

Supreme Court of Nova Scotia

B E T W E E N:

Rickcola Brinton

Applicant

and

**The Judicial Council of Nova Scotia and The Honourable Pamela S.
Williams, Judge of the Provincial Court of Nova Scotia**

Respondents

**BRIEF OF THE RESPONDENT,
THE HONOURABLE PAMELA WILLIAMS**

April 19, 2024

Paliare Roland Rosenberg Rothstein LLP

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

Linda Rothstein [REDACTED]

[REDACTED]

[REDACTED]

Catherine Fan [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Lawyers for the Respondent,
The Honourable Pamela S. Williams

TO: Charter Advocates Canada

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

James Manson

[REDACTED]

Lawyer for the Applicant

AND TO: Stockwoods LLP, Barristers

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

Andrea Gonsalves

[REDACTED]

Spencer Bass

[REDACTED]

Lawyer for the Respondent, The Judicial Council of Nova Scotia

AND TO: Nova Scotia Department of Justice

Legal Services Division

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

Kevin Kindred, K.C.

[REDACTED]

Caitlin Menczel-O'Neill

[REDACTED]

Lawyer for The Attorney General of Nova Scotia (AGNS)

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PART I. OVERVIEW

1. In this application, Judge Rickcola Brinton asks the Court to reverse the Chief Justice of Nova Scotia's decision to dismiss her complaint against Judge Pamela Williams (the "**Complaint**"). During the events in the Complaint, Judge Williams was the Chief Judge of the Nova Scotia Provincial Court.

2. The Complaint makes serious allegations that Judge Williams interfered with Judge Brinton's judicial independence and freedom of expression. It takes issue with the statutory powers and duties of the Chief Judge to oversee "the assignment of judicial duties", "suspend a judge upon such terms and conditions as the Chief Judge may determine" if necessary, and "approve of requests for ... sick and special leaves".¹ It also complains of Judge Williams' actions pursuant to her statutory authority. What is missing, however, is any allegation – much less evidentiary basis – that Judge Williams acted in bad faith or with an ulterior motive. To the contrary, and at all times, Judge Williams carried out her duties as Chief Judge in good faith, in consultation with the Court, and pursuant to the Court's collective decision to require that judges be fully vaccinated to preside over in-person appearances during a global pandemic.

3. None of the actions complained of could have possibly amounted to judicial misconduct or justified a sanction against Judge Williams. Key portions of the Complaint were not supported by any evidence and/or were entirely devoid of merit. The Chief Justice's decision to dismiss the Complaint gave due consideration to the submissions before him and followed the processes provided for in the *Provincial Court Act*. And

¹ *Provincial Court Act*, RSNS 1989, c 238, ss. 15(1)-(2); *Duties of the Chief Judge and Administrator of the Provincial Court Regulations*, NS Reg 250/83, item 3.

although Judge Brinton has no standing to challenge the merits of the Chief Justice's decision, it was entirely reasonable and within his power to make. Like the Complaint, this application for judicial review should be dismissed.

PART II. FACTS

A. The facts leading up to the Complaint

1. The Nova Scotia Provincial Court decides that only fully vaccinated judges should preside over in-person appearances

4. COVID-19 represented an unprecedented challenge for Nova Scotia's court system. The pandemic and public health measures required to respond to the pandemic required courts to adapt and respond quickly to the evolving situation and guidance from public health officials.

5. Beginning in August 2021, courts across Canada began announcing the vaccination status of their judges and – for some courts – policies requiring that all judges on the court be vaccinated.² By Fall 2021, the Nova Scotia Provincial Court joined the rest of the country and made a collective decision that judges presiding over in-person appearances should be double vaccinated to protect members of the public, counsel, and the Court itself.³ As Judge Williams explained in her submissions to the Chief Justice, the Bench felt that it was an important policy for the Court to adopt as a matter of conscience and health and safety:

As a Bench, colleagues felt strongly that it was right to require that we be fully vaccinated to preside over in-person proceedings. In the end, we felt we each had an obligation to protect each other, court staff, counsel, and the public. Most of the people who attend court

² Decision, p. 3; Judge Williams Response, dated July 12, 2023, p. 7, **Record of Decision-Making Authority ("RODA") Tab 4, p. 216**.

³ Decision, p. 3; Bench Meeting Discussion re: Vaccination Status of PCJS, November 16, 2021, **RODA Tab 4, p. 254**.

do not have a choice about whether to attend court. Many, including criminal accused persons and witnesses testifying under a summons, will suffer severe legal consequences if they do not. We felt that we had an obligation to minimize their risk as a basic matter of health and safety – particularly people who were immunocompromised or people who could not get vaccinated themselves. Our court's failure to lead was distracting from the tireless work of our judges to deliver justice in challenging times, undermining confidence in the administration of justice, and perpetuating a false impression that the judges viewed themselves to be above the laws and public health guidelines that applied to other Nova Scotians.⁴

2. Judge Brinton refuses to confirm her vaccination status and goes on medical leave

6. Judge Brinton's refusal to disclose her vaccination status placed Judge Williams and the Bench as a whole in a difficult position as they considered the path forward.

7. On November 1, 2021, Judge Williams advised Judge Brinton that "[a]ll colleagues have confirmed they are double vaccinated and [were] urging [her] to publicly release a communique to the effect that all Provincial Court Judges who sit in our Courtrooms are fully vaccinated".⁵ While Judge Brinton reflected on her decision, Judge Williams hoped to offer options that would allow Judge Brinton to continue sitting remotely, including assigning her to "conduct virtual hearings from home and assign other judges to preside in her courtroom".⁶ However, if that option proved unworkable, Judge Williams advised Judge Brinton that she would have no choice but to suspend her under s. 15(2) of the *Provincial Court Act*.⁷

8. The Chief Judge has statutory and inherent authority to oversee workload allocation, assign judicial duties, and ensure compliance with judicial ethics on behalf of

⁴ Judge Williams Response, , dated July 12, 2023, p. 6, **RODA Tab 4, p. 215**.

⁵ Letter from Judge Williams to Judge Brinton, dated November 1, 2021, **RODA Tab 4, p. 243**.

⁶ Letter from Judge Williams to Judge Brinton, dated November 1, 2021, **RODA Tab 4, p. 243**; Decision, p. 3.

⁷ Letter from Judge Williams to Judge Brinton, dated November 1, 2021, **RODA Tab 4, p. 243**; Decision, p. 3.

the Provincial Court.⁸ Section 15(1) provides that “[t]he Chief Judge is responsible for the administration of the judicial functions of the court, including...the scheduling of the sittings of the court and the assignment of judicial duties”.⁹ Section 15(2) provides that “[t]he Chief Judge may suspend a judge upon such terms and conditions as the Chief Judge may determine where the Chief Judge believes immediate action is necessary”.¹⁰

9. In the end, however, Judge Williams was never required to make the difficult decision to suspend one of her judicial colleagues.¹¹ By her own admission, on October 25, 2021, Judge Brinton began self-isolating after her family contracted COVID-19 and went on an extended medical leave thereafter.¹² She has remained on leave ever since.¹³ Although Judge Brinton’s legal brief continues to assert that she was improperly suspended, the Chief Justice found as a fact that she was not.¹⁴

3. Judge Williams inquires into the medical basis for Judge Brinton’s leave

10. In addition to being responsible for “the assignment of judicial duties” pursuant to s. 15(1) of the *Provincial Court Act*,¹⁵ the Chief Judge of the Provincial Court is responsible for “approv[ing] of ... sick and special leaves” requested by Provincial Court judges

⁸ *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at paras. 52, 56-59, **Book of Authorities (“BOA”) Vol 1, Tab 1**; *Therrien (Re)*, 2001 SCC 35, at para. 141, **BOA Vol 1, Tab 2**; *Valente v. The Queen*, [1985] 2 SCR 673 at p. 709, **BOA Vol 1, Tab 3**; *Ref re Remuneration of Judges of the Prov. Court of P.E.I.*; *Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3, at paras. 120, 260-261, **BOA Vol. 1, Tab 4**.

⁹ *Provincial Court Act*, RSNS 1989, c 238, s. 15(1).

¹⁰ *Provincial Court Act*, RSNS 1989, c 238, s. 15(2).

¹¹ Decision, p. 4.

¹² Complaint, para. 31-32, 43, 48, **RODA Tab 2, p. 13-14, 16-17**.

¹³ Decision, pp. 3-4; email from W. Hudgins to Judge Williams, dated October 6, 2022, **RODA Tab 4, p. 272**.

¹⁴ Applicant’s Legal Brief, para. 36, 82(e), 94, 97; Decision, pp. 3-4.

¹⁵ *Provincial Court Act*, RSNS 1989, c 238, s. 15(1).

pursuant to NS Reg 250/83 and Part 2 of the Judge's Income Protection Plan adopted by the Nova Scotia Provincial Judges' Salaries and Benefits Tribunal.¹⁶ The Judges' Income Protection Plan provides that the "Chief Judge may authorize short-term disability leave at full pay" for judges of the Provincial Court, and is the only person tasked with that responsibility.¹⁷ The Income Protection Plan was expressly adopted to respond to the Supreme Court's comments that while it is acceptable for the Executive branch to approve medical leaves of absences, it is preferable for them to be administered by the Court itself.¹⁸

11. During her leave, the Chief Justice noted that Judge Brinton submitted "Proof of Illness" forms to Judge Williams that contained "[n]o information concerning the illness or disability" that was prevented her from working.¹⁹ As such, on February 22, 2022, Judge Williams wrote to Judge Brinton to advise her "that as Chief Judge she was responsible for approving short-term disability leaves and she required satisfactory evidence of disability to give this approval".²⁰ She then followed up with correspondence to Judge Brinton's physician on March 28, 2022 (copied to her) requesting a medical report to substantiate the medical basis for Judge Brinton's short-term leave.²¹

¹⁶ The Judge's Income Protection Plan has the "same force and effect as if enacted by the Legislature" pursuant to the *Provincial Court Act*, *Provincial Court Act*, RSNS 1989, c 238, s. 21K(4).

¹⁷ Nova Scotia Tribunal on Provincial Court Judges' Salaries and Benefits, Supplementary Report on Income Protection, ss. 8-9, p. 16-17, **RODA Tab 3, p. 108**; Duties of the Chief Judge and Administrator of the Provincial Court Regulations, NS Reg 250/83, item 3.

¹⁸ Nova Scotia Tribunal on Provincial Court Judges' Salaries and Benefits, Supplementary Report on Income Protection, p. 5, **RODA Tab 3, p. 95**; *Valente v. The Queen*, [1985] 2 S.C.R. 673, at p. 714, **BOA Vol 1, Tab 3**.

¹⁹ Decision, p. 4.

²⁰ Decision, p. 4; Letter from Judge Williams to Judge Brinton, dated February 22, 2022, **RODA Tab 3, p. 118**.

²¹ Decision, p. 4. See also Letter from Judge Williams to Dr. Ola Babatolu, dated March 28, 2022, **RODA Tab 3, p. 126**.

12. In her brief, Judge Brinton submits to this Court that it was “inappropriate” for Judge Williams to write to her doctor because “Brinton’s insurer approved both her short-term and long-term disability application without Williams’s involvement”.²² That submission ignores the fact that the Income Protection Plan provides that “[e]vidence of a disability shall be provided to the satisfaction of the Chief Judge” (emphasis added).²³ Neither the Public Service Commission nor the short-term disability benefits provider has the power to approve short-term disability leaves – the Chief Judge does.²⁴ And as Judge Williams explained to Judge Brinton, she had learned that “neither the PSC nor Lifeworks [who insures the judges’ short-term disability benefits] requests medical information related to Judicial short-term illnesses”.²⁵

13. Judge Williams explained to Judge Brinton how the Judges’ Income Protection Plan operates in her letter of February 22, 2022 and attached a copy for her reference.²⁶ It is wrong for Judge Brinton to assert – as she does now – that her short-term disability application could be approved without the involvement of the Chief Judge.

