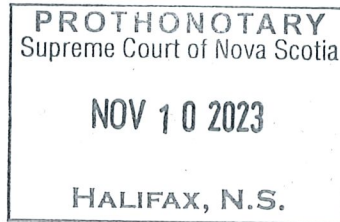


Form 7.05

2023



Hfx No.: 528362

**SUPREME COURT OF NOVA SCOTIA**

**Between:**

**RICKCOLA BRINTON**

**Applicant**

**and**

**THE HONOURABLE MICHAEL J. WOOD,  
CHIEF JUSTICE OF NOVA SCOTIA**

**THE JUDICIAL COUNCIL OF NOVA SCOTIA**

**Respondents**

**NOTICE FOR JUDICIAL REVIEW**

**To: The Honourable Michael J. Wood, Chief Justice of Nova Scotia  
The Judicial Council of Nova Scotia**

**Request for judicial review**

The applicant requests judicial review of a decision (the "**Decision**") of The Honourable Chief Justice Michael J. Wood, in his capacity as Chair of the Judicial Council of Nova Scotia (the "**Chair**") by virtue of section 16(1)(a) of the *Provincial Court Act*, RSNS 1989, c. 238 (the "**Act**").

**Decision to be reviewed**

The Decision is dated October 10, 2023 and was made by the Chair pursuant to sections 17A(2) and 17B of the Act. The Decision was first communicated to the applicant (through her counsel) on October 10, 2023. Attached to this notice is a copy of the Decision.

Attached to this notice is a copy of the Decision.

## **Grounds for review**

The applicant seeks review on the following grounds:

### **Introduction**

1. The applicant, Rickcola Brinton (“**Brinton**”), is a resident of Montague Gold Mines, in the Province of Nova Scotia. Brinton was appointed to the Provincial Court of Nova Scotia as a puisne judge on or about March 31, 2017. Brinton was born on June 14, 1975; she is currently 48 years old.

2. The respondent, Chief Justice Michael J. Wood, is the Chief Justice of Nova Scotia. At all times relevant to this proceeding, Chief Justice Wood was the Chair of the Nova Scotia Judicial Council pursuant to section 16 of the Act (the “**Chair**”).

3. In this proceeding, Brinton seeks judicial review of the Chair’s Decision, pursuant to section 17B(1)(a) of the Act, to dismiss a complaint (the “**Complaint**”) commenced by Brinton in the Nova Scotia Judicial Council on or about June 7, 2023 against Judge Pamela S. Williams, another judge of the Provincial Court (“**Williams**”).

4. At all times relevant to this proceeding, Williams was acting in her administrative capacity, and not in her judicial capacity, while serving as Chief Judge of the Provincial Court. Williams was appointed Chief Judge of the Provincial Court on or about February 27, 2013. Williams’s term as Chief Judge expired on or about August 27, 2023; Williams now continues to serve as a puisne judge of the Provincial Court.

### **Background Facts**

5. On September 29, 2021, Williams e-mailed the puisne judges on the Provincial Court, advising that the Nova Scotia bar had inquired about their Covid-19 vaccination status. Williams asked the other members of the Court whether they would agree to share their vaccination statuses

with each other and whether the Court should share that information with the bar in the form of a private statement.

6. Multiple judges responded stating that they were vaccinated and expressing support for disclosure of vaccination status.

7. Two judges expressed hesitation short of disagreement. For example, one judge noted that there may be privacy concerns for judges who cannot be vaccinated for a “*legitimate medical reason*” while adding that he had less sympathy for judges who were unvaccinated for other reasons.

8. Though fearing a possible backlash, Brinton responded to the group on October 1, 2021, stating:

I realize I may be in the minority, but I echo some of what Peter said, as I have concerns with medical privacy. I also know that the vaccination mandates and passports may be disproportionately impacting racialized communities. And as an essential service, will we be creating a two-tiered society for those who already feel as though we are not free to serve them.

9. In response to Brinton’s comment, another judge replied, “*Either we all voluntarily declare we are vaccinated, or the Chief should use her powers and order that all the [Provincial Court] judges be vaccinated*”.

10. On October 6, 2021, the Government of Nova Scotia announced that it would require all employees of the Province to be vaccinated against the virus that causes Covid-19. The requirement would go into force on November 30, 2021. Any employees who were unvaccinated on that date would be placed on unpaid leave. Provincial Court judges were unaffected by the Government’s new policy. However, all court staff, including judicial assistants, were subject to the new requirement.

