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 SCOITA

Respondents

LEGAL BRIEF OF THE RESPONDENT, THE JUDICIAL COUNCIL OF NOVA SCOTIA

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Hfx No.: 528362

SUPREME COURT OF NOVA SCOTIA

Between:

RICKCOLA BRINTON

Applicant

and

THE JUDICIAL COUNCIL OF NOVA SCOTIA

THE HONOURABLE PAMELA S. WILLIAMS,
JUDGE OF THE PROVINCIAL COURT OF NOVA SCOTIA

Respondents

LEGAL BRIEF OF THE RESPONDENT, THE JUDICIAL COUNCIL OF NOVA SCOTIA

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PART I - OVERVIEW

1. This application challenges a decision of the Chair of the Nova Scotia Judicial Council (the "**Council**") to dismiss a complaint against the then-Chief Judge of the Provincial Court. This case is the first time this Court is called upon to review the Council's jurisdiction and procedures. As always in judicial review, context is critical. The decision impugned in this application and the Applicant's fairness arguments must be viewed through the lens of the Council's unique role in protecting the constitutional principle of judicial independence and maintaining public confidence in the judiciary. Judicial council proceedings respond to conduct by judges that threatens the integrity of the judiciary and public confidence in the administration of justice. Any lower threshold jeopardizes judicial independence.

2. The Applicant contests the decision of the Council to dismiss her complaint against the Respondent, Chief Judge Pamela Williams (as she then was), rather than referring the complaint to a review committee, because the Chair determined that the complaint was frivolous. She claims that as the complainant before the Council, she was denied procedural fairness. She seeks, effectively, to have equal status to the respondent judge in the Council's process. Both of these arguments engage considerations about the very nature of the Council and its role. Accepting the Applicant's arguments would interfere with the Council's ability to meet its responsibility to maintain judicial independence and uphold public confidence in the legal system.

3. Mindful of the limits on a decision-maker's role in judicial review of its own decision, the Council's submissions in this application will focus on two issues raised by the Applicant: (1) the jurisdiction of the Chair of the Council under the *Provincial Court Act* (the "***Act***")[1] to dismiss the

[1] RSNS 1989, c 238.

complaint at a preliminary stage; and (2) the content of the duty of procedural fairness that the Council owes at the early screening stages to a member of the public who submits a complaint to the Council. The Council submits that the decision to dismiss the complaint was within the Chair's jurisdiction and that the Applicant was not denied procedural fairness. The Council does not intend to make submissions on the reasonableness of the decision.

4. The Chair acted within his jurisdiction in making the decision at issue in this application. The Chair exercised authority available to him under the *Act* and did not usurp the role of the review committee. In this case, performing the role of the chief judge, the Chair dismissed the complaint under s. 17B(1)(a) of the *Act* after concluding that the complaint was frivolous. It was well within his discretion not to refer an unmeritorious complaint to a review panel.

5. To fulfill its crucial role, the Legislature has bestowed the Council with the latitude to design its own procedures and screen out unmeritorious complaints at an early stage. In selecting its procedures in this case, the Council did not breach any duty of procedural fairness owed to the Applicant. To the extent that the Council owed the Applicant a duty of fairness at all, the content of that duty was necessarily minimal. The Applicant—like any other member of the public who initiates a complaint to the Council—faced no serious consequences to her rights, privileges, interests, or duties from any outcome of the Council's process. Requiring the Council to share a judge's response with a complainant is inconsistent with the *Act* and incompatible with the vital and unique constitutional role of the Council. It would undermine the very purposes for which the Council exists.

6. Should the Court find that the Council erred or acted unreasonably in some way, the matter should be sent back to the Chair to fulfill his important screening role, in accordance with this

Court's direction. The Applicant cannot use this Court's processes to circumvent these crucial steps in the statutory scheme.

PART II - SUMMARY OF FACTS

7. The Council generally accepts the facts as outlined by the Applicant and Judge Williams and, in particular, takes no position on the background facts prior to the Council's involvement.