14. In her letter, Judge Williams also reiterated that if Judge Brinton recovered and was able to return to sit, she could not return to sit without confirming her vaccination status. Refusing to confirm her vaccination status would leave Judge Williams with “no

²² Applicant’s Brief, at para. 82(f).

²³ Nova Scotia Tribunal on Provincial Court Judges’ Salaries and Benefits, Supplementary Report on Income Protection, p. 17, s. 9, **RODA Tab 3, p. 106**.

²⁴ Decision, p. 4.

²⁵ Letter from Judge Williams to Judge Brinton, dated February 22, 2022, p. 2, **RODA, Tab 3, p. 118**.

²⁶ Letter from Judge Williams to Judge Brinton, dated February 22, 2022, p. 2, **RODA, Tab 3, p. 119**.

recourse other than to suspend Judge Brinton and refer the matter to the Judicial Council".²⁷

15. However, no further action was ultimately necessary.²⁸ Judge Brinton was approved to receive long-term disability benefits shortly thereafter and has remained on a medical leave since then. The Chief Judge does not oversee the long-term disability plan.²⁹ However, once the long-term disability administrator approved Judge Brinton's leave, Judge Williams was satisfied that Judge Brinton had submitted sufficient medical information to justify a long-term absence and took no further action.³⁰

B. Judge Brinton files a Complaint against Judge Williams

16. On June 7, 2023, Judge Brinton filed a complaint with the Nova Scotia Judicial Council alleging that Judge Williams had interfered with her judicial independence during this period in her handling of Judge Brinton's vaccination status and her requests that Judge Brinton substantiate the medical basis for her leave.³¹ In her Complaint, Judge Brinton requested that the Complaint be referred directly to a Review Committee of the Nova Scotia Judicial Council.³²

²⁷ Decision, p. 4. See also Letter from Judge Williams to Judge Brinton, dated February 22, 2022, p. 3, **RODA, Tab 3, p. 120**.

²⁸ Decision, p. 4-5.

²⁹ See Nova Scotia Tribunal on Provincial Court Judges' Salaries and Benefits, Supplementary Report on Income Protection, p. 20, s. 20(5), **RODA, Tab 3, p. 110**

³⁰ Decision, p. 4-5.

³¹ Complaint, **RODA, Tab 2**.

³² Complaint, at paras. 14, 82-83, 86, **RODA Tab 2, pp. 10, 31, 33**.

C. The Chief Justice of Nova Scotia dismisses the Complaint

1. The judicial conduct process under the *Provincial Court Act*

17. The *Provincial Court Act* provides a statutory framework to receive and assess complaints about the conduct of provincially-appointed judges. That process contains numerous waypoints that allow the Judicial Council to screen out unmeritorious complaints that do not warrant further investigation or discipline.

18. At the initial stage, a complaint against a judge of the Provincial Court or the Family Court may be “made in writing by any person” to the Chief Judge of either Court under s. 17A of the *Provincial Court Act*.³³ In the ordinary course, the Chief Judge is tasked with reviewing a complaint to determine if there are “reasonable grounds to believe that the complaints should proceed to a Review Committee”.³⁴ Under s. 17B(1), the Chief Judge then has the power to either:

- (a) Dismiss the complaint if it is “not within the jurisdiction of the Judicial Council”, it is “frivolous or vexatious”, or “there is no evidence to support the complaint”;
- (b) Attempt to resolve the complaint; or
- (c) Refer the complaint to the Chair of the Judicial Council with a recommendation about whether the complaint should “be dismissed”,

³³ *Provincial Court Act*, RSNS 1989, c 238, s. 17A.

³⁴ *In the Matter of Complaints against Judge Gregory Lenehan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee) at para. 23, **BOA Vol 1, Tab 5**.

“resolved with the agreement of the judge”, or “referred to a review committee for further investigation”.³⁵

19. If the Chief Judge refers the complaint to the Chair of the Judicial Council – who is also the Chief Justice of Nova Scotia³⁶ – with a recommendation that it be dismissed or resolved, the Chair “may either accept the recommendation of the Chief Judge, and advise the complainant and the Judge in writing, or empanel a review committee”.³⁷

20. If the Chair refers the complaint to a Review Committee, s. 17G provides that the review committee “shall investigate the complaint” and may similarly:

- (a) dismiss the complaint;
- (b) resolve the complaint with the agreement of the judge; or
- (c) refer the complaint to a hearing before the Judicial Council.³⁸

21. The Nova Scotia Judicial Council has only empanelled a Review Committee twice since Nova Scotia adopted the current judicial conduct scheme in 2000. In the *Lenehan* matter, the Review Committee held that it would only refer an allegation of judicial misconduct to a hearing before the Judicial Council if it is satisfied that the impugned conduct:

³⁵ *Provincial Court Act*, RSNS 1989, c 238, s. 17B(1).

³⁶ *Provincial Court Act*, RSNS 1989, c 238, s. 16(1)(a).

³⁷ *Provincial Court Act*, RSNS 1989, c 238, s. 17C.

³⁸ *Provincial Court Act*, RSNS 1989, c 238, s. 17G.

- (a) “could ... be found to be so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public’s confidence in the ability of the judge to perform the duties of office, or in the administration of justice generally”; and
- (b) “warrants a disposition other than dismissal of the complaints in order to restore that confidence”.³⁹

22. Once a complaint is referred to the Judicial Council, the Judicial Council is required to hold a hearing. Upon concluding the hearing, the Judicial Council has the power under s. 17K to:

- (a) “dismiss the complaint”;
- (b) impose discipline, short of removal from office; or
- (c) “recommend that the judge be removed from office”.⁴⁰

2. The Chief Justice’s decision

23. Because the Complaint was made about the Chief Judge of the Provincial Court, the Chair of the Judicial Council and the Chief Justice of Nova Scotia, Wood C.J.N.S., assumed the role of the Chief Judge in evaluating the Complaint. Section 17A(2) of the *Provincial Court Act* provides that in the case of a complaint against the Chief Judge, the

³⁹ *In the Matter of Complaints against Judge Gregory Lenehan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee) at para. 45, **BOA Vol 1, Tab 5**.

⁴⁰ *Provincial Court Act*, RSNS 1989, c 238, s. 17K.

complaint shall be made “to the Chief Justice of Nova Scotia, in which case the Chief Justice has the powers and duties of the Chief Judge pursuant to Section 17B”.⁴¹

24. Given the extensive allegations of judicial misconduct and Judge Brinton’s request that the Complaint be referred directly to a Review Committee,⁴² the Chief Justice invited Judge Williams to provide comments on the allegations against her.⁴³ After considering the Complaint and the submissions he received, the Chief Justice determined that the Complaint should be dismissed under s. 17B(1)(a) on the basis that the acts complained of could not possibly support a finding of judicial misconduct. The core of his decision is summarized in his conclusion that:

the actions of Chief Judge Williams could not support a finding of judicial misconduct as defined [by the Nova Scotia Judicial Council’s Review Committee] in *Lenahan*. Her decisions concerning how to assign judicial work and what medical information was required to support Judge Brinton’s medical leave fall within her authority as Chief Judge. The reasons for these decisions and the methods of implementation would not warrant any of the sanctions found in s. 17K of the *Act*.⁴⁴

PART III. ISSUES

25. Judge Brinton’s legal brief advances five separate challenges to the process leading up to and the substance of the Chief Justice’s decision, which she argues justify substituting an order that her Complaint be referred directly to a Review Committee. Those submissions fundamentally misunderstand the judicial conduct process and statutory scheme.

⁴¹ *Provincial Court Act*, RSNS 1989, c 238, s. 17A(2).

⁴² Complaint, at paras. 14, 82-83, 86, **RODA Tab 2, pp. 10, 31, 33**.

⁴³ Letter from Chief Justice Wood to Judge Williams, dated June 8, 2023, **RODA Tab 8A**; Letter from Chief Justice Wood to Judge Williams, dated August 15, 2023, **RODA Tab 8G**.

⁴⁴ Decision, at p. 5.

26. Properly considered in context, there are three overarching issues in this application, none of which should cause this Court to interfere with the Chief Justice's decision:

- (a) The process adopted by the Chief Justice aligned with the *Provincial Court Act* and was a procedurally fair one;
- (b) Judge Brinton has no standing to challenge the merits of the Chief Justice's decision on judicial review; and
- (c) If she does have standing, the Chief Justice's decision to dismiss her Complaint was reasonable both as to the legal test that he applied and the factors he took into account.

PART IV. LAW AND ARGUMENT

A. *Preliminary issue: the application misconstrues the role of the Judicial Council and the impact of its decision on the complainant*

27. Many of Judge Brinton's submissions are premised on the assumption that the purpose of Judicial Council proceedings is to vindicate her rights, and that the Chief Justice gave her rights insufficient weight in dismissing the Complaint.⁴⁵ In reality, "the Council does not exist to enforce the rights of complainants or to provide them with redress"⁴⁶ and the complainant has no legal interest that is affected by the outcome of the complaint either way. The only two parties to the process are Judge Williams and the Judicial Council itself. It is the reason why, in law:

⁴⁵ See, e.g., Applicant's Brief, at para. 72, 79-80, 84-85, 92-96, 100.

⁴⁶ *Taylor v. Canada (Attorney General)*, 2003 FCA 55, at para. 82, **BOA Vol 1, Tab 6**.

- (a) The Judicial Council's duty of procedural fairness does not require it to disclose a judge's response to a complainant;
- (b) A complainant is only owed a duty of procedural fairness and has no standing to challenge the merits of a decision to dismiss their complaint; and
- (c) The *Doré* framework does not apply, since it is only triggered when a decision "infringes *Charter* rights or limits the values underlying them".⁴⁷

28. The Canadian Judicial Council and its provincial and territorial counterparts are "highly specialized tribunal[s]" that have a unique statutory and constitutional mandate to "investigate, reprimand, and potentially recommend the removal of judges where their conduct may threaten judicial integrity".⁴⁸ However, even when a judicial council engages its powers to discipline a judge under investigation, "[t]he purpose of judicial discipline in Canada is not to punish a particular judge; rather, its role is remedial and related to the

⁴⁷ *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, at paras. 67, 74, **BOA Vol 1, Tab 7**.

⁴⁸ *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, at paras. 44-46, 50-51, and 60, **BOA Vol 1, Tab 8**, citing *Therrien (Re)*, 2001 SCC 35, at para. 58, **BOA Vol 1, Tab 2**, and *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at para. 68, **BOA Vol 1, Tab 1**. See also *Canada (Attorney General) v. Slansky*, 2013 FCA 199, at para. 138 (*per* Mainville J.A., concurring), **BOA Vol 1, Tab 9**.

judiciary as a whole”.⁴⁹ In other words, its purpose is “to restore a loss of public confidence arising from the judicial conduct in issue”.⁵⁰

29. Decades of jurisprudence has affirmed and re-affirmed that proceedings before judicial councils are not “adversarial proceeding[s]” between the complainant and the judge complained of.⁵¹ They are purely investigative proceedings in which the only two parties to this process are the judge complained of, and the Judicial Council.⁵² In fact, it is a constitutional imperative that the Judicial Council have carriage of any investigation and prosecution: judges must be accountable for their conduct but they must face those challenges in forums with the expertise and “sufficient safeguards to protect the integrity of the principle of judicial independence”.⁵³ This includes the individual independence of the judge who is facing discipline or removal from the bench for the way they have

⁴⁹ *In the Matter of Application Brought by the Toronto Star and the Criminal Lawyers’ Association* (October 14, 2015) (Ontario Judicial Council), at para. 66, **BOA Vol 2, Tab 10**, citing *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at para. 68, **BOA Vol 1, Tab 1**:

The Comité’s mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack of any definitive power of removal become entirely comprehensible and clearly reflect the objectives underlying the Comité’s establishment: not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.

