



HUMAN RIGHTS

Judicial review of Canadian Human Rights Commission decision made under *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 41(1) dealing with respondent's complaint — Absent exceptional circumstances, parties to administrative proceeding expected to exhaust their remedies in that proceeding before pursuing recourse to courts — This principle applied in context of decision dealing with human rights complaint under s. 41(1) in *Laurentian Bank of Canada v. Fortin*, 2020 FC 921 (*Laurentian Bank*) wherein Court finding application for judicial review premature — Here, applicant arguing unreasonable for Commission to: conclude that respondent's complaint not frivolous; disregard its objection to complaint on timeliness grounds; deal with complaint despite it being vexatious — Applicant submitting that *Laurentian Bank* wrongly decided, inconsistent with past case law — Whether application herein should be dismissed as premature — Application premature — Act designed on "gatekeeper" model in contrast with "direct access" model — S. 41(1) requiring Commission to "deal with" any complaint filed unless it "appears to the Commission" that one of five situations applying — Given "gatekeeping" nature of s. 41(1), Commission should only decline to deal with complaint where "plain and obvious" that complaint falling under one of grounds for not dealing with it — In deciding to deal with complaint, Commission not rendering final decision or deciding any substantive right of parties, rather performing screening, filtering role — In all cases cited by applicant, issue of prematurity not addressed by Court or even raised — Those cases not standing for principle that judicial review not premature when that question not addressed — Judicial review inherently discretionary remedy — That the Court may have exercised its discretion to hear judicial review on merits in other cases in which question of prematurity not raised not making it incorrect to apply principle of non-interference in declining to exercise jurisdiction in later case — Cases cited by applicant not overruling binding authority of Federal Court of Appeal in *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332 wherein Court setting out that courts should not interfere with ongoing administrative processes until after they are completed, or until available, effective remedies exhausted — While legislative framework in *CB Powell* involving statutory appeal mechanism, broader principle affirmed by Federal Court of Appeal applying well beyond that administrative context — While Parliament creating mechanism by which non-meritorious complaints could be screened out at early stage, this not meaning that it intended judicial oversight at every stage of human rights complaint process — Expression "appears to the Commission" indicating intention to leave determination in hands of administrative decision maker — *Laurentian Bank* not wrongly decided, consistent with case law interpreting s. 41(1), applying general principle of non-interference with ongoing administrative processes — Applications for judicial review of Commission decision s. 41(1) premature absent exceptional circumstances — No exceptional circumstances in this case — Application dismissed.

BANK OF NOVA SCOTIA V. WILLIAMS (T-1189-19, 2020 FC 1127, McHaffie J., reasons for judgment dated December 7, 2020, 17 pp.)