

SUPREME COURT OF NOVA SCOTIA

Citation: *Perreault v. Nova Scotia (Human Rights Commission)*
2013 NSSC 329

Date: 2013-10-17

Docket: Hfx. No. 411492

Registry: Halifax

Between:

Nicholas Perreault

Applicant

v.

Nova Scotia Human Rights Commission, Attorney General of Nova Scotia and
Pratt & Whitney

Respondents

DECISION

Judge: The Honourable Justice Kevin Coady

Heard: October 2, 2013, in Halifax, Nova Scotia

Date of Decision: October 16, 2013

Counsel: Charlene Moore, for the Applicant
Lisa Teryl, for the Respondent,
Nova Scotia Human Rights Commission
Ian Pickard, for the Respondent, Pratt & Whitney

By the Court:

[1] The Applicant filed a Notice for Judicial Review of a decision of the Nova Scotia Human Rights Commission (NSHRC) dismissing the Applicant's request for an extension of time for filing a complaint. That review will be heard on November 26, 2013.

[2] On July 12, 2013 the Applicant filed this motion pursuant to *Civil Procedure Rule 7.27* seeking permission to introduce new evidence beyond the record. The motion is opposed by Pratt and Whitney (P&W). The NSHRC takes no position on the motion.

[3] The proposed addition to the record is a supplementary affidavit sworn by Mr. Perreault on June 4, 2013. Schedule "A" to that affidavit is a December 5, 2011 e-mail from the NSHRC to Mr. Perreault wherein reference is made to mailing a draft complaint to him. Schedule "B" is an unsigned complaint. The deadline for filing a signed complaint was February 14, 2012. Mr. Perreault insists that he signed that complaint and personally delivered it to a Ms. Cadogan at the NSHRC on December 12, 2011. The NSHRC has no record of receiving such a

complaint. Ms. Cadogan has no memory of accepting a complaint on December 12, 2011. Mr. Perreault states he did not retain a copy of the signed complaint. Attached hereto as schedule "A" is a copy of the proposed new evidence.

[4] The process at the NSHRC unfolded as if a complaint had been received within the one year limitation. On April 18, 2012 an unsuccessful resolution conference was held. The absence of a complaint was noticed at that time.

[5] Within days the NSHRC provided Mr. Perreault with another complaint form and a request for extension form. He completed those documents and returned them to the NSHRC. Additionally, Ms. Cadogan sent a letter to P&W's registered agent seeking their position on the extension application. That correspondence did not find its way to P&W's counsel. The result of this error was that P&W did not forward their objection before a stipulated date. In the absence of any objection the NSHRC officer granted Mr. Perreault an extension.

[6] Upon learning of this decision P&W requested the NSHRC reconsider the extension decision after allowing them time to file an objection. The NSHRC agreed. On December 20, 2012 the officer reversed his decision and denied the application to extend. The officer relied on *ExxonMobil Canada Limited v. Carpenter*, (2011) N.S.J. No. 649.

[7] The parties have filed an agreed statement of facts which details the time line. Attached hereto as schedule “B” is the agreed statement of facts.

[8] There is a complexity at play in the overall judicial review that bears comment on this motion. Should it be factually determined that Mr. Perreault filed a complaint on December 12, 2011 then the judicial review would be moot. The decision-maker would have had no jurisdiction to make the decision denying the extension as there would be no limitation issue. Should it be factually established that Mr. Perreault did not file his complaint on December 12, 2011 then the judicial review would be appropriate. What will be the issue before the Justice on the judicial review? Will it be a proceeding to determine if the complaint was filed on time? Will it be a review of the decision-maker’s decision to not extend? Clearly the issue of the alleged filing on time was not before the decision-maker. Should it be before the judicial review Justice? Is a judicial review the appropriate vehicle to inquire into the factual question?