11. On October 7, 2021, Williams requested to meet with Brinton. When they spoke, Williams attempted to persuade Brinton to change her mind. Brinton explained that her position was a matter of conscience and a result of prayerful contemplation. Brinton told Williams that she felt compelled to speak up because she believed that the Covid-19 vaccine question was a political issue causing division and that the Court should remain neutral.

12. Trying to find a workable solution to the matter, Brinton then offered to self-test for Covid-19 as often as needed. Williams rejected Brinton's offer because that option was not available to court staff.

13. Williams then advised Brinton that the only option (to which Williams in any event doubted that the other judges would agree) was to limit her work to presiding over arraignment court from home if the other judges agreed to take on the trials assigned to her. Brinton was willing to co-operate but shared Williams's doubt that the other judges would agree to such an arrangement.

14. Williams then advised Brinton that if the above possible solution was not accepted by the other judges, then Brinton would have to find another solution.

15. At this time, there was no requirement for Provincial Court judges to be fully vaccinated against Covid-19 for them to perform their duties. It is therefore unclear why Williams believed that Brinton's only option was to work from home and preside over arraignment court.

16. In any event, Brinton shared her concern with Williams that it was difficult to speak openly about the issue. Williams agreed, and assured Brinton that she would not seek to suspend her or refer her to the Nova Scotia Judicial Council. At no time did Williams advise Brinton that she might do so in the future, or that Brinton had done (or had not done) anything that would warrant



any form of discipline at all. At no time did Williams advise Brinton that she was considering implementing a Covid-19 vaccination policy.

17. Nonetheless, on November 1, 2021, Williams sent a follow-up e-mail to the puisne judges, advising:

I can advise that only fully vaccinated judges will be assigned to sit in our courtrooms for the foreseeable future. I am not inclined to issue a public statement to this effect but each of you are at liberty to advise staff, lawyers and members of the public that Provincial Court judges sitting in courtrooms are fully vaccinated.

18. Williams did not explain how she believed she had the authority to make such a decision.

19. On November 25, 2021, contrary to her earlier advice to Brinton and the other puisne judges, and without Brinton's prior knowledge, Williams issued a public statement announcing that:

...all Provincial Court judges presiding in courtrooms, both now and in the future, are fully vaccinated. While some members of our Bench may not be sitting due to medical leave at present, any judge returning to sit in the Provincial Court will be fully vaccinated.

20. Meanwhile, at the end of October 2021, Brinton's husband tested positive for Covid-19. Brinton and the rest of their family soon tested positive as well. Starting on October 25, 2021, Brinton maintained a 10-day quarantine as required.

21. Upon recovering and completing her quarantine, Brinton found herself suffering from overwhelming exhaustion and anxiety arising from Williams's actions. Brinton visited her doctor, Dr. Babatolu, and informed him that the greatest source of her anxiety was work e-mails. She explained that the anxiety was so severe that her body would shut down. Dr. Babatolu advised Brinton to go off work for four weeks during which time he instructed her to avoid reading e-mails.

22. Thus, on or about November 15, 2021, Brinton submitted a “*Proof of Illness*” form, signed and dated by Dr. Babatolu, to Williams, thereby satisfying the requirements set out at section 9(1) of Part 2 of the *Supplementary Report on Income Protection* prepared by the Nova Scotia Tribunal on Provincial Court Judges’ Salaries and Benefits, which requires a judge to provide “*evidence of a disability*” to the “*satisfaction of the Chief Judge*”. The “*Proof of Illness*” form did not request or require Brinton to provide medical records of any kind to satisfy the “evidentiary” requirements of section 9(1).

23. During her short-term disability leave, Brinton appropriately did share (and continued to share) the details of her medical diagnosis and treatment plan with Sarah Giavroutas, Disability Case Manager with Lifeworks, the group insurance benefits administrator at that time for government employees and Provincial Court judges.

24. On December 15, 2021, while Brinton was still on short-term disability leave, Williams sent an e-mail to Brinton advising that the other judges were unwilling to take on her scheduled trials. Williams added: “...*they are of the view that a judge must perform all aspects of the work, including trials. I agree with them.*” As she was avoiding work e-mails pursuant to her doctor’s orders, Brinton did not see the e-mail at this time.

25. On December 17, 2021, Brinton informed Williams that she had been told to take another 4-6 weeks off of work by her doctor. Brinton submitted a second Proof of Illness to that effect.