8. The Council can confirm the following chronology regarding the complaint:

(a) **June 7, 2023**: Counsel for the Applicant submitted her complaint against (then) Chief Judge Williams, alongside a supporting Exhibit Book, to Chief Justice Wood, in his capacity as Chair of the Council.[2]

(b) **June 8, 2023**: The Chair forwarded the complaint and supporting documentation to Chief Judge Williams and explained: "Prior to making any decision with respect to this request, I wish to give you the opportunity to make any submissions or comments which you consider appropriate."[3]

(c) **June 8, 2023**: The Chair responded to the Applicant's counsel, acknowledging receipt of the complaint, and stating that he had forwarded the complaint to Chief Judge Williams for comment.[4] The Applicant did not object to the complaint having been shared with Chief Judge Williams.

(d) **June 12, 2023**: Chief Judge Williams wrote to the Chair advising that she had retained counsel and requesting one month to respond to the complaint.[5] The Chair agreed to this request.[6] That same day, the Chair informed the Applicant's counsel

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[2] **Letter from Applicant's Counsel to Council,** June 7, 2023, Record of Decision-Making Authority ("RoDA"), Tab 1, p 5; **Brinton Complaint**, RoDA, Tab 2, pp 7-33; **Exhibit Book**, RoDA, Tab 3, pp 35-208.
[3] **Letter from Chair to Respondent,** June 8, 2023, RoDA, Tab 8A, p 290.
[4] **Letter from Chair to Applicant's Counsel**, June 8, 2023, RoDA, Tab 8B, p 292.
[5] **Letter from Respondent to Chair,** June 12, 2023, RoDA, Tab 8D, p 296.
[6] **Letter from Chair to Respondent**, June 12, 2023, RoDA, Tab 8E, p 298.

that he had granted Chief Judge Williams' request.[7] Again, the Applicant's counsel did not respond or object.

(e) **July 12, 2023**: Chief Judge Williams submitted her response to the Chair. She argued that the complaint should be dismissed summarily under ss. 17B(1)(a)(ii) or 17B(1)(a)(iii) because there was no evidence to support the central allegations and they were frivolous due to their lack of merit.

(f) **August 15, 2023**: the Chair wrote to counsel for the Applicant, explaining that he had reviewed the complaint and Chief Judge Williams' response, and requesting additional submissions on whether disagreements on the scope of a chief judge's authority to administer the court fall within the jurisdiction of the Council.[8] He asked for these submissions to be filed within a month. That same day, the Chair also forwarded this letter to Chief Judge Williams, providing her with the same opportunity to make additional submissions, within the same timeline.[9]

(g) **September 11, 2023**: Counsel for the Applicant provided additional submissions on the jurisdictional issue.[10] The letter did not raise any concerns with the procedures the Chair had employed to date, nor did it request any additional procedural rights for the Applicant.

(h) **September 15, 2023**: Chief Judge Williams provided her additional submissions on the jurisdictional issue. While she agreed that certain aspects of the complaint were outside the jurisdiction of the Council, she reiterated her request that the complaint should be dismissed as frivolous and lacking evidence.[11]

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[7] **Letter from Chair to Applicant's Counsel**, June 12, 2023, RoDA, Tab 8C, p 294.
[8] **Letter from Chair to Applicant's Counsel**, August 15, 2023, RoDA, Tab 8F, pp 300-301.
[9] **Letter from Chair to Respondent**, August 15, RoDA, Tab 8G, p 303.
[10] **Letter from Applicant's Counsel**, September 11, 2023, RoDA, Tab 5, pp 274-276.
[11] **Letter from Respondent**, September 15, 2023, RoDA, Tab 6, pp 278-282.