[9] It is not disputed that the record is incomplete. In addition to Mr. Perreault’s affidavit and attachments, P&W’s April 26, 2011 letter opposing the extension is not included. Counsel for P&W provided it to the NSHRC on March 28, 2013. The record does not include the December, 2011 letter from the NSHRC

to Mr. Perrault enclosing the complaint form referred to in the December 5, 2011 e-mail to Mr. Perreault. The record does not include event notations one would expect. Correspondence was misdirected causing disruption to the usual timelines. In the December 5, 2012 decision allowing the extension the decision-maker stated:

I find the circumstances exceptional as required by the Act. Mr. Perreault's file had been processed as if the complaint had been filed. It was only late in the process, and after the one-year time limitation had elapsed, that the oversight was realized. An administrative oversight by Commission staff contributed significantly to the failure to file a complaint within the time limitation.

Counsel for the NSHRC readily acknowledged that they were responsible for drafting the complaint.

[10] In the decision-maker's reversed decision of December 20, 2012 he stated:

Mr. Perreault's file was processed as if the complaint had been filed. It was only late in the process, and after the one-year time limitation had elapsed, that the oversight was realized. An administrative oversight by Commission staff contributed to Mr. Perreault's failure to file a formal complaint within the time limitation. However, despite these facts, I must apply ExxonMobil and find that Mr. Perreault remained responsible for filing a complaint within the prescribed time limitation.

[11] P&W relies on the fact that when the absence of a complaint was discovered on April 18, 2012, Mr. Perreault said nothing about filing on December 12, 2011. P&W argue that Mr. Perreault received two reminders (January 3 & 18,

2012); a second draft complaint (April 17, 2012); a request for an extension (May 11, 2012); and a further draft complaint (September 28, 2012) and says nothing about filing on December 12, 2011.

[12] On Mr. Perreault's May 11, 2012 "Request for an Extension Form" the following appears:

Reasons for requesting an extension: Please provide, concise, clear, specific reasons why you did not contact the Human Rights Commission regarding your complaint within 12 months of the last alleged discriminatory act.

Mr. Perreault replied as follows:

I did contact the HRC within 12 mts but my complaint letter was sent to me on April 19/ 2012 and signed on April 20/ 2012. Rosemarie received it by email that same day, when she notified me that I would have to make an extension request since I didn't sent that complaint in on time. Before the Feb 14/ 2012.

[13] *Civil Procedure Rule 7.27* states as follows:

(1) A party who proposes to introduce the evidence beyond the record on a judicial review or appeal must file an affidavit describing the proposed evidence and providing the evidence in support of its introduction.

(2) An applicant for judicial review, or an appellant, must file the affidavit when the notice for judicial review, or the notice of appeal is filed, and a respondent must file the affidavit no less than five days before the day the motion for directions is to be heard.

(3) A motion for permission to introduce new evidence must be made at the same time as the motion for directions, unless a judge orders otherwise.

Discussions on and around the motion for directions removed any concerns about filing times.

[14] The test for admission for new evidence was articulated in *Palmer v. The Queen*, [1980] 1 SCR 759 as follows:

(1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases.

(2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue at trial.

(3) The evidence must be credible in the sense that it is reasonably capable of belief.

(4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[15] The evidence as a whole indicates that when contact is made with a complainant staff at the NSHRC assume responsibility for drafting the formal complaint. The record confirms that Mr. Perreault was diligent in responding to the directions of Ms. Cadogan. There is no evidence that he displayed an indifferent attitude to his complaint. Ms. Cadogan acknowledged that she “dropped the ball” respecting Mr. Perreault’s complaint. Also the process unfolded as if all players accepted that a complaint was filed on time.

[16] It would be difficult to conclude that Mr. Perreault did not exercise the due diligence expected of a self-represented complainant. He clearly followed

directions on all matters ancillary to the formal complaint. Putting aside the issue of credibility, Mr. Perreault did not realize the record was incomplete until he received it. I must find that he was as diligent as could be expected in the circumstances. I am not prepared to conclude that his failure to protest in the face of the limitation issue equates to a lack of due diligence. He was an unsophisticated complainant navigating an unfamiliar landscape.