[Emphasis in original.]

⁵⁰ *In the matter of a complaint respecting the Honourable Madam Justice Lesley M. Baldwin* (May 10, 2002) (Ontario Judicial Council), **BOA Vol 2, Tab 11**.

⁵¹ *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at paras. 72-74, **BOA Vol 1, Tab 1**; see also *Therrien (Re)*, 2001 SCC 35, at para. 103, **BOA Vol 1, Tab 2**; *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087, at paras. 193, 219, 222, **BOA Vol 2, Tab 12**.

⁵² *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at para. 73, **BOA Vol 1, Tab 1**; *Therrien (Re)*, 2001 SCC 35, at para. 103, **BOA Vol 1, Tab 2**.

⁵³ *Mackeigan v. Hickman*, [1989] 2 SCR 796 at pp. 831-834 *per* McLachlin J. and 806-807 *per* Lamer J., concurring, **BOA Vol 2, Tab 13**, holding that a Royal Commission lacked jurisdiction to summons the Chief Justice regarding his reasons for assigning specific judges to preside over the wrongful conviction appeal of Donald Marshall Jr.

exercised their judicial authority, as well as the institutional independence of the court as a whole to administer its own affairs.⁵⁴

30. Like other judicial council processes, complainants have no standing in the Nova Scotia Judicial Council's discipline process. As the Supreme Court explained in *Ruffo v. Conseil de la magistrature*, "[t]he complaint is merely what sets the process in motion".⁵⁵ The legislature has not seen fit to give complainants the right to appeal a decision to dismiss a complaint, nor do complainants have the right to control the investigation or prosecution of any complaint if the Judicial Council decides to inquire into the allegations. Consistent with the jurisprudence of courts across the country, the Nova Scotia Judicial Council Review Committee has held that "[a] person who makes a complaint against a judge does not control the process" because "[t]hey are not a formal party to the process ... and that is in accordance with the principles relating to judicial independence".⁵⁶

B. The Chief Justice followed the procedures under the Provincial Court Act and discharged his procedural fairness obligations toward Judge Brinton

31. Like other administrative tribunals, the Judicial Council has the power to "determine its own procedures and any procedures governing a review committee".⁵⁷ Moreover, ss. 17A(2) and 17B(2) of the *Provincial Court Act* provide that when deciding

⁵⁴ *Valente v. The Queen*, [1985] 2 SCR 673, at pp. 698, 708-709, **BOA Vol 1, Tab 3**; *Ref re Remuneration of Judges of the Prov. Court of P.E.I.*; *Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3, at para 120, **BOA Vol 1, Tab 4**.

⁵⁵ *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at para. 73, **BOA Vol 1, Tab 1**; *Therrien (Re)*, 2001 SCC 35, at para. 103, **BOA Vol 1, Tab 2**.

⁵⁶ *In the Matter of Complaints Against Judge Alanna Murphy* (March 30, 2022) (Nova Scotia Judicial Council Review Committee), at para. 19, **BOA Vol 2, Tab 14**.

⁵⁷ *Provincial Court Act*, RSNS 1989, c 238, s. 17(1)(i).

how to screen a complaint, the Chief Judge or Chief Justice may seek out a response from the judge complained of and must keep any such response confidential:

(2) Any discussions between the Chief Judge and the judge complained of respecting the complaint are confidential and shall not be disclosed by the Chief Judge to the Judicial Council.⁵⁸

32. Those provisions are a full answer to Judge Brinton’s complaints that the Chief Justice had no jurisdiction to invite responding submissions from Judge Williams and/or should have provided a copy of those submissions to Judge Brinton.

33. The *Act* governs the procedures that the Chief Justice was bound to follow.⁵⁹ They are no different than the procedures governing other judicial councils across the country, many of whom are required to abide by statutory confidentiality obligations during the investigative process or have adopted similar provisions in their rules of procedure.⁶⁰

34. Among other things, confidentiality preserves the judicial council’s ability to get to the heart of a complaint by securing “full and frank disclosures at the investigation stage” and allowing the judge complained of to give a full explanation of their decisions or conduct without fear of undermining the deliberative process or the inner workings of the court.⁶¹ In doing so, it ultimately serves the public interest in having independent judges and independent courts. As the Ontario Judicial Council explained when considering an

⁵⁸ *Provincial Court Act*, RSNS 1989, c 238, s. 17B(2).

⁵⁹ *Grant v. Ontario (Information and Privacy Commissioner)*, March 5, 2001 (Ont. Div. Ct.) at paras. 15-17, **BOA Vol 2, Tab 15**.

⁶⁰ Attached at **Appendix A** is a chart setting out the relevant statutory and procedural provisions.

⁶¹ *Canada (Attorney General) v. Slansky*, 2013 FCA 199, at paras. 152, 161, 166 *per* Mainville J.A., and at para. 9, **BOA Vol 1, Tab 9**; *In the Matter of Application Brought by the Toronto Star and the Criminal Lawyers’ Association* (October 14, 2015) (Ontario Judicial Council), at paras. 136-37, 140-141, **BOA Vol 2, Tab 10**.

application to disclose the full contents of a complaint file – including the judge's response – to the complainant association and the media:

A system of accountability for judicial conduct must provide for accountability, yet at the same time guard against any risk of infringement of the constitutional guarantees that apply to any judge who is the subject of a complaint. The Council's Procedures have established a legal threshold, so that a hearing is ordered when there is a basis in fact that could result in a finding of judicial misconduct. If the threshold has been met, the risk of harm to the judicial independence of the subject judge is outweighed by the need to preserve or restore public confidence in the judiciary in general. Public disclosure of the complaint, and the underlying facts giving rise to it, will normally be appropriate in cases where there is sufficient merit to the complaint to warrant referring it to a hearing. However, for the many complaints that do not meet this threshold to order a hearing, the harm to judicial independence and the integrity of the process will typically outweigh any benefits of disclosure. Drawing a line between complaints referred to hearing (presumptively public) and complaints that have not met the required threshold in the screening process (presumptively confidential) is rational in the circumstances.⁶²

[Emphasis added.]

35. The Ontario Divisional Court rejected similar allegations that there was “something nefarious” or “unfair” about “the confidential nature of the [Ontario Judicial Council]’s complaints procedure”, for whom the *Courts of Justice Act* also requires that the subcommittee’s investigation and report be kept private.⁶³ To the contrary, it “is mandated by statute and intended to achieve a balance between accountability on the part of the judges for their conduct and constitutionally protected judicial independence”.⁶⁴

36. Accepting Judge Brinton’s submissions would result in an unprecedented expansion to the scope of disclosure afforded under the *Provincial Court Act* and at common law.

⁶² *In the Matter of Application Brought by the Toronto Star and the Criminal Lawyers’ Association* (October 14, 2015) (Ontario Judicial Council), at para. 141, **BOA Vol 2, Tab 10**.

⁶³ *Kipiniak v. The Ontario Judicial Council*, 2012 ONSC 5866, at para. 12, **BOA Vol 2, Tab 16**; see also *Courts of Justice Act*, RSO 1990, c C.43, s. 51.4(6), (17), (18).

⁶⁴ *Kipiniak v. The Ontario Judicial Council*, 2012 ONSC 5866, at para. 12, **BOA Vol 2, Tab 16**.

37. Even for judicial councils with no statutory confidentiality obligations, such as the Canadian Judicial Council, the common law duty of procedural fairness does not require that the council disclose the judge's response to the complainant or seek submissions in reply.⁶⁵ Judge Brinton's brief misstates how the *Baker* factors apply to judicial discipline proceedings and the ultimate level of procedural fairness owed to a complainant, as reviewed most recently by the Federal Court in *National Council of Canadian Muslims v. Canada (Attorney General)*.⁶⁶ Proceedings before judicial councils are investigatory, not adversarial, in nature.⁶⁷ The complainant faces no jeopardy in the proceeding and has no legal interest in the outcome, whether or not it is dismissed.⁶⁸ The complainant has no expectation that they will receive disclosure – indeed, the statute and the procedures adopted confirm that they will not. Most importantly, this statutory scheme – including the confidentiality assurances baked into s. 17B – provides a strong indicator that the legislature intended that judges be able to respond confidentially and candidly to complaints against them without having to limit their comments to what would be appropriate for public consumption.

⁶⁵ *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087, at para. 222, **BOA Vol 2, Tab 12**.

⁶⁶ *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087, at paras. 196-208, **BOA Vol 2, Tab 12**.

⁶⁷ *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, at para. 72-74, **BOA Vol 1, Tab 1**; see also *Therrien (Re)*, 2001 SCC 35, at para. 103, **BOA Vol 1, Tab 2**; *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087, at para. 199, **BOA Vol 2, Tab 12**.

⁶⁸ *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087, at paras. 201-202, **BOA Vol 2, Tab 12**.

C. Judge Brinton does not have standing to challenge the merits of the Chief Justice's decision

38. The Chief Justice carefully reviewed and considered Judge Brinton's Complaint through a fair process. That is the only issue properly before this Court.

39. Across the country, there is a settled consensus that "[u]nless a statute expressly provides otherwise, a complainant in a professional discipline case has no standing to challenge the substantive reasonableness of a decision not to refer a complaint to a discipline hearing".⁶⁹ This Court's decisions in *Tupper v. Nova Scotia Barristers' Society* and *Robichaud v. College of Registered Nurses of Nova Scotia* have exhaustively canvassed the jurisprudence on this issue and are some of the leading decisions in the country.⁷⁰ They apply with equal force to this application for judicial review.

(a) Complainants in professional discipline proceedings do not have standing to challenge the merits of a decision dismissing their complaint

40. In *Tupper*, this Court held that to obtain private interest standing in a judicial review, the burden is on the applicant to show that they have "some special interest, private interest or sufficient interest" in the decision or proceeding.⁷¹ In particular, they must demonstrate that a decision-maker "has infringed a legal right of theirs, or that they have

⁶⁹ *Fuchigami v. Ontario College of Teachers*, 2024 ONSC 106, at para. 14, **BOA Vol 2, Tab 17**.

⁷⁰ *Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290, at paras. 30-43, **BOA Vol 2, Tab 18**, aff'd 2014 NSCA 90, **BOA Vol 2, Tab 19**; *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, **BOA Vol 2, Tab 20**.

⁷¹ *Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290, at para. 30, **BOA Vol 2, Tab 18**, aff'd 2014 NSCA 90, **BOA Vol 2, Tab 19**, citing *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at para. 10, **BOA Vol 2, Tab 20**.

a legal right which will ‘cause or threaten to cause [them] some special damage over and above that suffered by the general public’.”⁷²

41. Determining whether the complainant has a sufficient interest in a decision to obtain standing as of right requires a careful analysis of the statutory scheme, and the rights that it affords to complainants in that process.

42. In most professional discipline proceedings, like proceedings before the Judicial Council, a complainant is not a party to the proceeding.⁷³ It is the disciplinary body that has the statutory authority, mandate, and expertise to regulate its members in the public interest.⁷⁴ As the Alberta Court of Queen’s Bench explained in *Tran v. College of Physicians and Surgeons of Alberta*:

A person who complains to a professional regulatory body has the same interest as any member of the public: an interest in ensuring that members of the profession meet the standards set by the governing body. It is the role and the obligation of the professional regulator, not the complainant, to ensure that standard is met.⁷⁵

43. Ordinarily, a complainant’s only rights are to submit a complaint and – by implication – to have that complaint dealt with through a fair process.⁷⁶ On judicial review,

⁷² *Tupper v. Nova Scotia Barristers’ Society*, 2013 NSSC 290, at para. 30, **BOA Vol 2, Tab 18**, aff’d 2014 NSCA 90, **BOA Vol 2, Tab 19**, citing *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at para. 10, **BOA Vol 2, Tab 20**.