(i) **October 10, 2023**: The Chair sent his decision to the Applicant's counsel dismissing her complaint.[12] The Chair also forwarded a copy of the decision to Judge Williams.[13]

9. In the Decision, the Chair explained that, because the complaint was against the Chief Judge of the Provincial Court, he was required to exercise the powers and duties of the chief judge to screen the complaint under s. 17B of the *Act*.[14] He opined that he should refer the complaint to a review committee only 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*".[15]

10. The Chair also highlighted the distinction between legal errors and judicial misconduct, noting that, even if Chief Judge Williams acted in excess of her authority, on its own that would not constitute judicial misconduct warranting sanction.[16]

11. After laying out the facts of the complaint, the Chair noted that the "factual underpinning" was well documented and set out in detail.[17] He found that "the actions of Chief Judge Williams could not support a finding of judicial misconduct", as they concerned how to assign judicial work and what medical information was required to support the Applicant's medical leave, which fall squarely within her authority as Chief Judge.[18] As a result, Chief Judge Williams' decisions would

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[12] **Decision Outline**, October 10, 2023, RoDA, Tab 7, pp 284-288 ("**Decision**").
[13] **Letter from Chair to Respondent**, October 10, 2023, RoDA, Tab 8H, p 305. On August 28, 2023, Judge Williams completed her term as Chief Judge and resumed her role as a puisne judge of the Provincial Court.
[14] **Decision**, at p 1, RoDA, Tab 7, p 284.
[15] **Decision**, at p 2, RoDA, Tab 7, p 285.
[16] **Decision**, at p 2, RoDA, Tab 7, p 285.
[17] **Decision**, at p 5, RoDA, Tab 7, p 288.
[18] **Decision**, at p 5, RoDA, Tab 7, p 288.

not warrant any of the sanctions found in s. 17K of the *Act*.[19] Accordingly, he dismissed the complaint "[b]y virtue of the authority in s. 17B(1)(a)".

PART III - LAW AND ANALYSIS

12. Given the participation of another respondent, Judge Williams, who provides the necessary adversarial context to defend the Decision on its merits,[20] the Council will address only the first two issues raised by the Applicant:

(a) Was the Chair's decision to dismiss the complaint pursuant to s. 17B(1) *ultra vires* the Chair's authority?

(b) Did the Chair's (a) failure to advise Judge Brinton and her counsel of the substance and details of the response and comments from Chief Judge Williams, and (b) failure to provide Judge Brinton and her counsel with an opportunity to reply to such response and comments, amount to a breach of procedural fairness?[21]

13. The Council takes the following position on these issues:

(a) The Chair had the jurisdiction to dismiss the complaint as frivolous under s. 17B(1)(a) of the *Act*.

(b) The Chair did not breach any duty of procedural fairness owed to the Applicant. The Applicant was not entitled to receive the submissions of Chief Judge Williams or have an opportunity to reply to them.

14. The Council will also comment from an institutional perspective on the appropriate remedy in this case, in the event this Court concludes that the Decision should be quashed. In particular,

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[19] **Decision**, at p 5, RoDA, Tab 7, p 288.
[20] See ***Ontario Energy Board v Ontario Power Generation***, 2015 SCC 44, especially paras 52-59, Council's Book of Authorities ("CBoA"), Tab 1, pp 31-33, for the principles governing a decision-maker's participation in a judicial review application challenging its decision.
[21] **Applicant's Legal Brief**, at para 45.

respect for the role of the Council as designed by the Legislature dictates that the appropriate remedy is to remit the matter to the Chair to fulfill his screening role under ss. 17B(1) and 17C of the *Act*.

15. Before embarking on those points, the Council will offer submissions on the role of judicial councils within Canada's constitutional framework, which provides essential context.