26. On February 22, 2022, Williams wrote a letter to Brinton stating that she would not approve Brinton’s request for short-term disability benefits unless she provided “*evidence of a disability.*” Williams also stated that the “Proof of Illness” form previously provided was insufficient in her eyes because it lacked “*information on the nature of [the] illness.*” This was the first time that

Williams did anything to indicate that Brinton's "*Proof of Illness*" form was not enough to satisfy the "evidentiary" requirement of section 8(1).

27. In any event, Williams went on to again raise the issue of Brinton's vaccination status in the February 22 Letter. She wrote:

In the event you are medically cleared to return to work, there is still the issue of your vaccination status. As of November 5, 2021, you were still unwilling to divulge your private vaccination status. In my December 15, 2021, e-mail to you, I reiterated the need for you to be fully vaccinated upon your return, in keeping with the Provincial Court policy; see enclosed. If you continue to choose not to disclose your vaccination status, you will be considered non-vaccinated and unable to preside over in-person trial and sentencings in the Court Room, which is a large part of the daily functions of a Provincial Court Judge. Regrettably, I will have no recourse other than to suspend you and refer the matter to the Judicial Council.

28. This was the first time that Brinton heard that she was to be suspended, that she would be deemed to be unvaccinated, or that she would be permanently unable to preside in court, all because of declining to divulge her vaccination status, which Williams acknowledged in the February 22 Letter as "*private*". It was also the first time that Brinton heard that she would be referred to the Judicial Council.

29. Brinton replied in writing indicating that she would apply for long-term disability.

30. On March 21, 2022, Dr. Babatolu provided a note confirming that Brinton would be off work due to medical reasons from December 17, 2021 until at least May 16, 2022.

31. In April 2022, Brinton was approved for long-term disability by Manulife.

32. Before then, however, on March 28, 2022, without any warning or further attempt to contact Brinton, and without Brinton's consent, Williams wrote to Dr. Babatolu to request that he supply her with details of Brinton's medical issues. Williams advised:

I am writing to request a medical report for the timeframe October 25, 2021, to March 21, 2022, outlining the treatment plan, anticipated date of resolution, and/or restrictions and limitations to determine if Judge Brinton could have operationally performed her job with or without modifications to duties/hours.



As Chief Judge, I am tasked with authorizing short-term illness claims for Judges of the Provincial Court. Without this information, regrettably I am not able to authorize the 100 days of short-term illness taken.

33. Brinton received a copy of the letter but did not realize it had been addressed to her doctor until she received a call from Dr. Babatolu informing her of the letter he had received. Brinton became concerned that Williams's statement that she was "*not able to authorize the 100 days of short-term illness taken*" (which had already been incurred by this point) meant that Williams would seek or was seeking to recover the benefits that had already been paid to Brinton. During the call, Brinton declined to consent to the release of her records.

34. Thereafter, Williams's office called Dr. Babatolu, following up on the request in Williams's earlier letter. Dr. Babatolu's office called Brinton a second time to ask if she had given consent for the release of her medical information. Brinton repeated that she had not.

35. Ultimately, Dr. Babatolu did not provide Williams with the requested records. By this time, Brinton had already provided the necessary information to her long-term disability benefits provider, Manulife.

36. In April 2022, Brinton was approved for long-term disability by Manulife.

37. Brinton has received no updates or further communication from Williams since April 2022. Given that Brinton was unable to comply with the condition imposed by Williams in the February 22 Letter, the clear terms of that letter indicate that Brinton was suspended and that the matter would be referred to the Judicial Council.

### **The Complaint is Commenced**

38. Section 17A(2) of the Act provides that where a complaint is made against the Chief Judge of the Provincial Court of Nova Scotia, it should be presented to the Chief Judge of the Family



Court of Nova Scotia or, in the absence of the Chief Judge of the Family Court, to the Chief Justice of Nova Scotia (i.e. the Chair).

39. Accordingly, since Williams was currently Chief Judge of both the Provincial and Family Courts of Nova Scotia, Brinton, through her counsel, prepared and forwarded the Complaint to the Chair on or about June 7, 2023, asking the Chair to refer the Complaint to a review committee of the Judicial Council for further investigation.

40. In Brinton's view, the Complaint raises issues of grave importance to the proper functioning of the judiciary, both in Nova Scotia and across Canada. It engages the principles of individual judicial independence, judicial impartiality and, by extension, the rule of law itself. It concerns the working relationship between a chief judge and a puisne judge, and the proper scope of the chief judge's authority within that relationship.