[17] Mr. Perreault's proposed new evidence must be relevant to a decisive issue that was before the decision-maker. The decisive and only issue before the decision-maker was whether an extension of time should have been granted. If the proposed evidence had been part of the record it would have been something for the decision-maker to consider. The e-mail and the draft complaint would be some evidence that the issue of filing on time was on the minds of staff at the NSHRC.

[18] The third *Palmer* requirement is that the proposed evidence must be credible and reasonably capable of belief. The e-mail and the draft complaint establish that Mr. Perreault, at a minimum, was provided with a complaint well in advance of the limitation period expiring. The issue of credibility relates to whether he signed it and forwarded it the NSHRC on December 12, 2011. He says he did. The NSHRC and P&W are not in a position to refute his evidence. The

mismanagement of the file by Ms. Cadogan opens up the possibility that the alleged complaint could have been lost. Paragraph 32 of the agreed statement of facts does little to erase that possibility. Clearly Mr. Perreault has issues with credibility but I am not prepared to conclude that he is incapable of belief on the critical issue.

[19] The fourth *Palmer* requirement is whether the proposed evidence could have affected the result. If the e-mail and draft complaint had been before the decision-maker it would have triggered an investigation into what happened to the draft complaint. I suspect that would have included discussions with Mr. Perreault. His version of events could reasonably lead the decision-maker to conclude there were sufficient irregularities to suggest it was possible that Mr. Perreault was truthful. Such a conclusion could have avoided an extension decision. The submissions of the NSHRC counsel indicate that at the material time extensions were routinely granted.

[20] I am satisfied that the *Palmer* test has been met and I order that Mr. Perreault's Affidavit and attachments be made part of the judicial review record. I conclude that the credibility issue should be before the reviewing justice. It would

be procedurally unfair to deprive Mr. Perreault the opportunity to put this evidence before the reviewing Court.

Coady J.

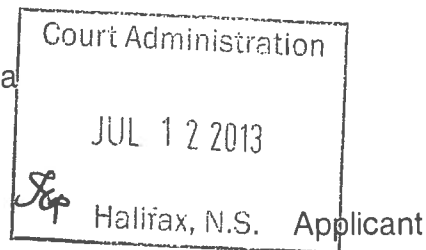
SCHEDULE "A"

411492
HFX No. 41192

Supreme Court of Nova Scotia

Between:

NICHOLAS PERREAULT



v

**NOVA SCOTIA HUMAN RIGHTS COMMISSION,
ATTORNEY GENERAL OF NOVA SCOTIA and PRATT & WHITNEY**

Respondents

Supplementary Affidavit of Nicholas Perreault

I make oath and give evidence as follows:

- 1 I am the Applicant in this proceeding.
- 2 I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief.
- 3 I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
- 4 I have reviewed the Commission Record which has been filed with the court in response to the motion I have filed for judicial review.
- 5 In reviewing the record, I noted there was documentation missing with respect to the communications between myself and Rose Cadogan, the Human Rights Officer assigned to my file.
- 6 I am providing this Affidavit to outline my understanding of what took place from December 2011 to May 2012.
- 7 On December 5, 2011 I received an email from Rose Cadogan that my draft complaint was being sent to me by mail. Attached hereto and marked as Exhibit "A" is a true copy of the December 5, 2011 email.
- 8 Approximately two or three days later, I received the package from Rose Cadogan.