A. The role and function of the Council

16. Judicial councils, including provincial councils such as the Council in Nova Scotia, serve a constitutionally vital role in protecting judicial independence and preserving the integrity of the judiciary as a whole and the proper functioning of the administration of justice.[22]

(i) The statutory scheme

17. The Council is established through s. 16(1) of the *Act*. It is chaired by the Chief Justice of Nova Scotia and is made up of the Chief Judge of the Provincial Court, the Chief Judge of the Family Court, two additional judges of the Provincial Court or Family Court, the president of the Nova Scotia Barristers' Society, an additional senior lawyer, and two laypersons.[23]

18. Under s. 17(1) of the *Act*, the Council is empowered to receive, investigate, resolve, dismiss, and adjudicate complaints against judges of the Provincial Court and Family Court.[24]

19. While the *Act* establishes the Council and outlines certain aspects of its powers and procedures, the statute is silent on many important matters that the Council faces. The executive

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[22] ***Ruffo v Conseil de la magistrature***, [1995] 4 SCR 267, at paras 68, 77, CBoA, Tab 2, pp 117, 122; ***Therrien (Re)***, 2001 SCC 35, at para 58, CBoA, Tab 3, pp 195-196; ***Moreau-Bérubé v New Brunswick (Judicial Council),*** 2002 SCC 11, at para 46, CBoA, Tab 4, p 281.
[23] *Act*, s 16(1).
[24] *Act*, s 17(1), 17A(1).

has not enacted any regulations governing the Council's procedures. Instead, the Legislature has provided the Council with significant latitude to interpret the relevant provisions of the *Act* and fill in any gaps. Indeed, the *Act* expressly endows the Council with the power to "determine its own procedures and any procedures governing a review committee".[25]

(ii) Jurisprudence on the constitutional role of judicial councils

20. The powers of the Council, and its choice of procedures, must be assessed in the context of the role it plays within the constitutional framework of the Province. That role gives the Council a mandate to consider complaints relating to judicial conduct and judicial ethics, not complaints regarding judicial decision-making.[26]

21. In *Moreau-Bérubé*, the Supreme Court considered a decision emanating from the equivalent judicial council in New Brunswick. It took the opportunity to explore the role of such councils more generally. Justice Arbour, writing for the Court, highlighted the "unique and special role judicial councils serve in light of competing constitutional interests".[27] This fact places them in a special position among both administrative tribunals generally and professional disciplinary bodies more specifically.[28] In particular, the Court explained that judicial councils are "responsible for preserving the integrity of the whole of the judiciary".[29]

22. The integrity of the judiciary has two dimensions: accountability and independence.[30] Through a disciplinary process whereby councils investigate, reprimand, and potentially

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[25] *Act*, s 17(1)(i).
[26] **In the Matter of Complaints Against Judge Gregory Lenehan, made pursuant to the *Provincial Court Act*, RSNS 1989, c. 238, Decision of the Review Committee, March 29, 2018**, at para 46, CBoA, Tab 5, pp 314-315 ("***Lenehan Decision***").
[27] ***Moreau-Bérubé***, at para 44, CBoA, Tab 4, pp 278-280.
[28] ***Moreau-Bérubé***, at para 44, CBoA, Tab 4, pp 278-280.
[29] ***Moreau-Bérubé***, at para 46, CBoA, Tab 4, p 281, quoting ***Therrien***, at para 58, CBoA, Tab 3, pp 195-196.
[30] ***Moreau-Bérubé***, at para 46, CBoA, Tab 4, p 281.

recommend the removal of judges where their conduct may threaten judicial integrity (the accountability function), councils provide "institutional protection of the judiciary as a whole, and public perceptions of it".[31] The public can have confidence in the judiciary because mechanisms exist to investigate and, where appropriate, remove judges who engage in serious misconduct. As one review committee of the Council has explained: "the ultimate goal of a judicial conduct process is to guard the integrity of the judicial system or, to put it another way, to ensure public confidence in the judiciary".[32]

23. At the same time, to maintain the integrity of the judiciary, councils must also protect judicial independence—particularly the components of security of tenure and the ability of judges to deliver judgments free from external pressures and influences.[33] Judicial independence has been described as "the single most important element of the rule of law in a democratic society".[34] It is a constitutional right of litigants that exists for the benefit of the judged, not the judges.[35]

