DOMINION BANK Respondent.

"Max M. Teitelbaum"

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Deputy Judge

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

**DOCKET:** T-1707-08

**STYLE OF CAUSE:** RAJIV TOMAR v. THE TORONTO-DOMINION  
BANK  
(Formerly Rajiv Tomar v. TD Canada Trust)

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 2, 2009

**REASONS FOR JUDGMENT:** TEITELBAUM D.J.

**DATED:** June 8, 2009

**APPEARANCES:**

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Mr. Christopher G. Riggs FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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