- 9 Included in the package was a copy of the Intake Questionnaire, information on the Resolution Conference process and the draft complaint form. Attached hereto and marked as Exhibit "B" is a true copy of the complaint form.
- 10 I reviewed the typed draft complaint form and I signed it. I returned the signed complaint on Monday, December 12, 2011.
- 11 I asked for Rose Cadogen at reception. I met with her briefly and handed Rose Cadogen the paperwork.
- 12 I went to Montreal on December 15, 2011 and returned January 2, 2012.
- 13 In early January 2012 I received the letter setting out the date for the Resolution Conference.
- 14 I recall speaking with Rose Cadogan in early March 2012 to discuss my witnesses for the Resolution Conference.
- 15 On April 13, 2012 Rose Cadogen emailed me the response from Pratt & Whitney.
- 16 After reviewing the response from Pratt & Whitney I asked to elaborate on the issues raised in my complaint.
- 17 On April 17, 2012 Rose Cadogen emailed me a draft complaint form. I added information to the form. It was an informal complaint form as there was no place for a signature.
- 18 On April 18, 2012 I attended the Resolution Conference and was given a binder of materials. Pratt & Whitney reviewed the binder of materials and asked about the formal complaint.
- 19 I recall Rose Cadogen leaving the meeting and then coming back and asking for a recess. At the recess, Rose Cadogen pulled me aside in a small side room and told me that there was no formal complaint filed and that it was her mistake as it was an internal issue.
- 20 On April 19, 2012 Rose Cadogen sent me the formal complaint and I signed it and returned it on April 20, 2012.

21 When I filed the Request for an Extension I did not have the email response of Pratt & Whitney dated April 26, 2012.

Sworn to before me)
On ~~May 3~~ ^{June 4}, 2013)
at Halifax, Nova Scotia)

Charlene Moore)
Charlene Moore)
A Barrister of the Supreme)
Court of Nova Scotia)

CHARLENE MOORE
A Barrister of the Supreme
Court of Nova Scotia

Nicholas Perreault
Nicholas Perreault

Charlene Moore

From: Nicholas Perreault <nick_perreault17@hotmail.com>
Sent: April-16-13 11:39 AM
To: charlene.moore@nslegalaid.ca
Subject: RE:

Date: Mon, 5 Dec 2011 13:21:23 -0400
From: cadogara@gov.ns.ca
To: NICK_PERREAULT17@HOTMAIL.COM
Subject: Draft Complaint

Dear Mr Perreault,

We spoke earlier today . Please go through the draft complaint I sent you by mail.
Please let me know if there are any changes, or omissions.
Once you send it back, I'll go over it with you

Sincerely,

Rosemarie Cadogan
Human Rights Officer/Mediator
Nova Scotia Human Rights Commission
Joseph Howe Building 6th Flr
1690 Hollis Street
Halifax NS B3J 3C4
Tel: 902-424-2997
Fax: 902-424-0596

This is Exhibit " A " referred to in the
affidavit of Nicholas Perreault
Sworn before me this 4th
day of June A.D. 2013

Charlene Moore
.....
A Barrister of the Supreme Court of Nova Scotia

NOVA SCOTIA HUMAN RIGHTS COMMISSION

**Complaint under the Human Rights Act
R.S.N.S., 1989, C.214, as amended**

**Complainant
Nicholas Perreault
26 Sarah Crescent
Dartmouth, NS B2W 4Z4**

**Respondent
Pratt and Whitney Canada
Corporation
1300-1959 Upper Water Street
Nova Scotia B3J 3R7**

**Section and Nature of Complaint:
5(1)(d)(o); employment, disability**

Case Number: H10-1710

I, Nicholas Perreault, complain against Pratt and Whitney Canada that on February 14, 2011 they did discriminate against me in the matter of employment because of a disability or a perceived disability.

The nature of my complaint is as follows:

1. I was employed as a manufacturing specialist with Pratt & Whitney Canada Corporation in September 2007 until my employment was terminated in February 2011.
2. I experience post traumatic stress disorder, anxiety and depression.
3. I worked with the Respondents at their branch in Montreal before transferring to a branch in Nova Scotia. I did this in order to provide care for my mother after she was diagnosed with cancer.
4. I worked for 11 months before being laid off in March 2009. During this time, I was dealing with my mother's illness. I was anxious all the time, and I would sometimes have to leave work early to care for her.
5. I began feeling anxious due to the stress of this and my personal situation, and would throw up and my hands would shake. I began having quality issues based on the sensitive work I was doing. I would go to the office nurse to calm down.
6. I was recalled to work in May 2010 for 4 months, and was placed in another area of operations. I was given 3 days of training before starting on my own.
7. My supervisors were aware of my problems as I told them in late July 2010 when I was suspended for not clocking out for a smoke break. I told my supervisor Randy Duncaster, and he told me that I should go to see a doctor. I used the Respondents' Employee Assistance Program to get therapy.

