

Form 4.05A

2023

Hfx. No. 527144

Supreme Court of Nova Scotia

Between:

**RICKCOLA BRINTON**

Plaintiff

-and-

**THE ATTORNEY GENERAL OF NOVA SCOTIA  
REPRESENTING HIS MAJESTY THE KING IN RIGHT OF  
THE PROVINCE OF NOVA SCOTIA**

Defendants

**Notice of Defence**

**To: The Plaintiff**  
c/o James Manson  
Charter Advocates Canada

[REDACTED]  
[REDACTED]

**Your action is defended**

The Defendant, the Attorney General of Nova Scotia Representing His Majesty the King in Right of the Province of Nova Scotia ("**the AGNS**") defends your action.

The grounds for the defence are stated in the attached Statement of Defence.

**Contact Information**

The AGNS designates the following address:

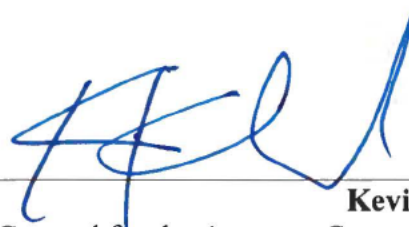
Department of Justice (N.S.)  
Joseph Howe Building

[REDACTED]  
[REDACTED]

Documents delivered to this address are considered received by the AGNS on delivery.  
Further contact information is available to each party from the prothonotary.

**Signature**

Signed February 12<sup>th</sup>, 2024.



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**Kevin Kindred, K.C.**  
Counsel for the Attorney General of Nova Scotia,  
representing His Majesty the King in Right of the  
Province of Nova Scotia



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**Caitlin Menczel-O'Neill**  
Counsel for the Attorney General of Nova Scotia,  
representing His Majesty the King in Right of the  
Province of Nova Scotia

**Prothonotary's certificate**

I certify that this notice of defence, including the attached statement of defence, was filed with  
the court on \_\_\_\_\_, 2024.

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**Prothonotary**

## Statement of Defence

1. This statement is made by the Defendant, the Attorney General of Nova Scotia representing His Majesty the King in Right of the Province of Nova Scotia ("**the AGNS**"). The AGNS pleads and relies upon the *Proceedings Against the Crown Act*, R.S.N.S. 1989, c. 360.
2. As to paragraph 2 in the Statement of Claim, pursuant to Section 29(1)(e) of the Nova Scotia *Public Service Act*, R.S.N.S. 1989, c. 376, the AGNS "has the regulation and conduct of all litigation for or against the Crown or any public department in respect of any subject within the authority or jurisdiction of the Government".
3. As to paragraph 3 in the Statement of Claim, the AGNS states that the Provincial Court of Nova Scotia is a court of record established by the Legislature of the Province of Nova Scotia, pursuant to the *Provincial Court Act*, RSNS 1989, c. 238, under its constitutional authority over the administration of justice in the Province, as set out in ss. 92(14) of the *Constitution Act, 1867*, R.S.C. 1985, App. II, No. 5, s. 1.
4. The AGNS denies the remaining statements from paragraph 3 of the Statement of Claim, including the assertion that the Provincial Court of Nova Scotia is a legal entity capable of being sued.
5. Subject to the specific admissions outlined below, the AGNS does not admit but denies all allegations of fact in the Statement of Claim and puts the Plaintiff to the strict proof thereof.
6. The AGNS admits the allegations in the Statement of Claim at paragraph 4 alone.
7. The AGNS states that the presumption of constitutional conformity prohibits the interpretation of statutes contrary to the Canadian constitution, namely the express provisions of and principles inherent to the *Constitution Act, 1867* and the *Constitution Act, 1982*, R.S.C. 1985, App. II, No. 44.
8. The AGNS states that the independence of the judiciary, in substance and appearance, is a fundamental and inviolable principle of the Canadian constitution.
9. The AGNS asserts that any interpretation of the *Proceedings Against the Crown Act* giving rise to a finding of liability against the Province for the conduct of members of the Judiciary would offend the constitutional principle of judicial independence, which prohibits any actual or apparent intervention by the Province, or any employee, officer, agent, or representative of the Province, in either the legal decision making or the administrative direction of all Judges.