24. Judicial councils are concerned with judicial conduct and ethics—not the merits of judicial decision-making—and they impose a high threshold of misconduct for discipline or removal from judicial office. This ensures that judges can decide the cases before them based solely on the evidence and the law, rather than fear of reprisal or a desire to curry favour.[36]

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[31] ***Moreau-Bérubé***, at para 46, CBoA, Tab 4, p 281.
[32] ***Lenehan Decision***, at para 10, CBoA, Tab 5, p 304.
[33] ***Moreau-Bérubé***, at para 46, CBoA, Tab 4, p 281. See also: ***R v Edwards***, 2024 SCC 15, at paras 103 (per Kasirer J), 171 (per Karakatsanis J), CBoA, Tab 6, p 418.
[34] ***Cosgrove v Canadian Judicial Council***, 2007 FCA 103, at para 29, CBoA, Tab 7, pp 481-482. See also: ***Edwards***, at para 154, per Karakatsanis J (dissenting, but not on this point), CBoA, Tab 6, p 442.
[35] ***Cosgrove***, at para 31, CBoA, Tab 7, p 482.
[36] ***Moreau-Bérubé***, at paras 56-57, CBoA, Tab 4, pp 285-287 (Within the context of the individual independence of judges, "the core principle is the liberty of the judge to hear and decide cases without fear of external reproach").

25. Judicial councils, which are comprised of chief justices and judges, and associate chief justices and judges, are well-positioned to fulfill their role. As the Supreme Court recognized, part of their expertise "lies in [their] appreciation of the distinction between impugned judicial actions that can be dealt with in the traditional sense, through a normal appeal process, and those that may threaten the integrity of the judiciary as a whole".[37]

26. The Council's role is not to supervise or correct errors made by judges in their judicial functions; that is the role of the appeal process. Rather, the Council's role is to address judicial misconduct of such a serious nature that it threatens the integrity of the judiciary as a whole.

27. The Council has made clear that it is concerned with judicial misconduct that is "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".[38] This is appropriately and necessarily a high bar.[39] As the review committee explained in its decision dismissing the complaints against Judge Lenehan, "[t]he threshold for a finding of judicial misconduct is necessarily high to protect the independence of the judiciary that is the cornerstone of the rule of law".[40]

28. In addition to judges' individual independence, the constitutional principle of judicial independence has a vital second dimension: administrative independence of the courts. This aspect of judicial independence—which is also safeguarded by judicial councils—encompasses the

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[37] ***Moreau-Bérubé***, at para 60, CBoA, Tab 4, p 289. See also: ***Lenehan Decision***, at para 46, CBoA, Tab 5, pp 314-315.
[38] ***Lenehan Decision***, at para 45, CBoA, Tab 5, p 314.
[39] ***Lenehan Decision***, at paras 49, 184, CBoA, Tab 5, pp 315, 345. See also: **In the Matter of Complaints Against Judge Alanna Murphy made pursuant to the *Provincial Court Act*, RSNS 1989, c 238, Decision of the Review Committee, March 30, 2022**, at para 24, CBoA, Tab 8, p 510 ("***Murphy Decision***").
[40] ***Lenehan Decision***, at para 186, CBoA, Tab 5, p 345.

administrative decisions that bear directly on the exercise of the judicial function, such as the assignment of judges, the sittings of the court, and the court lists.[41]

29. In order to maintain its institutional independence, the court itself must control these processes, usually through the chief judge or chief justice. As with judicial decision-making, such administrative decisions cannot, on their own, amount to judicial misconduct subject to sanction without impermissibly treading on the constitutional principle of independence. Judicial councils are not the appropriate venues to challenge a chief judge's or chief justice's administrative management of their courts.

30. These principles form the important backdrop to the Council's powers and the Decision.

B. The Chair had jurisdiction to summarily dismiss the complaint

31. Under the *Act*, the chief judge and the chair exercise important powers to screen out unmeritorious complaints at an early stage. The Chair's decision here was well within those powers.

32. The Council agrees with the Applicant that the standard of reasonableness applies to the question of whether the Chair had the jurisdiction to dismiss the complaint.[42] The Chair's determination that he had jurisdiction to dismiss the complaint was reasonable.