This is Exhibit " B " referred to in the
affidavit of Nicholas Perreault
Sworn before me this 4th
day of June A.D. 2013

Charles Weir
.....
A Barrister of the Supreme Court of Nova Scotia

8. I told another human resources manager, Vern Graham that I did not feel that I was given sufficient training for my new position. Although I was told that I would be given more training, no date was given for this. I was put on last chance probation for quality issues in September 2010.
9. Things worsened, as management did not take my disability seriously and thought that I was 'faking it'. My psychologist advised that I needed time to de-stress and playing hockey was suggested. My supervisor advised that she should write a letter to this effect, but when I gave him the letter, the time off was denied. Thereafter, every time that I requested time off, it was denied.
10. In October 2012, I told my supervisor Dave Beaton, human resources manager Vern Graham, and division manager Roslyn O'Brien that I could not handle things the way they were anymore. They told me that it was my fault that I was in that situation, and that the stress and anxiety I experienced was due to my bad work habits. I went to my doctor the next day and was taken off work for 3 months. I continued receiving therapy.
11. On my return to work in February 2011, I was fired with immediate effect.
12. Based on the above, I believe that because of my disability, Pratt and Whitney Canada Corporation considered me a liability, and dismissed me as a result of my medical condition, without making any attempt to accommodate my disability.
13. Based on the above, I allege that I was discriminated against in my employment because of my disability and this is contrary to Section 5(1)(d)(o) of the *Nova Scotia Human Rights Act*.

I have read (or had read to me) the above allegation(s) and to the best of my knowledge, the information is true and accurate.

Dated at _____, Nova Scotia on _____, 2011
(City, Town or Municipality) (Month) (Day) (Year)

Signature of Complainant

I consent to the release to the Nova Scotia Human Rights Commission (NSHRC) of all information and documents concerning me that the NSHRC considers necessary for its investigation, such as personnel records, documents, data, medical or hospital records which relate to this complaint. I also authorize the NSHRC to have such information examined by any person it retains to provide advice and assistance in dealing with my complaint.

Dated at _____, Nova Scotia _____
City, Town or Municipality (Month) (Day) (Year)

Signature of Complainant

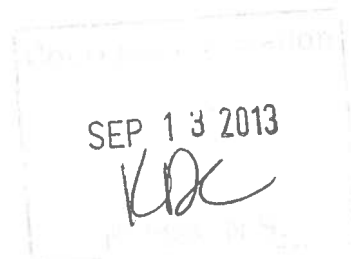
SCHEDULE "B"

HFX No. 411492

Supreme Court of Nova Scotia

Between:

NICHOLAS PERREAULT



Applicant

and

NOVA SCOTIA HUMAN RIGHTS COMMISSION, ATTORNEY GENERAL OF NOVA
SCOTIA and PRATT & WHITNEY

Respondents

AGREED STATEMENT OF FACTS

The Parties to the Judicial Review agree to the following facts:

1. Mr. Nicholas Perreault was dismissed from his employment on February 14, 2011
(Record, Tab 3, p.10).

Intake Form

2. Mr. Perreault contacted the Human Rights Commission ("Commission) on February 14,
2011. (Record, Tab 4, p.1).

3. On February 21, 2011, Mr. Perreault requested a Human Rights intake package. (Record, Tab 4, p.1)
4. Mr. Nicholas Perreault submitted an Intake Form to the Commission on March 21, 2011 (Record, Tab 3, p.1).
5. On November 2, 2011, Mr. Darryl MacPherson of the Human Rights Commission, advised Mr. Perreault his matter would be referred to investigation and a complaint form would be prepared. (Record, Tab 4, p .3)
6. On November 2, 2011 the file was assigned to Human Rights Officer, Rose Cadogan. (Record, Tab 4, pg. 4).