⁷³ *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at paras. 34-36, **BOA Vol 2, Tab 20**, citing *Metropolitan Centre Inc. v Abugov Kaspar Architecture, Engineering, Interior Design*, 2007 ABQB 419, at paras. 24-29, **BOA Vol 2, Tab 21**; *Mitten v. College of Alberta Psychologists*, 2010 ABCA 159, at paras. 16-18, **BOA Vol 2, Tab 22**; *Friends of the Old Man River Society v. Association of Professional Engineers, Geologists and Geophysicists of Alberta*, 2001 ABCA 107, at para. 41, **BOA Vol 2, Tab 23**.

⁷⁴ *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at pp. 886-890, **BOA Vol 2, Tab 24**; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, at paras. 35-40, **BOA Vol 2, Tab 25**; *Green v. Law Society of Manitoba*, 2017 SCC 20 at paras. 25, 28-31, **BOA Vol 2, Tab 26**.

⁷⁵ *Tran v. College of Physicians and Surgeons of Alberta*, 2017 ABQB 337, at para. 23, **BOA Vol 2, Tab 27**, aff’d 2018 ABCA 95, **BOA Vol 2, Tab 28**.

⁷⁶ *Perry v. Nova Scotia Barristers’ Society*, 2016 NSSC 121, at para. 32-35, **BOA Vol 2, Tab 29**; *Tupper v. Nova Scotia Barristers’ Society*, 2013 NSSC 290, at paras. 31, 43, **BOA Vol 2, Tab 18**; *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at paras. 14-15, 50-51, **BOA**

complainants have standing to challenge the fairness of the process followed because they have a legal right to procedural fairness.⁷⁷ However, they do not ordinarily have standing to challenge “what follows from a fair consideration of the complaint” – i.e. the merits of the decision – because they have no other legal rights in that process.⁷⁸ The exception is if a statutory scheme deems the complainant to be a party to some or all of the process and provides them with all of the rights of a party (as with the Nova Scotia *Police Act*),⁷⁹ or the scheme gives the complainant the right to seek substantive review of a decision dismissing their complaint (as with Ontario's *Regulated Health Professions Act*).⁸⁰ Neither applies here.

44. To have standing to challenge the merits of a decision, this Court affirmed in *Robichaud* that it is “not sufficient to be interested in the decision” – a complainant has to “have to have an interest that is or will be affected by the decision”.⁸¹ The fact that the underlying events in question may have affected the complainant does not give the complainant a legal interest in the outcome of the disciplinary proceedings themselves.⁸²

Vol 2, Tab 20; *Allen v. College of Dental Surgeons of British Columbia*, 2007 BCCA 75, at para. 24, 38, **BOA Vol 3, Tab 30**; *Mitten v. College of Psychologists (Alberta)*, 2010 ABCA 159, at paras. 17-18, **BOA Vol 2, Tab 22**.

⁷⁷ *Ibid.* See also *Fuchigami v. Ontario College of Teachers*, 2024 ONSC 106, at paras. 14-16, **BOA Vol 2, Tab 17**.

⁷⁸ *Ibid.*

⁷⁹ *Police Act*, SNS 2004, c 31, s. 77.

⁸⁰ Richard Steinecke, *Complete Guide to the Regulated Health Professions Act* (Toronto: Thomson Reuters, 2019) (loose-leaf) § 5:25, fn 1, **BOA Vol 3, Tab 31**; see also *Regulated Health Professions Act*, 1991, SO 1991, c. 18, Schedule 2, Health Professions Procedural Code, ss. 29(2), (5), 32(1)-(3), 33(1)-(2), 35.

⁸¹ *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at paras. 12, 45, **BOA Vol 2, Tab 20**.

⁸² *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at para. 34, **BOA Vol 2, Tab 20** citing *Metropolitan Centre Inc. v. Abugov Kaspar Architecture*, 2007 ABQB 419, at para. 29, **BOA Vol 2, Tab 21**. See, e.g., *Fuchigami v. Ontario College of Teachers*, 2024 ONSC 106, **BOA Vol 2, Tab 17** (complainant became suicidal and depressed); *Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290, at para. 45, **BOA Vol 2, Tab 18**, aff'd 2014 NSCA 90, **BOA Vol 2, Tab 19** (“Mr. Tupper genuinely believes he has been grievously wronged by the lawyers named in his complaint”); *Perry v. Nova Scotia Barristers'*

Nor can a complainant manufacture a legal interest in the proceedings through their own unilateral actions, such as refusing to return to the profession until the member is disciplined,⁸³ or by commencing a parallel civil claim against the member.⁸⁴

(b) *This application for judicial review should be restricted to the procedural fairness of the Chief Justice's decision*

45. Most courts have arrived at the same conclusion when the complainant's standing to seek judicial review of a decision dismissing their complaint against a judge or other judicial official has been challenged:⁸⁵

- (a) In *Fairchild v. Bligh*, the Nunavut Court of Justice held that the complainants had no standing to challenge the merits of a decision disposing of their complaints against a Justice of the Peace after a full hearing.⁸⁶ It noted that the complainants were “‘non-parties’ to the entire disciplinary proceedings being conducted under that statutory framework because their rights will not be affected by the disciplinary process”.⁸⁷ It concluded that the complainants were limited to challenging the fairness of that process, relying on the line of professional discipline cases reviewed above.⁸⁸

Society, 2016 NSSC 121, at para. 50, **BOA Vol 2, Tab 29** (“Although Mr. Perry no doubt considers the decision to be important to him, it does not affect his rights, for example, his livelihood”).

⁸³ *Fuchigami v. Ontario College of Teachers*, 2024 ONSC 106, at paras. 17-18, **BOA Vol 2, Tab 17**.

⁸⁴ *Allen v. College of Dental Surgeons of British Columbia*, 2007 BCCA 75, at paras. 9, 24(6), **BOA Vol 3, Tab 30**.

⁸⁵ The sole exception is *Kipiniak v. The Ontario Judicial Council*, 2012 ONSC 5866, **BOA Vol 2, Tab 16**, where the Court held that it was “at least arguable” that the complainant had standing to challenge the merits of the judicial council's decision dismissing on judicial review: at para. 20. However, the Court did not have before it the full line of professional regulation decisions and in any case made its comments in *obiter*.

⁸⁶ *Fairchild v. Bligh*, 2015 NUCJ 17, at para. 17-18, **BOA Vol 3, Tab 32**.

⁸⁷ *Fairchild v. Bligh*, 2015 NUCJ 17, at para. 18, **BOA Vol 3, Tab 32**.

⁸⁸ *Fairchild v. Bligh*, 2015 NUCJ 17, at paras. 22, 34, **BOA Vol 3, Tab 32**.

- (b) In *Douglas v. Canada (Attorney General)*, the Federal Court similarly dismissed the complainant's request to be added as a necessary party on a judicial review brought by Justice Lori Douglas on the basis that he had no substantive rights in the underlying discipline process:

As found by the Inquiry Committee, the investigation process contemplated under subsection 63(3) of the *Judges Act* is concerned with the broader public interest in protecting public confidence in the administration of justice. It transcends the interests of the individual complainant. Once engaged, it is only the public interest, as represented by the independent counsel, and the rights of the judge whose conduct is investigated and to whom party status is expressly conferred by section 64 of the *Judges Act*, that are at issue. The complainant has no individual legal right to have his or her complaint determined, or in the outcome of the inquiry process.

Mr. Chapman, as complainant, has no right or interest in whether or not the Inquiry Committee should be recused, or whether the proceedings should be prohibited. The fact that he enjoyed procedural rights in that proceeding does not transform these procedural rights into substantive rights.⁸⁹

46. As the complainant – and not the respondent – in a judicial discipline proceeding, Judge Brinton's only legal interest was to have her complaint dealt with in a fair process.⁹⁰ The underlying Complaint expressly acknowledged that she was not seeking "any ... potential legal remedies, nor does [the Complaint] ask for any of [Judge Williams'] "decision(s)" to be set aside".⁹¹ Judge Brinton asked only that "the Judicial Council ... investigate the allegations of misconduct made against [Judge Williams] in the Complaint,

⁸⁹ *Douglas v. Canada (Attorney General)*, 2013 FC 451, at paras. 35-36, **BOA Vol 3, Tab 33**.

⁹⁰ *Canada (Attorney General) v. Slansky*, 2013 FCA 199, at para. 165 *per* Mainville J.A. and at para. 5 *per* Evans J.A., **BOA Vol 1, Tab 9**. See also *In the Matter of Complaints Against Judge Alanna Murphy* (March 30, 2022) (Nova Scotia Judicial Council Review Committee), at para. 19, **BOA Vol 2, Tab 14**; *Fairchild v. Bligh*, 2015 NUCJ 17, at para. 18, **BOA Vol 3, Tab 32**; *Taylor v. Canada (Attorney General)*, 2003 FCA 55, at paras. 82, 85, **BOA Vol 1, Tab 6**.

⁹¹ Judge Brinton Response, dated September 11, 2023, p. 2, **RODA Tab 5, p. 275**.

and for the Council to take such disciplinary steps in response as it considers appropriate”.⁹²

47. On review, Judge Brinton has no standing to ask this Court to substitute its decision for the Chief Justice’s because she finds the decision to be unreasonable.

48. No other complainant in a criminal or regulatory prosecution has the right to seek judicial review of the merits of a decision declining to prosecute a person or member without express or implied statutory authorization. Without diminishing the unique constitutional and statutory framework that governs judicial conduct proceedings, the roles assigned to the Judicial Council and the complainant in this statutory scheme is broadly analogous to the roles assigned in other types of prosecutions.

49. Moreover, like many other professional regulation schemes,⁹³ a complainant only has a limited foundation to assess the reasonableness of a decision not to refer a complaint to discipline. Several aspects of judicial council investigations are often protected by statutory confidentiality provisions and public interest privilege.⁹⁴ As such, there will often be information that supports the reasonableness of a decision but to which a complainant is not, cannot, and should not be privy.

50. The public interest in holding judges accountable for abuses of their authority may in some cases justify granting public interest standing to a complainant to challenge the

⁹² Judge Brinton Response, dated September 11, 2023, p. 2, **RODA Tab 5, p. 275**.

⁹³ *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379, at paras. 63-67, **BOA Vol 2, Tab 20**.

⁹⁴ See, e.g., *Canada (Attorney General) v. Slansky*, 2013 FCA 199, **BOA Vol 1, Tab 9** (public interest privilege applies to report on information provided by respondent judge and witnesses).

reasonableness of a decision dismissing their complaint. However, it does not give complainants private interest standing to challenge these decisions as of right.

51. The test for public interest standing was most recently restated by the Supreme Court in *British Columbia (Attorney General) v. Council of Canadians with Disabilities*. That test has three components:

- (a) whether there is a serious justiciable issue raised;
- (b) whether the plaintiff has a real stake or a genuine interest in it; and
- (c) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.⁹⁵

52. What is fatal in this application is the first and third factors, the last of which “relates to the concern about needlessly overburdening the justice system”.⁹⁶ In *Council of Canadians with Disabilities*, the Court directed that “[i]f there are other means to bring the matter before the court, scarce judicial resources may be put to better use”.⁹⁷ In particular, “[i]f there are other proceedings relating to the matter”, the court is required to ask “what will be gained in practice by having parallel proceedings?”.⁹⁸

⁹⁵ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at para. 28, **BOA Vol 3, Tab 34**.