41. In this case, Brinton argues that that working relationship has been irreparably damaged. Various actions taken by Williams against Brinton between October 2021 and March 2022 constitute serious violations of Brinton's individual judicial independence and appearance of judicial impartiality.

42. First, Williams applied undue pressure on Brinton to disclose her COVID-19 vaccination status, despite Brinton's clear indication that she was unwilling to do so in order to (a) observe medical privacy legislation in Nova Scotia; and (b) preserve both her and the Court's collective appearance of judicial impartiality.

43. Second, on or about February 22, 2022, in response to Brinton's unwillingness to disclose her COVID-19 vaccination status, Williams unilaterally decided to (a) assume that Brinton was not vaccinated against COVID-19; (b) suspend Brinton; and (c) refer her to the Judicial Council,

ostensibly to discipline her. At no time was Brinton given a meaningful opportunity to prepare for or respond to Williams's decisions.

44. Third, on or about March 28, 2022, while Brinton was away from work on short-term disability leave due to various personal issues and illness, Williams improperly attempted to obtain Brinton's private medical records in connection with Brinton's disability insurance claim, going so far as to write directly to Brinton's physician to request the records directly from him, without Brinton's knowledge or consent. By then, Brinton had already been on disability leave since October 25, 2021 with Williams's approval, having presented a formal "*Proof of Illness*" form to Williams, signed and dated by Brinton's physician on November 15, 2021. Although Brinton had by then been receiving disability benefits for several months, Williams's letter to Brinton's physician advised that without the requested medical records, Williams was "*not able to authorize the 100 days of short-term illness taken*".

45. Williams's actions, whether taken individually or together, seriously violated her ethical obligation to act with integrity towards Brinton, her obligation to respect Brinton's medical privacy, as well as several aspects of the principles both of judicial independence and impartiality.

46. First, by applying pressure to Brinton concerning the disclosure of her vaccination status, Williams interfered with Brinton's medical privacy rights, her judicial independence and her ability to preserve her own appearance of impartiality and, by extension, the appearance of impartiality of the Court itself.

47. Second, by unilaterally suspending Brinton, Williams improperly took steps deliberately intended to prevent Brinton from performing her judicial duties, further compromising Brinton's judicial independence.

48. Third, by representing to Brinton that she would be referred to the Judicial Council simply for declining to divulge her COVID-19 vaccination status, Williams misused the authority granted to her under section 17D(2) of the Act.

49. Fourth, by interfering with Brinton's short-term disability process, Williams further violated her obligation to respect Brinton's medical privacy, and also put Brinton's financial security in jeopardy, compromising her independence further still.

50. Regrettably, at every step of the way, Williams acted in excess of her authority as Chief Judge, leaving Brinton no choice but to present this complaint, in order to protect both her own independence and impartiality as a judge of the Provincial Court, and the independence of the Court itself.

#### **The Complaint is Dismissed by the Chair**

51. On or about June 7, 2023, Brinton, through her counsel, prepared and sent the Complaint to the Chair, pursuant to section 17A(2) of the Act. Pursuant to sections 17B(1)(c)(iii) and 17C of the Act, Brinton asked the Chair to refer her Complaint to a review committee for further investigation.

52. On June 8, 2023, the Chair sent a letter to Brinton's counsel, confirming receipt of the Complaint. In the letter, the Chair advised that he had sent the Complaint to Williams "for comment" prior to making a decision concerning Brinton's request for the Complaint to be referred to a review committee. The Chair did not indicate how he had the authority under the Act, or at all, to do so

53. On June 12, 2023, the Chair sent another letter to Brinton's counsel, advising that Williams had requested one month to "review and respond to the complaint", which he had granted. The Chair did not explain how he had the authority under the Act, or at all, to do so.

54. On August 15, 2023, the Chair sent another letter to Brinton's counsel, advising, among other things, that he had received "comments from Chief Judge Williams".

55. Neither Brinton nor her counsel have ever been made aware of the substance and details of the response and comments made by Williams to the Chair following Williams's request for a month's time in order to "review and respond to the complaint". No opportunity was ever given to Brinton or her counsel to reply to any such response or comments. The Chair has not explained to Brinton how it has the authority to do so under the Act, or at all.

56. Rather, the Chair's letter dated August 15, 2023 requested Brinton, through her counsel, only to provide additional written submissions on the issue of whether the Judicial Council had jurisdiction to handle Brinton's Complaint. In response, on or about September 11, 2023, Brinton, through her counsel, provided the Chair with additional written submissions in support of her Complaint.