December 2011 Draft Complaint Form

7. On November 28, 2011 the Commission sent a letter to Mr. Bruce Marchand, Recognized Agent for Pratt & Whitney to confirm that Mr. Perreault had contacted the Commission and alleged discrimination on the basis of mental disability. The Commission advised that Mr. Perreault's file was at the pre-complaint assessment stage of the Commission's process. Pratt & Whitney was invited to provide information to the Commission by December 12, 2011 that would assist the Commission in resolving the allegations made by Mr. Perreault. (Record, Tab 3, p. 22-23).
8. On December 5, 2011, Rosemarie Cadogan, Human Rights Officer, sent an email to Mr. Perreault advising him to go through the draft complaint form that she had sent him in the mail and advise of any changes or omissions. Ms. Cadogan requested he send it back and she would go over it with him. (Supplementary Affidavit of Nicholas Perreault, Exhibit "A")
9. On December 13, 2011, Mr. Ian Pickard faxed a Response to the Commission on behalf of Pratt & Whitney (Record, Tab 3, p. 26-28).

Resolution Conference

10. On December 29, 2011, Ms. Cadogan, sent a letter on behalf of the Commission to Mr. Perreault and Mr. Pickard, notifying the parties that a Resolution Conference had been scheduled for April 18, 2012 (Record, Tab 3, p. 29).

April 2012 Complaint Form

11. On April 17, 2012, following a conversation with Mr. Perreault, Ms. Cadogan sent an email to Mr. Perreault requesting that he go through the draft complaint form and advise of changes or omissions (Record, Tab 3, p. 40).
12. On April 17, 2012, Mr. Perreault responded to the investigating officer's email of April 17, 2012, with changes to the complaint form and stated he could sign it the next day when he came in. (Record, Tab 3, pp. 39).
13. On April 18, 2012, a Resolution Conference took place. The Resolution Conference was attended by Ms. Cadogan for the Commission, Mr. Pickard, Vern Graham, Scott Baker, and David Beaton for Pratt & Whitney, and Mr. Perreault and his girlfriend at the time (Record, Tab 3, p. 29).
14. The Resolution Conference did not result in a resolution or settlement.
15. On April 19, 2012, Ms. Cadogan sent an email to Mr. Perreault with a revised Complaint Form attached and instructions for Mr. Perreault to sign and return it immediately (Record, Tab 3, p. 39).
16. Mr. Perreault signed the Complaint Form on April 20, 2012 (Record, Tab 3, p. 65)

Complainant Request of Extension of 12 Month Time Limitation

17. On April 20, 2012, Ms. Cadogan sent a letter to Mr. Perreault enclosing a Request for an Extension Form. Ms. Cadogan advised Mr. Perreault to complete the enclosed Form and

- return it to the Manager of Dispute Resolution at the Commission by May 14, 2012 .
(Record, Tab 3, p. 61).
18. On April 20, 2012, Ms. Cadogan sent a letter to Mr. Pickard advising of a need for an extension of time in Mr. Perreault's matter to file a complaint. (Record, Tab 4, p. 8)
 19. On May 11, 2012 Mr. Perreault signed the Request for an Extension which is received by the Commission on May 11, 2012. (Record, Tab 3, p. 63).
 20. Ms. Cadogan left the Commission in the Summer 2012.
 21. On July 18, 2012, Candace Shatford, Legal Assistant at McInnis Cooper emails Ms. Cadogan for a status update on the matter. (Record, Tab 4, p.10)
 22. On July 20, 2012, Gerald Hashey, Manager, Dispute Resolution, sent a letter to Mr. Bruce Marchand, the recognized agent for Pratt & Whitney, advising that Mr. Perreault submitted a request for an extension. In error, the letter was sent to Mr. Bruce Marchand, Registered Agent, and not to Mr. Pickard who was counsel for Pratt & Whitney. The letter, enclosing an Objection to the Granting of an Extension Form directed that it be returned by August 13, 2012. (Record, Tab 3, p. 70). The Commission received no response to the letter.
 23. On September 5, 2012, Mr. Hashey wrote to Mr. Perreault and again wrote to Mr. Marchand advising of his decision to grant Mr. Perreault the extension of time. (Record, Tab 3, p. 75).