⁹⁶ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at paras. 40, 53, **BOA Vol 3, Tab 34**, citing *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236, at pp. 252-253. See also *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at para. 63, **BOA Vol 3, Tab 35**.

⁹⁷ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at para. 53, **BOA Vol 3, Tab 34**.

⁹⁸ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at para. 55, **BOA Vol 3, Tab 34**.

53. In substance, Judge Brinton's real complaint is that the Chief Judge had the statutory powers that Judge Williams exercised in her case.⁹⁹ These are complaints that can only be adjudicated in an application directly challenging those powers and the decisions made under those powers.¹⁰⁰ Judicial councils have no jurisdiction to adjudicate whether those powers are constitutional, nor is it their function to adjudicate whether they have been exercised in a manner that is constitutionally compliant.¹⁰¹ Moreover, Judge Brinton has, indeed, commenced a parallel civil claim in this court in court file nos. 527144 and 529236 against Judge Williams, the Office of the Chief Judge of the Provincial Court of Nova Scotia, the Provincial Court of Nova Scotia, and the Attorney General of Nova Scotia on the exact same facts.

54. This Court should not grant Judge Brinton public interest standing to relitigate the same facts in two separate proceedings when the core allegations are more properly

⁹⁹ Complaint, at paras. 85(e) ("The Respondent did not have the power to [suspend Judge Brinton] *for any reason*, let alone simply because the Complainant was unwilling to disclose her vaccination status") and 85(f) ("the Respondent should not have written to the Complainant's doctor, Dr. Babatolu, to ask him to supply the Respondent with the details of the Complainant's medical issues. This was obviously inappropriate, as evidenced by the fact that the Complainant's insurer approved both her short-term and long-term disability applications without the Respondent's involvement.").

¹⁰⁰ See, e.g., *Reilly v. Wachowich*, 1999 ABQB 309, **BOA Vol 3, Tab 36**, aff'd 2000 ABCA 241, **BOA Vol 3, Tab 37** (judicial review challenging the Chief Judge's decision to reassign Judge Reilly's sitting location) and *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3 at paras. 265-266, **BOA Vol 1, Tab 4** (reference re: constitutionality of *Provincial Court Judges Act* provisions allowing the Attorney General to reassign a judge's sitting location).

¹⁰¹ See, e.g., the decision of the New Brunswick Judicial Council regarding a complaint made against Justice Mackin, as excerpted in *Mackin v. New Brunswick (Minister of Finance)*, 1998 CanLII 9800 (NB KB), at p. 11, **BOA Vol 3, Tab 38**. In that case, Judge Mackin had commenced a claim against the Province alleging that legislation eliminating supernumerary status had imperilled the judicial independence of his court. In the interim, he refused to sit and – once ordered to resume sitting – began staying cases heard in front of him. The Minister of Justice filed a complaint against Judge Mackin with the New Brunswick Judicial Council, which the Council dismissed. The Council held that the Judicial Council "ha[d] no jurisdiction to resolve the[] legal issues [raised in the underlying litigation] and cannot deal with the complaint until they are."

pursued in a direct challenge to the impugned legislation. It is not a prudent use of scarce judicial resources and unnecessarily creates a risk of conflicting findings and conclusions.

D. The Chief Justice’s decision was reasonable

55. Even if the Court is prepared to grant Judge Brinton standing to challenge the merits of the Chief Justice’s decision, it should not reverse his decision. The Chief Justice articulated the correct legal test and made a reasonable decision to dismiss the Complaint.

1. The Chief Justice correctly articulated his role in the statutory scheme and the test to apply

56. Although Judge Brinton asserts that the Chief Justice erred by “arrogat[ing] the authority granted to the review committee” and casts his error as a jurisdictional one, true questions of jurisdiction or *vires* have long since ceased to be a meaningful concept in administrative law.¹⁰² In reality, those submissions are a disguised challenge to the substantive merits of the decision.¹⁰³

57. The Chief Justice’s decision makes it clear that he appreciated both his role in the statutory scheme and the test that he was bound to apply. As he explained in his decision:

- (a) Pursuant to s. 17A(2), he was required “to exercise the power and duties set out in s. 17B” in the place of the Chief Judge;¹⁰⁴

¹⁰² Applicant’s Brief, at para. 56; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 65-67, **BOA Vol 3, Tab 39**.

¹⁰³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 66, **BOA Vol 3, Tab 39**, citing *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para. 38 *per* Gascon J. and at para. 111, *per* Brown J.

¹⁰⁴ Decision, at p. 1

- (b) Under s. 17B, he had the power to “dismiss the complaint and provide written reasons if: (i) the complaint is not within the jurisdiction of the Judicial Council, (ii) I consider the complaint to be frivolous or vexatious or (iii) there is no evidence to support the complaint”;¹⁰⁵ and
- (c) His role was to “exercise a screening function which includes determining whether the complaint should be referred to a review committee for further investigation”.¹⁰⁶

58. Judge Brinton disagrees that her Complaint should be dismissed on a preliminary basis. That does not make the Chief Justice’s decision incorrect or even unreasonable. The Chief Justice simply found that the key portions of the Complaint were entirely unsubstantiated and so unmeritorious that there were no reasonable grounds to believe that the Complaint should proceed to a Review Committee.

2. The Chief Justice’s decision to dismiss the Complaint was a reasonable one

59. As Judge Brinton concedes in her legal brief, the Complaint essentially “raised two issues: 1) the interference with Brinton’s judicial independence by pressuring her to be vaccinated and suspending her; and 2) the interference with Brinton’s medical privacy”.¹⁰⁷

60. It is obvious from the submissions before the Chief Justice and the reasons for decision that he found two related bases for dismissing the Complaint:

¹⁰⁵ Decision, at p. 1

¹⁰⁶ Decision, at p. 2.

¹⁰⁷ Applicant’s Brief, at para. 96.

- (a) There was “no evidence to support the complaint”; and
- (b) The allegations were “frivolous” upon careful review.¹⁰⁸

61. First, Judge Brinton’s legal brief continues to assert that Judge Williams improperly suspended her from her judicial duties when Judge Williams did not. The Chief Justice expressly found that “[s]ince Judge Brinton was not cleared to return to work, Chief Judge Williams was never required to decide what work to assign to Judge Brinton and whether there might be other options to consider”.¹⁰⁹ That finding was available to him on the facts put before him by both Judge Williams and Judge Brinton.¹¹⁰ It was also an independently verifiable one, since a suspension triggers an automatic referral to the Judicial Council.¹¹¹ The Chief Justice was not required to accept Judge Brinton’s bald assertion that she was suspended when she was not.¹¹²

62. Next, the Chief Justice found that the balance of the allegations were so unmeritorious that they could not possibly support a finding of misconduct – in other words, that the complaint was a frivolous one.

¹⁰⁸ *Provincial Court Act*, RSNS 1989, c 238, s. 17B(1)(a)(ii), (iii).

¹⁰⁹ Decision, at p. 4.

¹¹⁰ Complaint, at paras. 31-36, 41, 43, 48, **RODA Tab 2, pp. 13-17**; Letter from Judge Williams to Chief Justice Wood, dated July 12, 2023, p. 7, **RODA Tab 4, p. 216**. See also email from W. Hudgins to Judge Williams, dated October 6, 2022, **RODA Tab 4, p. 272**.

¹¹¹ *Provincial Court Act*, RSNS 1989, c 238, s. 15(3).

¹¹² *Russell v. Ontario Civilian Commission on Police Services*, 2006 CanLII 23946 (ON SCDC), at paras. 5-6, **BOA Vol 3, Tab 40**, leave to appeal to C.A. refused November 3, 2006, leave to appeal to S.C.C. refused [2007] 1 S.C.R. xiv, (“the facts alleged by the complainant must be more than a self-serving bald allegation. The provisions of the Act respecting frivolous or vexatious complaints reinforce the conclusion that there must be a reasonable basis or an air of reality to the evidence before proceeding to the next stage.”)

63. All parties agree that the *Provincial Court Act* requires the Chief Justice to engage in a limited merits assessment to the extent that he was required to determine if the Complaint was a “frivolous” one. The test for a frivolous complaint has been expressed in several different ways but at its core encapsulates a complaint that cannot possibly succeed because it:

- (a) “clearly has no merit”¹¹³,
- (b) “will necessarily fail”¹¹⁴,
- (c) is “obviously unsustainable”¹¹⁵, or
- (d) has “no rational argument based upon the evidence or law in support of that claim”.¹¹⁶

64. No matter how a frivolous complaint is defined, the Chief Justice had to have jurisdiction to consider whether Judge Williams’ conduct could ever meet the test for judicial misconduct when considering whether to refer the Complaint. That is the ultimate inquiry and source of jurisdiction for the Chief Justice, the Review Committee, and the Judicial Council as a whole.

¹¹³ *Catford v. The Health Professions Appeal and Review Board*, 2017 ONSC 7411, at para. 24, **BOA Vol 3, Tab 41**; see also *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79, at para. 25, **BOA Vol 3, Tab 42**, citing *Sherman v. Giles*, 1994 NSCA 226, **BOA Vol 3, Tab 43**.

¹¹⁴ *R. v. Haevischer*, 2023 SCC 11, at para. 67, **BOA Vol 3, Tab 44**.

¹¹⁵ *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79, at para. 25, **BOA Vol 3, Tab 42**, citing *Sherman v. Giles*, 1994 NSCA 226, **BOA Vol 3, Tab 43**.

¹¹⁶ *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79, at para. 30, **BOA Tab 42, Vol 3**, citing *Diskotech Investments et al v. Szczepanik et al*, 2003 BCSC 1691, **BOA Vol 3, Tab 45**.

65. As the Chief Justice noted, citing the Review Committee’s decision in the *Lenehan* complaints, that test requires two findings:

- (a) An “undermining of public confidence in the judge or the administration of justice generally”, as measured through the eyes of a “reasonably informed person”; and that
- (b) Some form of discipline “is necessary in order to restore that confidence”.¹¹⁷

66. The *Lenehan* decision on which the Chief Justice relied stressed that it is “dangerous and wrong to equate an error of law, without more, with judicial misconduct”.¹¹⁸ Likewise, the Chair of the Canadian Judicial Council has agreed that in ordinary circumstances, a Chief Justice’s “exercise of discretion in carrying out [their] role of Chief Justice, without any oblique or improper motive, and with the best of intentions” does not amount to judicial misconduct even where the allegation is that they have interfered with the judicial independence of their court.¹¹⁹

67. The Chief Justice reasonably concluded that “[e]ven if Chief Judge Williams acted in excess of her authority that, alone, would not amount to judicial misconduct. Something more would be required”.¹²⁰ Errors in judicial decision-making – without more – do not amount to judicial misconduct.¹²¹ Instead, they are “matters properly dealt with through

¹¹⁷ *In the Matter of Complaints against Judge Gregory Lenehan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee) at paras. 11, 41, **BOA Vol 1, Tab 5**; Decision, at p. 5.

¹¹⁸ *In the Matter of Complaints against Judge Gregory Lenehan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee) at para. 185, **BOA Vol 1, Tab 5**.

¹¹⁹ *In the Matter of a Complaint Against Chief Justice Clyde K. Wells* (March 12, 2003) (Canadian Judicial Council), **BOA Vol 3, Tab 46**.