57. On October 10, 2023, Brinton, through her counsel, received the Chair's Decision, in which the Chair dismissed Brinton's Complaint in its entirety, with reasons, pursuant to section 17B(1)(a) of the Act. The Decision concluded that Williams's actions as described in the Complaint could not support a finding of judicial misconduct.

58. The Decision was incorrect and/or unreasonable, on the following grounds:

- (a) the Chair purported to dismiss the Complaint pursuant to the power vested in him by section 17B(1)(a) of the Act, but without making any of the necessary findings under sections 17B(1)(a)(i) – (iii) that would enable him to do so. Accordingly, the Chair's dismissal of the Complaint pursuant to section 17B(1)(a) was *ultra vires* the Chair's authority;



- (b) the Chair substituted his own opinion of the strength of Brinton's Complaint for that of a review committee, which is not permitted by the Act and hence was *ultra vires* the Chair's authority;
- (c) the Chair improperly invited a response and comments from Williams, and granted Williams a month's time in order to provide such response and comments, before deciding whether to refer the Complaint to a review committee, all of which is not permitted by the Act and hence was *ultra vires* the Chair's authority;
- (d) the Chair improperly failed to advise Brinton and her counsel of the substance and details of the response and comments received from Williams and failed to provide Brinton and her counsel with an opportunity to reply to such response and comments. Such a procedure is not authorized by the Act and hence was *ultra vires* the Chair's authority. Such a procedure also amounts to a lack of procedural fairness;
- (e) the Chair failed to employ the well-known *Doré/Loyola* analysis in determining whether to refer the Complaint to a review committee for further investigation;
- (f) the Chair failed to consider the rule of law and/or Brinton's constitutional right to judicial independence and impartiality in determining whether to refer the Complaint to a review committee for further investigation;
- (g) the Decision displays a failure of rationality internal to the reasoning process leading to the dismissal of the Complaint;

- (h) the Decision is untenable in light of the relevant factual and legal constraints bearing upon it.

### **Order proposed**

The applicant requests an order:

- (a) setting aside the Decision; and
- (b) referring the Complaint to a review committee of the Judicial Council for further investigation, pursuant to section 17B(1)(c)(iii) and 17C.

### **You may participate**

You may participate in the judicial review if you file a notice of participation no more than ten days after the day a copy of this notice for judicial review is delivered to you. Filing the notice entitles you to notice of further steps in the judicial review.

### **Record to be produced**

The applicant foresees no difficulty obtaining the record and believes it will be delivered to the court and the respondents no later than **December 31, 2023**. The record will include:

- 1. the Complaint, filed with the Chair
- 2. Brinton's Exhibit Book, filed with the Complaint, containing the following exhibits:
  - (a) Exhibit "A" – News Release: "Vaccination Required for Provincial Government Employees", dated October 6, 2021
  - (b) Exhibit "B" – Various e-mails from and to Chief Judge Williams, dated September 29 to November 5, 2021
  - (c) Exhibit "C" – E-mails between Brinton and Chief Judge Williams, dated October 7, 2021
  - (d) Exhibit "D" – Statement from the Chief Judge regarding the Vaccination Status of Provincial Court Judges, dated Nov. 25, 2021
  - (e) Exhibit "E"- Supplementary Report on Income Protection, prepared by the Nova Scotia Tribunal on Provincial Judges' Salaries and Benefits
  - (f) Exhibit "F" – Proof of Illness Form, dated November 15, 2021
  - (g) Exhibit "G" – Letter from Chief Judge Williams to Brinton, dated Feb. 22, 2021

- (h) Exhibit “H” – Proof of Illness Form, dated December 17, 2021
  - (i) Exhibit “I” – Note from Dr. Babatolu, dated March 21, 2022
  - (j) Exhibit “J” – Letter from Chief Judge Williams to Dr. Babatolu, dated March 27, 2022
  - (k) Exhibit “K” – *Rees et al. v. Crane*, [1994] 2 A.C. a73 (Trinidad & Tobago P.C.)
  - (l) Exhibit “L” – Ethical Principles for Judges, Canadian Judicial Council Catalogue Number JU11-4/2004E
- 3. a covering e-mail to the Chair, dated June 7, 2023, from Brinton’s counsel to the Chair, enclosing the Complaint and Exhibit Book
  - 4. correspondence dated June 8, 2023 from the Chair to Brinton’s counsel
  - 5. correspondence dated June 12, 2023 from the Chair to Brinton’s counsel
  - 6. correspondence dated August 15, 2023 from the Chair to Brinton’s counsel
  - 7. correspondence and further written submissions dated September 11, 2023, from Brinton’s counsel to the Chair
  - 8. the Decision, dated October 10, 2023