10. The AGNS denies the allegation that the Chief Judge of the Nova Scotia Provincial Court is an “an officer of the Nova Scotia Crown” for the purposes of finding liability under the *Proceedings Against the Crown Act*. The term “officer” is defined at section 2(c) of the *Proceedings Against the Crown Act*: “officer”, in relation to the Crown, includes a minister of the Crown and any servant of the Crown”. Judges of the Nova Scotia Provincial Court, including the Chief Judge, are neither ministers nor servants of the provincial Crown.
11. In the alternative, the AGNS states that the administration of the Provincial Court Bench, including the determination and implementation of a vaccination policy for judges during a province-, nation-, and world-wide pandemic, constitutes a responsibility of a judicial nature for the Chief Judge of the Nova Scotia Provincial Court. The AGNS therefore asserts the statutory limitation of liability in section 5(6) of the *Proceedings Against the Crown Act*, which prohibits proceedings against the Crown thereunder “in respect of anything done or omitted to be done by any person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities that he has in connection with the execution of judicial process.”
12. As to paragraph 7 in the Statement of Claim, the AGNS was involved in the Plaintiff’s appointment as a puisne judge of the Nova Scotia Provincial Court as required by section 3(1) of the *Provincial Court Act*, R.S., c. 238, which stipulates: “The Governor in Council may appoint, on the recommendation of the Attorney General, such judges as he deems necessary.”
13. Similarly, the AGNS is involved in the appointment of Chief Judges of the Nova Scotia Provincial Court as required by section 3(2) of the *Provincial Court Act*, which stipulates: “The Governor in Council may appoint, on the recommendation of the Attorney General, a Chief Judge who shall hold the office of Chief Judge for such term as the Governor in Council may determine.”
14. Judges of the Nova Scotia Provincial Court, including the Chief Judge and Associate Chief Judge, are otherwise separate and independent from the AGNS and the Province. The Provincial Court and the Provincial Crown are distinct branches of government. The AGNS has no oversight, common enterprise, or sufficient connection with the judges of the Nova Scotia Provincial Court, whose powers and jurisdiction are provided for under section 7 of the *Provincial Court Act*.
15. Pursuant to sections 15 of the *Provincial Court Act*, the Chief Judge of the Nova Scotia Provincial Court is responsible without oversight from the Province for the administration of all judicial functions of the Provincial Court. The AGNS does not determine or provide instruction with respect to the administration of any Courts or judicial functions within the Province, including that of the Nova Scotia Provincial Court.

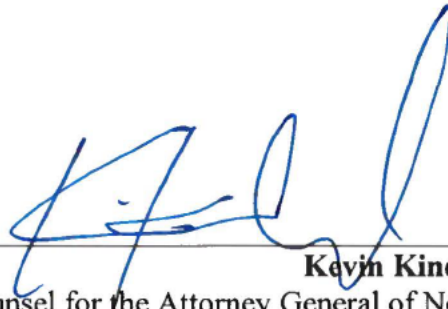
16. Pursuant to sections 16 and 17 of the *Provincial Court Act*, a Judicial Council is established to review complaints against Provincial Court Judges, including the Chief Judge, and provide oversight on the decisions and conduct of the Chief Judge. The AGNS is not a member of the Judicial Council, nor does the AGNS participate in Judicial Council affairs. The Judicial Council is not answerable in any capacity to the AGNS, the Governor in Council, or any other Provincial government entity.
17. Based on the statutory provisions referred to in paragraphs 11-15 above, as to the Plaintiff's claims of workplace liability and vicarious liability against the Province, the AGNS states that the Plaintiff is not and has never been an employee, contractor, servant, agent, officer, or partner of the Province. The Chief Judge of the Nova Scotia Provincial Court, current and all former, also have never been employees, contractors, servants, agents, officers, or partners of the Province. At all times material to this proceeding, there has been no relationship between the AGNS and these other parties which gives rise to a *prima facie* claim of vicarious liability.
18. As required under the Canadian constitution, the Province and the AGNS are separate in all ways from members of the Judiciary, including in all matters of judicial administration and policy making for judges of the Provincial Court.
19. While the Defendant Judges were appointed to the Nova Scotia Provincial Court Bench by the Governor in Council at the recommendation of the AGNS, there is no delegation or assignment of jurisdiction, nor can there be under the constitution, sufficient to give rise to vicarious liability flowing from the AGNS to any Provincial Court Judge. Judges, including the Chief Judge of the Nova Scotia Provincial Court, derive all jurisdiction and administrative authority under statute and the constitution, namely: the *Provincial Court Act*; the *Judicature Act*, R.S., c. 240, s. 1, the *Constitution Act, 1867*, and the *Constitution Act, 1982*.
20. The AGNS therefore denies all allegations of tortious conduct respecting the Plaintiff by what is referred to as the "Nova Scotia Crown". The AGNS further denies all allegations of vicarious liability in respect of alleged torts, breaches of duty, or breaches of statute, regulation, or by-law committed by any officers or agents of the Province.
21. As to any other claims raised by the Plaintiff against the AGNS and/or the Province in the course of this action, including all allegations of negligence, bad faith, misfeasance of public office, violation of medical privacy, violation of *Charter* rights, harassment, inaction, recklessness, unreasonable conduct, breach of terms of appointment, or breach of contract:
  - a. The AGNS denies all such claims for the reasons set out above.
  - b. The AGNS denies that the Plaintiff has suffered any damages, injuries, or losses, whether as alleged or otherwise.
  - c. In the further alternative, the AGNS states that the Plaintiff has failed to reasonably mitigate any alleged damages, injuries, or losses in relation to the claims of this action.

22. The AGNS pleads and relies upon the provisions of the *Proceedings Against the Crown Act*, the *Provincial Court Act*, Canada's Acts of Constitution, the *Interpretation Act*, RSNS 1989, c 235, and the *Tortfeasors Act*, RSNS 1989, c 471.

23. The AGNS asks that this Honourable Court dismiss the Plaintiff's action, with costs.

**Signature**

Signed February 12th, 2024.

A handwritten signature in blue ink, appearing to read 'Kevin Kindred', written over a horizontal line.

**Kevin Kindred, K.C.**  
Counsel for the Attorney General of Nova Scotia,  
representing His Majesty the King in Right of the  
Province of Nova Scotia

A handwritten signature in blue ink, appearing to read 'Caitlin Menczel-O'Neill', written over a horizontal line.

**Caitlin Menczel-O'Neill**  
Counsel for the Attorney General of Nova Scotia,  
representing His Majesty the King in Right of the  
Province of Nova Scotia