¹²⁰ Decision, at p. 2

¹²¹ *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, at para. 58, **BOA Vol 1, Tab 8**.

the normal appeal process” or other proceedings.¹²² As the Supreme Court of Canada explained in *Moreau-Bérubé v. New Brunswick (Judicial Council)*, errors only rise to the level of judicial misconduct when “it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole” in a way that “is not curable by the appeal process” or any other mechanism of review.¹²³

68. In substance, the Chief Justice found that the Complaint was entirely without merit. He was satisfied that in no world would Judge Williams’ actions amount to misconduct or warrant discipline because there was nothing in the Complaint except an allegation that Judge Williams had exceeded her statutory authority. This is what the Chief Justice was expressing when he concluded that “the actions of Chief Judge Williams could not support a finding of judicial misconduct as defined in *Lenahan*” (emphasis added):

Having considered all of the material provided to me as well as the applicable principles, I conclude that the actions of Chief Judge Williams could not support a finding of judicial misconduct as defined in *Lenahan*. Her decisions concerning how to assign judicial work and what medical information was required to support Judge Brinton’s medical leave fall within her authority as Chief Judge. The reasons for these decisions and the methods of implementation would not warrant any of the sanctions found in s. 17K of the Act.¹²⁴

69. On judicial review, the Court does not assess written reasons “against a standard of perfection”.¹²⁵ Judge Brinton wrongly seizes on two lines of the decision in isolation to suggest that the Chief Justice misapprehended his role when the reasons as a whole

¹²² *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, para. 55, **BOA Vol 1, Tab 8**; see also para. 58, 60.

¹²³ *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, at para. 58, **BOA Vol 1, Tab 8**. See also *In the Matter of Complaints against Judge Gregory Lenahan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee) at paras 3-4, 185, **BOA Vol 1, Tab 5**; *Lochner v. Canada (Attorney General)*, 2021 FC 692, at paras. 95-107, **BOA Vol 3, Tab 47**; *Cosentino v. Canada (Attorney General)*, 2020 FC 884, at paras. 83-86, 94-97, **BOA Vol 3, Tab 48**, aff’d 2021 FCA 193, **BOA Vol 3, Tab 49** (exercise of judicial discretion in controlling courtroom processes not judicial misconduct).

¹²⁴ Decision, at p. 1

¹²⁵ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 91, **BOA Vol 3, Tab 39**.

indicate that he was in substance satisfied that the Complaint was entirely devoid of merit – in other words, it was a frivolous one that met the statutory criteria for dismissal. None of the grounds raised in Judge Brinton’s brief displace the “high degree of deference”¹²⁶ owed to the Chief Justice’s decision. In particular, the Court is required to defer to the Chief Justice’s expertise as the Chair of the Nova Scotia Judicial Council in discerning “the distinction between impugned judicial actions that can be dealt with in the traditional sense, through a normal appeal process” or other means “and those that may threaten the integrity of the judiciary as a whole, thus requiring intervention through the disciplinary provisions of the Act”.¹²⁷

70. The Chief Justice’s determinations were reasonable notwithstanding that he did not reference each subsection upon which he relied.

71. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the Supreme Court reaffirmed that the fact “[t]hat the reasons given for a decision do ‘not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred’ is not on its own a basis to set the decision aside”.¹²⁸ Nor should a decision be set aside simply because it does not “respond to every argument” or “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion”.¹²⁹ Instead, reasons should be reviewed against the record and the

¹²⁶ *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, at para. 53, **BOA Vol 1, Tab 8**; *Lochner v. Canada (Attorney General)*, 2021 FC 692, at paras. 99-100, **BOA Vol 3, Tab 47**.

¹²⁷ *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, at para. 60, **BOA Vol 1, Tab 8**.

¹²⁸ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 91 (per majority), **BOA Vol 3, Tab 40**, and at para. 305 (per dissent), **BOA Vol 3, Tab 39**, citing *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para. 16.

¹²⁹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, at para. 128 (per majority), paras. 304-305, **BOA Vol 3, Tab 39**, citing *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para. 16.

submissions of the parties to determine if the decision is “transparent, intelligible and justified”.¹³⁰

72. This Court reached the same conclusion in reviewing a Police Commissioner’s decision to dismiss a complaint as a frivolous one. Although it would have been “preferable for the Commissioner to have used the language found in the Act”, the written reasons made it clear that the Commissioner was dismissing the complaint because they had implicitly found that it was a “frivolous” one.¹³¹ The Commissioner had concluded that there were “no facts ... upon which a review Board could make a finding of misconduct” and “ha[d] no merit”.¹³² On review, the Court was “satisfied that the conclusion was a reasonable one when considered in the context of the record”.¹³³

3. The *Doré* framework does not apply on review

73. Against this, and for the first time on judicial review, Judge Brinton asserts that the Chief Justice was required to but did not engage in a “*Doré* analysis”¹³⁴ as his decision engaged “Brinton’s *Charter* right to judicial independence” and her right to freedom of expression – a ground upon which she did not rely below.¹³⁵

74. The Supreme Court’s decision in *Doré v. Barreau du Québec* provided a framework “for reviewing discretionary administrative decisions that limit *Charter*

¹³⁰ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 15, 94, 123, **BOA Vol 3, Tab 39**.

¹³¹ *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79, at paras. 9, 24, 36-38, **BOA Vol 3, Tab 42**.

¹³² *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79, at para. 9, **BOA Vol 3, Tab 42**.

¹³³ *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79, at paras. 24, 37-38, **BOA Vol 3, Tab 42**.

¹³⁴ Applicant’s Brief, at para. 76.

¹³⁵ Applicant’s Brief, at paras. 80, 83.

protections”.¹³⁶ It is only triggered “[o]nce the reviewing court has determined that the impugned administrative decision infringes *Charter* rights or limits the values underlying them”.¹³⁷

75. As a starting position, Judge Brinton’s argument that *Doré* applies is premised on the incorrect assumption that Judge Williams’ decisions interfered with Judge Brinton’s judicial independence and freedom of expression. Although Judge Brinton continues to insist that she was suspended,¹³⁸ she was too unwell to perform her duties at the same time she alleged that Judge Williams “prevent[ed] the Complainant from performing her judicial duties”.¹³⁹ During that period, Judge Williams did request medical documentation to substantiate her absences. However, the Supreme Court has twice held that requiring a judge to substantiate their use of medical leave is not an infringement of their judicial independence.¹⁴⁰ Judicial independence “exists for the benefit of the judged, not the judges”; it is “not intended to be a means for judges to improve their working conditions”.¹⁴¹ Finally, as for Judge Brinton’s allegations that Judge Williams infringed her

¹³⁶ *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, at para. 60, **BOA Vol 1, Tab 7**; *Doré v. Barreau du Québec*, 2012 SCC 12, at para. 36, **BOA Vol 4, Tab 50**; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, at para. 111, **BOA Vol 4, Tab 51**.

¹³⁷ *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, at paras. 67, 74, **BOA Vol 1, Tab 7**.

¹³⁸ See Applicant’s Brief, paras. 94, 97.

¹³⁹ Complaint, at para. 10, **RODA Tab 2, p. 10**.

¹⁴⁰ *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 S.C.R. 3, at para. 207, **BOA Vol 1, Tab 4**; *Valente v. The Queen*, [1985] 2 S.C.R. 673, at pp. 711-714, **BOA , Vol 1, Tab 3**.

¹⁴¹ *Conférence des juges de paix magistrats du Québec v. Quebec (Attorney General)*, 2016 SCC 39, at para. 33, **BOA Tab 53, Vol 4**, citing *Ell v. Alberta*, [2003] 1 SCR 857, at para. 29, **BOA Vol 4, Tab 52**, and *Ref re Remuneration of Judges of the Prov. Court of P.E.I.*; *Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3, at para. 207, **BOA Vol 1, Tab 4**.

freedom of expression, those allegations were never put to Chief Justice at first instance.¹⁴² They cannot now be pursued – belatedly – on judicial review.¹⁴³

76. More fundamentally, her arguments are also premised on the incorrect assumption that the Judicial Council's role is to reverse or uphold the conduct complained of. It is not.¹⁴⁴ *Doré* applies only if the decision under review has affected a *Charter* right or value. It does not apply just because – like here – the underlying conduct is alleged to have engaged the *Charter*. As the Federal Court explained in *Best v. Canada* concerning a similar decision by the Executive Director of the Canadian Judicial Council:

As for the Applicant's arguments that his legal and Charter-protected rights were violated by the Executive Director's decision to screen out his complaint, I find these to be wholly without merit and completely answered by *Taylor v Canada (Attorney General)*, [2002] 3 FC 91 at paras 40-44, 2001 FCT 1247, aff'd *Taylor v Canada (Attorney General)*, 2003 FCA 55 at para 114, [2003] 3 FC 3. The decision under review is that of the Executive Director and not Justice Shaughnessy's exercise of discretion or conduct in the context of judicial decision-making. ... The only rights affected by the complaint were those of Justice Shaughnessy, not those of the Applicant.¹⁴⁵

[Emphasis added.]

77. The only discipline decisions reviewed under the *Doré* framework are ones that have allegedly had a disproportionate impact on the *Charter* rights of the member under

¹⁴² *Gordillo v. Canada (Attorney General)*, 2022 FCA 23, at paras. 93-100, **BOA Vol 4, Tab 54**; *Alberta (Information & Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, at paras. 22-27, **BOA Vol 4, Tab 55**.

¹⁴³ *Gordillo v. Canada (Attorney General)*, 2022 FCA 23, at paras. 93-100, **BOA Vol 4, Tab 54**; *Alberta (Information & Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, at paras. 22-27, **BOA Vol 4, Tab 55**.

¹⁴⁴ *In the Matter of Complaints against Judge Gregory Lenehan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee) at para. 3, **BOA Vol 1, Tab 5**. See also *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, para. 55, 58, 60, **BOA Vol 1, Tab 8**.

¹⁴⁵ *Best v. Canada (Attorney General)*, 2017 FC 1145, at para. 49, **BOA Vol 4, Tab 56**.

investigation.¹⁴⁶ Not a single decision has applied the *Doré* framework because of the impact on the complainant because a discipline decision does not affect their rights.

4. Even if the Chief Justice’s decision is reviewable, the Court should not grant judicial review

78. If the Court finds error in the Chief Justice’s decision, Judge Brinton has asked that the Court refer the Complaint directly to a Review Committee. That is extraordinary relief with no justification offered.

79. In the ordinary course, a reviewing court is required to remit the decision to the initial decision-maker out of respect for the legislature’s intention that they be the ones to exercise a statutory discretion.¹⁴⁷ In this case, the Chief Justice/Chair is the only decision-maker with the authority to refer the Complaint to a hearing before the Review Committee. Upon reconsideration, the decision maker is entitled to “arrive at the same, or a different, outcome”.¹⁴⁸

80. Moreover, in the unique circumstances of this statutory scheme, the Court should decline to intervene even if it finds that the Chief Justice could not have reasonably dismissed the Complaint under s. 17B(1)(a).

81. The Chief Justice had two roles in these proceedings. Under s. 17A(2), the Chief Justice exercises “the powers and duties of the Chief Judge pursuant to Section 17B”

¹⁴⁶ See, e.g., *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425; *Doré v. Barreau du Québec*, 2012 SCC 12, **BOA Vol 4, Tab 50**; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, **BOA Vol 4, Tab 51**; *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270; *Foo v. Law Society of British Columbia*, 2017 BCCA 151.

¹⁴⁷ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 141-142, **BOA Vol 3, Tab 39**.

¹⁴⁸ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 141, **BOA Vol 3, Tab 39**.

when considering a complaint made against the Chief Judge. In that capacity, if the Chief Justice had found – as Judge Brinton prefers – that there were no grounds to dismiss the Complaint at that stage, he nonetheless had the power to “refer the complaint to the Chair of the Judicial Council together with a recommendation that the complaint be dismissed”.¹⁴⁹ At that point, as the Chair of the Judicial Council, he would have then been required to make a second screening decision under s. 17C of the *Provincial Court Act*. Together, ss. 17B and 17C provides that the Chair is entitled to accept his own recommendation and dismiss the Complaint pursuant to s. 17C:

17B (1) The Chief Judge to whom a complaint is made pursuant to Section 17A may

[...]