**The record may contain additional information of which the applicant is currently unaware. In that case, the applicant looks to the respondent to furnish such information, as provided below.**

**Notice to decision-making authority**

The respondent, the Judicial Council of Nova Scotia, is required by Civil Procedure Rule 7 (Judicial Review and Appeal) to file one of the following no more than five days after the day the decision-making authority is notified of this proceeding by delivery of a copy of this notice for judicial review:

- a complete copy of the record, with copies of separate documents separated by numbered or lettered tabs;
- a statement indicating that the decision-making authority has made arrangements with the applicant to produce of the record, providing details of those arrangements, and estimating when the return will be ready;
- an undertaking that the decision-making authority will appear on the motion for directions and will seek directions concerning the record;

- a summary of reasons given orally without a record and your certificate the summary is accurate, if you gave reasons orally and not on record.

If you fail in this regard, a judge may order costs against you including a requirement that you indemnify each other party for any expenses caused by your failure, such as expenses caused by an adjournment if that is the result.

**Stay of proceedings or other interim remedy**

The applicant WILL NOT make a motion for a stay of the enforcement of the decision under judicial review.

**Filing and delivering documents**

Any documents you file with the court must be filed at the office of the prothonotary at The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia B3J 1S7 (telephone no. (902) 424-7968).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

**Contact information**

The plaintiff designates the following address:

**James Manson, Senior Lawyer**  
**Charter Advocates Canada**  
**c/o 513-180 John Street**  
**Toronto, ON M5T 1X5**

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

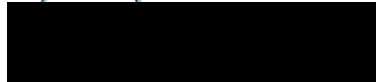
**Motion for date and directions**

At **11:00 a.m. on January 18, 2024**, the applicant will appear before a judge in Chambers at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia to make a motion for an order giving directions for the judicial review including a date and time for the hearing of it. The judge may make an order or provide directions in your absence if you or your counsel fail to attend, and the court may determine the judicial review without further notice to you.



**Signature**

Signed November 9, 2023

  
**CHARTER ADVOCATES CANADA**

**James Manson**

Tel:   
E-mail: 

**Counsel for the Applicant**

**Prothonotary's certificate**

I certify that this notice for judicial review was filed with the court on  
November 10, 2023.

  
**Prothonotary**

**JESSICA BOUTILIER**  
Prothonotary

THE HONOURABLE  
MICHAEL J. WOOD

CHIEF JUSTICE OF NOVA SCOTIA



THE LAW COURTS  
1815 UPPER WATER ST.  
HALIFAX, NS B3J 1S7  
TEL: 902-424-6932

October 10, 2023

By Email: [REDACTED]

Mr. James Manson  
Charter Advocates Canada  
[REDACTED]

Dear Mr. Manson:

**Re: Nova Scotia Judicial Council – Brinton Complaint**

I am writing to provide you with my decision pursuant to s. 17B of the *Provincial Court Act* in relation to the complaint by Judge Brinton which accompanied your letter of June 7, 2023.

I have reviewed the complaint and supporting materials and considered your supplemental submissions dated September 11, 2023. I also received and considered written comments from Chief Judge Williams concerning the allegations in the complaint. Finally, I conducted legal research and reviewed applicable decisions from courts and judicial conduct committees.

### **Principles Applied**

Since Judge Brinton's complaint is against the Chief Judge of the Provincial Court, s. 17A(2) of the *Act* requires me, as Chief Justice, to exercise the power and duties set out in s. 17B. These are set out in ss. (1) and consist of the following:

- 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.
- Attempt to resolve the complaint.
- Refer the complaint to a review committee for further investigation.

In your submissions on behalf of Judge Brinton, you urge me to refer the complaint to a review committee.

Given the nature of the complaint, I determined that a resolution was not feasible and, as a result, I did not pursue that option.

My role under s. 17B of the *Act* is to exercise a screening function which includes determining whether the complaint should be referred to a review committee for further investigation. I should only do so if there are reasonable grounds to believe the complaint raises issues of judicial misconduct of sufficient seriousness that could lead to one of the sanctions set out in s. 17K of the *Act* which are:

- Requiring the judge to obtain counselling, medical treatment or instruction.
- Imposing appropriate non-monetary sanctions including reprimand.
- Recommending the judge be removed from office as a result of inability to duly execute the function of their office.