(i) The complaint screening process under the Act

33. The *Act* sets out a tiered process through which every complaint must travel. At each stage, the Council has the power to dismiss the complaint if it does not warrant further consideration in

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[41] ***Reference re Remuneration of Judges of the Provincial Court (P.E.I.)***, [1997] 3 SCR 3, at para 117, CBoA, Tab 9, p 618 ("***Provincial Judges Reference***"); ***Edwards***, at paras 86, 116, CBoA, Tab 6, pp 410-411, 424.
[42] **Applicant's Legal Brief**, at para 47.

the next step of the process. This power is consistent with Council's role in safeguarding judicial independence, and the high bar for sanctionable judicial misconduct.

34. At the outset, a complaint must be directed to the chief judge of the judge who is the subject of the complaint (either the Provincial Court or the Family Court).[43] The chief judge assesses the complaint and has three options under s. 17B(1). First, the chief judge can dismiss the complaint with written reasons if:

(i) the complaint is not within the jurisdiction of the Council,

(ii) the chief judge considers the complaint to be frivolous or vexatious, or

(iii) there is no evidence to support the complaint.[44]

Second, the chief judge can attempt to resolve the complaint.[45] Third, the chief judge can refer the complaint to the chair, with a recommendation that the complaint be: (i) dismissed; (ii) resolved with the agreement of the judge; or (iii) referred to a review committee.[46] Notably, s. 17B(1)(c) does not set any parameters around when the chief judge can recommend dismissal.

35. The role of the chief judge under s. 17B has been characterized as a "screening function" to determine if there are "reasonable grounds to believe that the complaints should proceed to a Review Committee".[47] If the chief judge does not dismiss or resolve the complaint, they can refer it to the chair with a recommendation that the complaint be dismissed, resolved, or referred to a

[43] *Act*, s 17A(1).
[44] *Act*, s 17B(1)(a).
[45] *Act*, s 17B(1)(b).
[46] *Act*, s 17B(1)(c).
[47] ***Lenehan Decision***, at para 23, CBoA, Tab 5, p 308.

review committee. Pursuant to s. 17C, the chair can either accept the recommendation and dismiss or resolve the complaint, or empanel a review committee.[48]

36. When the chair refers a complaint to a review committee, the committee must investigate and, pursuant to s. 17G, can either: (a) dismiss the complaint; (b) resolve the complaint with the agreement of the judge; or (c) refer the complaint to a hearing before the Council.[49] The role of the review committee is to determine "whether the allegations could objectively amount to findings of judicial misconduct that warrant a formal hearing".[50] In deciding whether to refer a complaint for a hearing, the review committee applies the following test:

> 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 that confidence?[51]

37. After a hearing, the Council then has the power under s. 17K to: dismiss the complaint; require the judge to obtain counselling, remedial treatment, or instruction; or impose other non-monetary sanctions that the Council considers appropriate. The Council may also recommend that the judge be removed from office if, in the opinion of the Council, the judge 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,

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[48] *Act*, s 17C.
[49] *Act*, s 17G.
[50] ***Lenehan Decision***, at para 4, CBoA, Tab 5, pp 302-303.
[51] ***Lenehan Decision***, at para 45 (emphasis in original), CBoA, Tab 5, p 314. See also: ***Murphy Decision***, at para 22, CBoA, Tab 8, pp 509-510.

(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.[52]

38. The *Act* therefore provides three opportunities to dismiss a complaint before it proceeds to a hearing: (a) the chief judge's discretion under s. 17B(a)(i); (b) the chair's discretion (on recommendation of the chief judge) under s. 17C; and (c) a review committee's discretion under s. 17G. The early screening mechanisms in ss. 17B and 17C facilitate the summary dismissal of obviously unmeritorious complaints.[53] This screening function must be exercised in light of the ultimate test for judicial misconduct and the powers of the Council.