(c) refer the complaint to the Chair of the Judicial Council together with a recommendation that the complaint

(i) be dismissed,

(ii) be resolved with the agreement of the judge, or

(iii) be referred to a review committee for further investigation.

[...]

17C Upon receipt of a recommendation made pursuant to clause (c) of subsection (1) of Section 17B, the Chair of the Judicial Council may either accept the recommendation of the Chief Judge, and advise the complainant and the Judge in writing, or empanel a review committee.

82. All the considerations that the Chief Justice took into account in his decision under s. 17B of the *Act* were reasonable considerations that he could have properly considered when exercising his discretion about whether to dismiss the Complaint under s. 17C.

¹⁴⁹ *Provincial Court Act*, RSNS 1989, c 238, s. 17B(1)(c)(i).

83. In the end, judicial review is discretionary.¹⁵⁰ The Court is not required to “privilege form over substance” when the Chief Justice could have validly given the same reasons and arrived at the same outcome at the next stage of the process.¹⁵¹ The Court can and should decline to exercise its discretion to quash a decision because of technical flaws in the underlying decision when substantially the same process could have and would have followed had events unfolded differently.¹⁵²

PART V. ORDERS SOUGHT

84. Judge Williams respectfully requests an order dismissing the application for judicial review, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19TH day of April, 2024.



Linda Rothstein / Catherine Fan

¹⁵⁰ *British Columbia (Police Complaint Commissioner) v. Sandhu*, 2024 BCCA 17, at para. 115, **BOA Vol 4, Tab 57**.

¹⁵¹ *Chu v. British Columbia (Police Complaint Commissioner)*, 2021 BCCA 174, at para. 118, **BOA Vol 4, Tab 58**.

¹⁵² *Chu v. British Columbia (Police Complaint Commissioner)*, 2021 BCCA 174, at paras. 115-121, **BOA Vol 4, Tab 58** (court declined to quash screening decision adding Sergeant to complaint on the basis that the Police Complaint Commissioner “could have initiated substantially the same process” under a different subsection); *British Columbia (Police Complaint Commissioner) v. Sandhu* at paras. 115-130, **BOA Vol 4, Tab 57** (court declined to quash Chief’s decision to initiate investigation into misconduct of officer made without jurisdiction on the basis that the Commissioner – who had jurisdiction – would have followed substantially the same process). See also *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 142, **BOA Vol 4, Tab 39**, citing *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, at paras. 45-51.

Paliare Roland Rosenberg Rothstein LLP

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[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Linda Rothstein [REDACTED]

[REDACTED]

[REDACTED]

Catherine Fan [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Lawyers for the Respondent,
The Honourable Pamela S. Williams

SCHEDULE “A” – AUTHORITIES CITED

1. *Alberta (Information & Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61
2. *Allen v. College of Dental Surgeons of British Columbia*, 2007 BCCA 75
3. *Best v. Canada (Attorney General)*, 2017 FC 1145
4. *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27
5. *British Columbia (Police Complaint Commissioner) v. Sandhu*, 2024 BCCA 17
6. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
7. *Canada (Attorney General) v. Slansky*, 2013 FCA 199
8. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31
9. *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236
10. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
11. *Catford v. The Health Professions Appeal and Review Board*, 2017 ONSC 7411
12. *Chu v. British Columbia (Police Complaint Commissioner)*, 2021 BCCA 174
13. *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31
14. *Conférence des juges de paix magistrats du Québec v. Quebec (Attorney General)*, 2016 SCC 39
15. *Cosentino v. Canada (Attorney General)*, 2020 FC 884
16. *Cosentino v. Canada (Attorney General)*, 2021 FCA 193
17. *Diskotech Investments et al v. Szczepanik et al*, 2003 BCSC 1691
18. *Doré v. Barreau du Québec*, 2012 SCC 12
19. *Douglas v. Canada (Attorney General)*, 2013 FC 451
20. *Ell v. Alberta*, [2003] 1 SCR 857
21. *Fairchild v. Bligh*, 2015 NUCJ 17
22. *Foo v. Law Society of British Columbia*, 2017 BCCA 151
23. *Friends of the Old Man River Society v. Association of Professional Engineers, Geologists and Geophysicists of Alberta*, 2001 ABCA 107
24. *Fuchigami v. Ontario College of Teachers*, 2024 ONSC 106

25. *Gordillo v. Canada (Attorney General)*, 2022 FCA 23
26. *Grant v. Copley*, [2001] OJ No 749, 103 ACWS (3d) 888 (Ont. Div. Ct.)
27. *Green v. Law Society of Manitoba*, 2017 SCC 20
28. *Groia v. Law Society of Upper Canada*, 2018 SCC 27
29. *In the Matter of Application Brought by the Toronto Star and the Criminal Lawyers' Association* (October 14, 2015) (Ontario Judicial Council)
30. *In the Matter of Complaints Against Judge Alanna Murphy* (March 30, 2022) (Nova Scotia Judicial Council Review Committee)
31. *In the Matter of a Complaint Against Chief Justice Clyde K. Wells* (March 12, 2003) (Canadian Judicial Council)
32. *In the Matter of Complaints Against Judge Gregory Lenehan* (March 29, 2018) (Nova Scotia Judicial Council Review Committee)
33. *In the Matter of a Complaint Respecting the Honourable Madam Justice Lesley M. Baldwin* (May 10, 2002) (Ontario Judicial Council)
34. *Kipiniak v. The Ontario Judicial Council*, 2012 ONSC 5866
35. *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425
36. *Law Society of New Brunswick v. Ryan*, 2003 SCC 20
37. *Lochner v. Canada (Attorney General)*, 2021 FC 692
38. *Mackeigan v. Hickman*, [1989] 2 SCR 796
39. *Mackin v. New Brunswick (Minister of Finance)*, 1998 CanLII 9800 (NB KB)
40. *Mercier v. Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79
41. *Metropolitan Centre Inc. v Abugov Kaspar Architecture, Engineering, Interior Design*, 2007 ABQB 419
42. *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2
43. *Mitten v. College of Alberta Psychologists*, 2010 ABCA 159
44. *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11
45. *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087
46. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62
47. *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869
48. *Perry v. Nova Scotia Barristers' Society*, 2016 NSSC 121
49. *R. v. Haevischer*, 2023 SCC 11
50. Richard Steinecke, Complete Guide to the Regulated Health Professions Act (Toronto: Thomson Reuters, 2019) (loose-leaf) § 5:25

51. *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3
52. *Reilly v. Wachowich*, 1999 ABQB 309
53. *Robichaud v. College of Registered Nurses of Nova Scotia*, 2011 NSSC 379
54. *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267
55. *Russell v. Ontario Civilian Commission on Police Services*, 2006 CanLII 23946 (ON SCDC)
56. *Sherman v. Giles*, 1994 NSCA 226
57. *Taylor v. Canada (Attorney General)*, 2003 FCA 55
58. *Therrien (Re)*, 2001 SCC 35
59. *Tran v. College of Physicians and Surgeons of Alberta*, 2017 ABQB 337
60. *Tran v. College of Physicians and Surgeons of Alberta*, 2018 ABCA 95
61. *Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290
62. *Tupper v. Nova Scotia Barristers' Society*, 2014 NSCA 90
63. *Valente v. The Queen*, [1985] 2 SCR 673
64. *Wachowich v. Reilly*, 2000 ABCA 241
65. *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270

SCHEDULE “B” – RELEVANT STATUTES

Provincial Court Act, RSNS 1989, c 238

Responsibility of Chief Judge

15 (1) The Chief Judge is responsible for the administration of the judicial functions of the court, including, without limiting the generality of the foregoing, the scheduling of the sittings of the court and the assignment of judicial duties.

(2) The Chief Judge may suspend a judge upon such terms and conditions as the Chief Judge may determine where the Chief Judge believes immediate action is necessary.

(3) Within ten days of suspending a judge, the Chief Judge shall request the Judicial Council to investigate the circumstances giving rise to the suspension and to take the appropriate action.

Judicial Council

16 (1) Subject to Section 17T, a Judicial Council is hereby established for the purpose of this Act consisting of

- (a) the Chief Justice of Nova Scotia, who shall be the Chair of the Council;
- (b) the Chief Judge of the Provincial Court;
- (c) the Chief Judge of the Family Court or, where the Family Court no longer exists, the Associate Chief Judge of the Provincial Court;
- (d) two judges of the Provincial Court or Family Court appointed by the Nova Scotia Provincial Judges' Association;
- (e) the President of the Nova Scotia Barristers' Society;
- (f) a practising member of the Nova Scotia Barristers' Society appointed by the Council of the Society and who has a minimum of five years as a practising member; and
- (g) two persons other than lawyers or retired lawyers, judges or retired judges of any court appointed by the Attorney General of Nova Scotia.

[...]

Powers of Judicial Council

17 (1) The Judicial Council may

- (a) receive a complaint;
- (b) investigate a complaint;
- (c) resolve a complaint;
- (d) dismiss a complaint;
- (e) adjudicate a complaint;
- (f) retain counsel;
- (g) hold hearings;
- (h) delegate its functions to a committee or a member of the Judicial Council;
- (i) determine its own procedures and any procedures governing a review committee.

[...]

Complaint against judge

17A (1) A complaint against a judge of the Provincial Court or the Family Court shall be made in writing by any person to

- (a) the Chief Judge of the Provincial Court in the case of a complaint against a Judge of the Provincial Court; or
- (b) the Chief Judge of the Family Court in the case of a complaint against a Judge of the Family Court.

17A (2) A complaint against the Chief Judge or Associate Chief Judge of the Provincial Court shall be made in writing to the Chief Judge of the Family Court or, in the absence of the Chief Judge of the Family Court, to the Chief Justice of Nova Scotia, in which case the Chief Justice has the powers and duties of the Chief Judge pursuant to Section 17B.

[...]

Powers of Chief Judge upon receipt of complaint

17B (1) The Chief Judge to whom a complaint is made pursuant to Section 17A may

- (a) dismiss the complaint and provide written reasons to the complainant if
 - (i) the complaint is not within the jurisdiction of the Judicial Council,
 - (ii) the Chief Judge considers the complaint to be frivolous or vexatious, or
 - (iii) there is no evidence to support the complaint;
- (b) attempt to resolve the complaint;
- (c) refer the complaint to the Chair of the Judicial Council together with a recommendation that the complaint
 - (i) be dismissed,
 - (ii) be resolved with the agreement of the judge, or
 - (iii) be referred to a review committee for further investigation.

(2) Any discussions between the Chief Judge and the judge complained of respecting the complaint are confidential and shall not be disclosed by the Chief Judge to the Judicial Council.

Upon receipt of recommendation of Chief Judge

17C Upon receipt of a recommendation made pursuant to clause (c) of subsection (1) of Section 17B, the Chair of the Judicial Council may either accept the recommendation of the Chief Judge, and advise the complainant and the Judge in writing, or empanel a review committee.

[...]

Upon referral by Chief Judge

17E Upon receipt of a referral made pursuant to Section 17D, the Chair of the Judicial Council shall empanel a review committee.

Duties and powers of review committee

17G The review committee shall investigate the complaint and may

- (a) dismiss the complaint;
- (b) resolve the complaint with the agreement of the judge; or
- (c) refer the complaint to a hearing before the Judicial Council.

[...]