The review committee appointed to investigate complaints against The Honourable Judge Gregory Lenehan conducted an extensive review of judicial misconduct jurisprudence and in their report described the test to be applied in reviewing complaints against Provincial Court judges as follows (para 45):

Whether the impugned conduct, if proven or admitted, could support a finding of judicial misconduct. That is, from the point of view of a reasonable, dispassionate, and informed public could it 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 that it warrants a disposition other than dismissal of the complaints in order to restore the confidence?

I have concluded I should apply the same test in determining whether further investigation by a review committee is warranted with respect to the complaint of Judge Brinton.

The review committee in *Lenehan* also commented on the distinction between legal errors and judicial misconduct in paragraph 46 of their report:

In considering this, the Review Committee must be mindful of the distinction between legal errors and judicial misconduct, as earlier referenced. Appellate courts exist to deal with the former; Judicial Council regimes exist to deal with the latter. While there are some cases where judicial error and judicial misconduct can co-exist, legal errors, without more, do not amount to judicial misconduct.

I believe this distinction is important and applicable, by analogy, to Judge Brinton's allegation that Chief Judge Williams made decisions or took actions which exceeded the scope of her authority as Chief Judge. Even if Chief Judge Williams acted in excess of her authority that, alone, would not amount to judicial misconduct. Something more would be required.

### **Application of Principles to Complaint**

The allegations in Judge Brinton's complaint can be organized into the following categories:



- 1) Chief Judge Williams inappropriately pressured her to disclose her vaccinations status.
- 2) Chief Judge Williams unilaterally created a policy whereby only fully vaccinated judges would be assigned to sit in courtrooms which exceeded her authority as Chief Judge.
- 3) Chief Judge Williams threatened to suspend the complainant and refer the matter to the Judicial Council because she was unwilling to disclose her vaccination status.
- 4) Chief Judge Williams inappropriately contacted Judge Brinton's physician seeking medical information which she was not entitled to.
- 5) Chief Judge Williams failed to give Judge Brinton a meaningful opportunity to be heard following her letter of February 22, 2022.

The evidence provided to me establishes the following sequence of events:

- 1) In September 2021, Chief Judge Williams circulated an email to the Provincial Court judges inquiring whether they wished to advise the public of their vaccination status. At that time some Canadian courts were disclosing this information. Judge Brinton responded that she did not agree with doing so. No public announcement was made at that time.
- 2) On October 21, 2021, the Public Service Commission advised all government employees they would have to be fully vaccinated by the end of November, failing which they would be placed on unpaid leave. This would apply to all court staff. There were some limited exemptions permitted in the policy.
- 3) On October 25, 2021, Judge Brinton went on medical leave. Initially it was categorized as a short-term disability. In the spring of 2022, she was approved for long-term disability benefits. She has been on leave since October 25, 2021.
- 4) On November 1, 2021, following consultation with the judges of the Provincial Court, Chief Judge Williams decided only fully vaccinated judges would be assigned to sit in courtrooms for the foreseeable future. Although no public statement was issued, judges were advised that they could inform staff, lawyers, and members of the public of this decision.
- 5) Also on November 1, 2021, Chief Judge Williams wrote to Judge Brinton with respect to the issue of vaccination status. The letter acknowledges that she respects Judge Brinton's decision not to disclose her status. Chief Judge Williams noted that Provincial Court staff were obliged to be fully vaccinated by November 30<sup>th</sup> and expressed the belief that judges should be fully vaccinated to participate in court hearings as well. She advised that in the circumstances she could not assign Judge Brinton to sit in the courtroom. Chief Judge Williams identified two potential options. One was to have Judge Brinton conduct virtual hearings from home and assign other judges to preside in her courtroom. The other option Chief Williams identified was a suspension pursuant to s. 15(2) of the *Act* which would trigger the requirement to refer the matter to the Judicial Council pursuant to ss. (3).
- 6) On November 16, 2021, the Provincial Court judges held a virtual meeting. Judge Brinton did not participate. The topic was vaccination status of judges. Those in attendance agreed that only vaccinated judges should be presiding in court hearings.
- 7) By late November 2021, many courts in Canada were confirming the vaccination status of their judges or stating that only fully vaccinated judges were presiding in court. The three levels of court in Nova Scotia issued notices to this effect between November 24 and 26, 2021.