September 2012 Complaint Form

24. On September 18, 2012, Jack Pham, Human Rights Officer for the Commission, emailed Mr. Perreault another complaint form to review and sign before September 29, 2012 (Record, Tab 3, p. 78).
25. Mr. Perreault signed the Complaint Form on September 27, 2012 and returned it to the Commission via fax on September 28, 2012.(Record, Tab 3, p. 80).

26. On October 2, 2012 Rose Cadogan emailed Jack Pham, regarding Mr. Perreault's file and stated she dropped the ball on the file. (Record, Tab 3, p.83).

Respondent's Request for Reconsideration of the Extension

27. On October 17, 2012, Mr. Hashey sent a letter to Mr. Perreault and Mr. Pickard advising that Pratt & Whitney did not receive the request for a response with respect to granting the extension of time and that Mr. Pickard sought an extension of time to file a response. Further, Mr. Hashey advised that he will reconsider his decision to extend the time limitation period for Mr. Perreault to file the complaint, for reasons of procedural fairness (Record, Tab 3, p. 93).

Second Consideration of the Complainant's Request for Extension of Time Limitation

28. On October 23, 2012, Mr. Pickard sent a letter to the e Commission and Mr. Perreault with their response and objection to the request to extend the time limitation (Record, Tab 3, p. 98).
29. On November 5, 2012, Mr. Hashey sent a letter to Mr. Perreault with the response received from Pratt & Whitney, and provided Mr. Perreault an opportunity to respond no later than November 26, 2012 (Record, Tab 3, p. 103).
30. Mr. Perreault responded to the objection to extend the time. There is no date on the letter or when it was received. (Record, Tab 3, 2013).

The Decision not to Grant the Time Extension

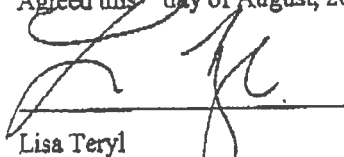
31. On December 20, 2012, Mr. Hashey advised Mr. Perreault and Mr. Pickard of his decision not to grant the extension of time to Mr. Perreault based on the *ExxonMobil Canada Limited v. Carpenter*, (2011) N.S.J. No. 649 (S.C.) decision (Record, Tab 3, p. 109).

Review of the investigation file

32. On June 6, 2013, an employee within the legal unit of the Commission conducted a search of the investigation file to determine whether the Commission had a copy of the complaint form alleged to have been filed on December 5, 2011, as per Mr. Perreault's affidavit dated June 4, 2013. This search resulted in the following findings:
- a. The Commission did not have a copy of the December 5, 2011 email correspondence between the original investigating officer and Mr. Perreault, or the attached draft complaint form alleged to have been hand delivered December 12, 2011;
 - b. The Commission did not have a copy of the response from Mr. Pickard dated April 26, 2012 as part of the record;
 - c. The Commission did not have a notation of the December 5, 2011 complaint form in its mail log in December of 2011. There was one notation on December 21, 2011 of a hand delivered document that does not include the sender's name.


d. The attached email dated June 7, 2013 from Ms. Cadogan to Lisa Teryl sets out Ms. Cadogan's recollection of whether the Draft December 2011 Complaint form was submitted in December 2011.

Agreed this ^{30th} day of August, 2013




Lisa Teryl

Legal Counsel for NSHRC



Charlene Moore

Legal Counsel for Mr. Perreault



Ian Pickard

Legal Counsel for Pratt & Whitney Canada Corp.