Hearing in private

17J Where the Judicial Council determines that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

Powers of Judicial Council

17K Following the hearing of a complaint, the quorum of the Judicial Council that heard the complaint may

- (a) dismiss the complaint;
- (b) require the judge to take a leave of absence with pay for the purpose of obtaining counseling, remedial treatment or instruction;
- (c) require the judge to obtain counseling, remedial treatment or instruction;
- (d) impose such other non-monetary sanctions including reprimand, as the Council considers appropriate in the circumstances; or
- (e) recommend that the judge be removed from office if, in the opinion of the Judicial Council, the judge in respect of whom an inquiry or investigation has been made is unable to duly execute the function of the judge's office by reason of
 - (i) age or infirmity,
 - (ii) having been guilty of misconduct,
 - (iii) having failed in the due execution of that office, or
 - (iv) having been placed, by the judge's conduct or otherwise, in a position incompatible with the due execution of that office.

[...]

Duties of Governor in Council

21K (1) Within forty-five days of receipt of the report prepared by a tribunal pursuant to subsection (1) of Section 21E, the Minister shall forward the report to the Governor in Council.

(2) The Governor in Council shall, without delay, confirm, vary or reject each of the recommendations contained in the report referred to in subsection (1).

(3) Upon varying or rejecting the tribunal's recommendations in accordance with subsection (2), the Governor in Council shall provide reasons for so doing to both the tribunal and the Association.

(4) The Governor in Council shall, without delay, cause the confirmed and varied recommendations to be implemented, and the recommendations have the same force and effect as if enacted by the Legislature once implemented and are in substitution of any existing legislation relating to those matters.

**Duties of the Chief Judge and Administrator of the Provincial Court Regulations,
NS Reg 250/83**

The Chief Judge shall have superintendence over the judges of the Provincial Magistrate's Court and without limiting the generality of the foregoing, shall have power and authority to

[...]

3 approve of requests for replacement judges, leaves of absence, vacations, sick and special leaves and advise the Administrator of such approval and requirements;

Courts of Justice Act, RSO 1990, c C.43

Role of subcommittee

Review

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer.

[...]

Investigation private

(6) The investigation shall be conducted in private.

Police Act, SNS 2004, c 31

Parties to proceedings

77 At a hearing of the Review Board,

- (a) where the review is the result of or involves a complainant, the complainant;
- (b) a member of a municipal police department who is the subject of complaint or disciplinary proceedings;
- (c) the chief officer or the chief officer's delegate;
- (d) the board;
- (e) any person who can demonstrate a personal interest in the proceedings; and
- (f) the Minister, are entitled to be parties to the proceedings.

**Regulated Health Professions Act, 1991, SO 1991, c. 18, Schedule 2, Health
Professions Procedural Code**

Request for review

29(2) The complainant or the member who is the subject of the complaint may request the Board to review a decision of a panel of the Inquiries, Complaints and Reports Committee unless the decision was,

- (a) to refer an allegation of professional misconduct or incompetence to the Discipline Committee; or
- (b) to refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.

Parties

(5) The complainant and the member who is the subject of the complaint are parties to a review.

[...]

Record of decision to be reviewed

32 (1) If the Board is requested to review a decision, the Registrar shall give the Board, within fifteen days after the Board's request, a record of the investigation and the documents and things upon which the decision was based.

Disclosure

(2) Before reviewing a decision, the Board shall disclose to the parties everything given to it by the Registrar under subsection (1).

Exceptions

(3) The Board may refuse to disclose anything that may, in its opinion,

- (a) disclose matters involving public security;
- (b) undermine the integrity of the complaint investigation and review process;
- (c) disclose financial or personal or other matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;
- (d) prejudice a person involved in a criminal proceeding or in a civil suit or proceeding; or
- (e) jeopardize the safety of any person.

[...]

Conduct of review

33 (1) In a review, the Board shall consider either or both of,

- (a) the adequacy of the investigation conducted; or
- (b) the reasonableness of the decision.

Procedure

(2) In conducting a review, the Board,

- (a) shall give the party requesting the review an opportunity to comment on the matters set out in clauses (1) (a) and (b) and the other party an opportunity to respond to those comments;
- (b) may require the College to send a representative;
- (c) may question the parties and the representative of the College;
- (d) may permit the parties to make representations with respect to issues raised by any questions asked under clause (c); and
- (e) shall not allow the parties or the representative of the College to question each other.

[...]

Powers of Board

35 (1) After conducting a review of a decision, the Board may do any one or more of the following:

- 1. Confirm all or part of the decision.
- 2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
- 3. Require the Inquiries, Complaints and Reports Committee to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation.

Decision in writing

(2) The Board shall give its decision and reasons in writing to the parties and the Inquiries, Complaints and Reports Committee.

APPENDIX "A"

Provision	Source
Federal	
<p>92 In the case of a complaint made by the Council itself or an anonymous complaint, or on receipt of a complaint referred to it under section 91, the Council shall designate one of its members to review the complaint.</p> <p>93 The reviewing member shall give the judge who is the subject of the complaint an opportunity to make written submissions about the complaint within the time limit established by the Council for the purpose of this section.</p> <p>94(2) If the reviewing member dismisses the complaint, they shall inform the complainant in writing of their decision and the reasons for it.</p> <p>(3) The reasons shall not include information that is confidential or personal, or that is not in the public interest to disclose.</p>	<p><i>Judges Act</i>, R.S.C., 1985, c. J-1</p>
<p>7.6(1) For the purposes of s. 7.2 or 7.5 of these procedures, the reviewing member may instruct the Council Secretariat to retain an investigator to gather further information about a matter and prepare a report if necessary.</p> <p>(2) If necessary and with the authorization of the reviewing member or the Chairperson, the investigator may conduct confidential interviews and may provide assurances of confidentiality to those who provide information.</p> <p style="text-align: center;">[...]</p> <p>8.11(1) In accordance with s. 103(1) of the Act, the review panel must give notice of its decision and the reasons for it to:</p> <ul style="list-style-type: none"> (a) the judge who is the subject of the complaint; (b) the chief justice of the court of which that judge is a member; and 	<p>Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges</p>

<p>(c) the Council.</p> <p>(2) In accordance with s. 103(2) of the Act, if the review panel dismisses a complaint, it must inform a complainant in writing of its decision and the reasons therefore. However, in accordance with s. 103(3) of the Act, the reasons shall not include information that is confidential or personal, or that is not in the public interest to disclose.</p>	
Manitoba	
<p>32(1) The Judicial Inquiry Board is established to perform the following functions:</p> <p>(a) to investigate complaints under this Part alleging misconduct or incapacity of judges, and to conduct proceedings before the council when charges are laid;</p> <p>(b) to investigate complaints under Part VI alleging misconduct or incapacity of judicial justices of the peace, and to conduct proceedings before a Court of King's Bench judge when charges are laid;</p> <p>(c) to investigate complaints under The Court of King's Bench Act alleging misconduct or incapacity of associate judges, and to conduct proceedings before the Associate Judges Judicial Council when charges are laid.</p> <p>[...]</p> <p>33(1) On referral of a complaint under this Part, the board shall consider the matter and may conduct such investigation as it considers appropriate.</p> <p>(2) On referral of a complaint, the board shall give notice to the judge who is the subject of the complaint and the Chief Judge.</p> <p>(3) An investigation shall be conducted in private.</p>	<p><i>The Provincial Court Act</i>, C.C.S.M. c C275</p>
Ontario	
<p>51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer. 1994, c. 12, s. 16; 1996, c. 25,</p>	<p><i>Court of Justice Act</i>, R.S.O. 1990, c. C.43</p>

<p>s. 9 (20).</p> <p style="text-align: center;">[...]</p> <p>(4) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.</p> <p>(5) The subcommittee may engage persons, including counsel, to assist it in its investigation.</p> <p>(6) The investigation shall be conducted in private.</p> <p>[...]</p> <p>(17) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council. 1994, c. 12, s. 16.</p> <p>(18) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,</p> <ul style="list-style-type: none"> (a) hold a hearing under section 51.6; (b) dismiss the complaint; (c) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or (d) refer the complaint to a mediator in accordance with section 51.5. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20). <p>(20) After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.</p>	
<p>Privacy and Confidentiality of the Complaint and Discipline Process (page 9)</p> <p>The early stages of the complaint process prior to a hearing are entirely confidential. That confidentiality is required by statute and is intended to balance the accountability of judges for their conduct with their constitutionally protected judicial independence. There are several reasons why confidentiality is important at the pre-hearing stages of a judicial complaint:</p>	<p><u>Ontario Judicial Council, Procedures Document</u></p>

- a) The disclosure of unsubstantiated complaints risks undermining the judge's authority in carrying out his or her judicial functions.
- b) Without the capacity to ensure some form of confidentiality, the ability of the Judicial Council to obtain full and frank disclosures may be compromised, making the investigation process less effective.
- c) The judge who is the subject of the complaint may have legitimate privacy concerns.
- d) There is an overriding need to protect judicial independence.

Procedural Rules re Confidentiality [\(page 18\)](#)

6.1 The investigation stage and the consideration of the complaint by the review panel shall be conducted in private and are confidential. If a review panel has ordered a hearing, after the Notice of Hearing is served on the judge, the hearing becomes public, unless there are exceptional circumstances and a Hearing Panel orders otherwise.

[...]

6.4 The Judicial Council has ordered that, subject to an order by the Council, a review panel or a Hearing Panel, any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. The order applies whether the information or documents are in the possession of the Judicial Council, the Attorney General, or any other person, but does not apply to information and/or documents,

- a) that the Courts of Justice Act requires the Judicial Council to disclose; or
- b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

6.5 Documents reviewed by a complaint subcommittee, review panel, or the Judicial Council, as applicable, including complaint letters, complaint subcommittee reports, judges' responses to complaints, and the Chief

<p>Justice's reports to a review panel, are presumed to be confidential and may not be disclosed or made public at any stage of the complaint process unless the document is filed in evidence at a public hearing. Where such documents are filed in evidence at a public hearing, a hearing panel may make an order that certain information or documents remain confidential or are subject to a publication ban in accordance with rule 19.5.</p>	
New Brunswick	
<p>6.521(1) When a complaint is made to the chief judge under section 6.511, the chief judge shall review the complaint ...</p> <p>6.521(3) Any discussions between the chief judge and the judge whose conduct is in question respecting the complaint are confidential and shall not be disclosed by the chief judge to the Judicial Council.</p>	<p><i>Provincial Court Act, RSNB 1973, c P-21, s. 6.521</i></p>
Nova Scotia	
<p>17B (1) The Chief Judge to whom a complaint is made pursuant to Section 17A may</p> <ul style="list-style-type: none"> (a) dismiss the complaint and provide written reasons to the complainant if <ul style="list-style-type: none"> (i) the complaint is not within the jurisdiction of the Judicial Council, (ii) the Chief Judge considers the complaint to be frivolous or vexatious, or (iii) there is no evidence to support the complaint; (b) attempt to resolve the complaint; (c) refer the complaint to the Chair of the Judicial Council together with a recommendation that the complaint <ul style="list-style-type: none"> (i) be dismissed, (ii) be resolved with the agreement of the judge, or (iii) be referred to a review committee for further investigation. <p>(2) Any discussions between the Chief Judge and the judge complained of respecting the complaint are confidential and shall not be disclosed by the Chief Judge to the Judicial Council.</p>	<p><i>Provincial Court Act, R.S.N.S. 1989, c 238</i></p>

Rickcola Brinton

Applicant

-and-

**The Judicial Council of Nova Scotia and The Honourable
Pamela S. Williams, Judge of the Provincial Court of Nova
Scotia**

Respondents

Supreme Court of Nova Scotia

PROCEEDING COMMENCED AT HALIFAX

**BRIEF OF THE RESPONDENT
THE HONOURABLE PAMELA WILLIAMS**

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax:

Linda Rothstein (LSO# 21838K)

Tel.: 416.646.4327
Email: linda.rothstein@paliareroland.com

Catherine Fan (LSO # 77641P)

Tel: 416.646.6315
catherine.fan@paliareroland.com

Lawyers for the Respondent,
The Honourable Pamela S. Williams