- 8) On November 15, 2021, Judge Brinton provided a "Proof of Illness" form signed by her physician to Chief Judge Williams indicating she would be absent from work from October 25 to November 15, 2021. No information concerning the illness or disability was provided. A similar Proof of Illness form was provided on December 16, 2021.
- 9) On February 22, 2022, Chief Judge Williams wrote to Judge Brinton indicating she had been contacted by the Public Service Commission concerning Judge Brinton's medical leave. She informed Judge Brinton that as Chief Judge she was responsible for approving short-term disability leaves and she required satisfactory evidence of disability to give this approval. She requested that Judge Brinton obtain this for her. The letter also repeated the advice that if Judge Brinton was medically cleared to return to work but not prepared to disclose her vaccination status, she would not be assigned to preside over in-person trials and sentencing. In that circumstance, Chief Judge Williams indicated she would have no recourse other than to suspend Judge Brinton and refer the matter to the Judicial Council as required by the *Act*.
- 10) On March 21, 2022, Judge Brinton provided another Proof of Illness form which was similar to those previously given. It did not contain any particulars of Judge Brinton's illness or disability. On March 28<sup>th</sup>, Chief Judge Williams wrote to Judge Brinton's physician (copied to her) requesting a medical report with respect to the period of her short-term leave. Judge Brinton did not consent to the disclosure of any additional medical information and so nothing further was provided to Chief Judge Williams.

Chief Judge Williams was responsible for assigning judicial duties, including which judges were to preside in which courtrooms. After consultation with the judges of her court, she decided she would only assign fully vaccinated judges to sit in court. This was consistent with the practice of other courts as well as the direction given to court staff by the government.

The decision to only assign fully vaccinated judges for court hearings was made while Judge Brinton was on medical leave. However, it would have applied to her if she had been cleared to return to work. Chief Judge Williams had several communications with Judge Brinton about what would happen in this circumstance. One possibility, which Chief Judge Williams identified, was to have Judge Brinton work virtually from home; although there were concerns about whether there was an adequate volume of this work as well as what would happen with respect to the in-person hearings in Judge Brinton's courtroom. If there was insufficient virtual work available, Chief Judge Williams felt she might have to suspend Judge Brinton under s. 15(2) of the *Act* and refer the issue to the Judicial Council as required by ss. (3). Since 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.

Chief Judge Williams was responsible for assessing the medical evidence and approving requests for short-term medical leave by Provincial Court judges. The forms submitted by Judge Brinton in the fall of 2021 contained no information concerning her illness or disability and Chief Judge Williams decided she needed additional information concerning this. She wrote to Judge Brinton on February 22<sup>nd</sup> requesting additional information and received a response on March 21<sup>st</sup> which did not include the requested information. On March 28<sup>th</sup> she wrote directly to Judge Brinton's doctor with a copy to Judge Brinton requesting the information. Judge Brinton, as she was entitled



to, did not consent to additional medical information being provided by her physician. That was the end of the issue.

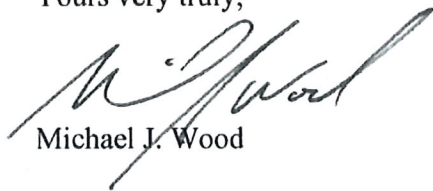
Judge Brinton says the sequence of events starting in the fall of 2022 were very difficult for her and created significant stress. She says she felt pressure as a result of the decisions made and actions taken by Chief Judge Williams and the other judges of the Provincial Court in response to the COVID pandemic. The question which I must decide is whether Chief Judge Williams engaged in judicial misconduct, as that term was defined in the *Lenahan* report. This requires actions which, viewed objectively, could seriously undermine the impartiality, integrity, and independence of the judiciary to the extent that the public's confidence in the ability of Chief Judge Williams to perform her judicial duties has been undermined. I must also be satisfied that the conduct in question could justify one of the dispositions other than dismissal set out in s. 17K of the *Act*.

Section 17B(1) contemplates that I could refer the matter to a review committee for further investigation. That path would lead to dismissal, resolution, or referral of the complaint to the Judicial Council for a hearing. On the information provided to me, I do not see any requirement for further investigation since the factual underpinning for the allegations is well documented and set out in detail in Judge Brinton's complaint. I am in as good a position as a review committee to apply the *Lenahan* test to the circumstances described by Judge Brinton.

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*.

By virtue of the authority in s. 17B(1)(a) of the *Act* the complaint of Judge Brinton is dismissed.

Yours very truly,



Michael J. Wood