39. The broad discretion of the Council to screen out and summarily dismiss unmeritorious complaints (as provided for in ss. 17B and 17C of the *Act*) is crucial to the Council's ability to fulfill its role of protecting judicial independence and the integrity of the judiciary. It is for this reason that judicial councils across the country maintain similar screening mechanisms.[54] Indeed, for these judicial councils, the majority of complaints are screened out at the preliminary stages with a decision that no investigation or inquiry is warranted.[55]

40. Unmeritorious complaints have a disruptive effect on the judge concerned and, if allowed to proceed unchecked, can harm the integrity of the judiciary. Judicial councils must be able to screen out unmeritorious complaints at an early stage to prevent these impacts. As noted above, public confidence is a central goal underlying judicial independence and the role of judicial

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[52] *Act*, s 17K.
[53] ***Cosgrove***, at para 80, CBoA, Tab 7, pp 497-498.
[54] See, for example, **Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges**, ss 6-7 ("**CJC Review Procedures (2023)**"). The courts have repeatedly upheld the decisions of judicial councils to screen out complaints as reasonable: see, for example, ***Turner-Lienaux v Canada (Attorney General)***, 2022 FCA 213, at paras 8-9, CBoA, Tab 10, pp 753-754; ***Cosentino v Canada (Attorney General)***, 2021 FCA 193, CBoA, Tab 11, pp 757-762.
[55] ***Cosgrove***, at paras 2, 74 CBoA, Tab 7, pp 475, 496.

councils. As the Supreme Court has emphasized: "Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation".[56]

41. The New Brunswick Court of Appeal in *Murray* highlighted one form of tactical misuse of the complaint process: where a litigant who has unsuccessfully sought the recusal of the judge assigned to their matter subsequently files a complaint with a judicial council, in an attempt to have the judge disqualified from hearing all future matters in which the litigant is a party.[57] This is an abuse of the judicial council's complaints process and ought not to be permitted.

42. Were the Council required to thoroughly investigate all complaints, even where they appear on their face to be lacking merit, brought for improper purposes, abusive of the complaints process, or otherwise not in the public interest, public confidence in the integrity of the judiciary would be seriously undermined. The public would rightfully have diminished confidence in our judiciary if complaints to the Council could be weaponized against judges in an effort to "shop" for a preferred adjudicator, punish a judge for an unfavourable ruling, attempt to incentivize a judge to rule in a particular way, or dictate the administration of the court.

43. Such risks exist even if the complaint is ultimately dismissed at the end of the process. The prospect of having to undergo and respond to an improper or abusive complaint itself—with the corresponding uncertainty, time, and resources required—may be perceived by reasonable people to operate as exerting inappropriate pressure on judicial decision making. The time required for judges to thoroughly respond to all complaints in full investigations or full hearings, no matter

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[56] ***Provincial Judges Reference***, at para 112, CBoA, Tab 9, p 616., citing ***Valente v The Queen***, [1985] 2 SCR 673, at p 689, CBoA, Tab 12, p 780.

[57] ***Murray v New Brunswick Police Commission***, 2012 CanLII 34210, [2012] NBJ no 211 (CA), at para 9, CBoA, Tab 13, p 813 ("In plain language, this tactical maneuver is called "judge shopping" and is not to be tolerated by any judge of any court in this Province.").

how frivolous, would be an unnecessary drain on already scarce judicial resources and unduly disruptive to the proper administration of justice.

44. To prevent such an outcome, the Council must be able to screen out these sorts of complaints at an early stage. This is the power enshrined in ss. 17B and 17C of the *Act*.

(ii) The Chair dismissed the complaint as frivolous under s. 17B(1)(a)

45. In this case, the Chair had the jurisdiction to dismiss the Applicant's complaint against Chief Judge Williams as frivolous. He acted within his authority in doing so.

46. Because the first step in the Council's judicial complaints process involves review by the respondent judge's chief judge, where a complaint is made against the Chief Judge of the Provincial Court, the *Act* provides a modified procedure. The complaint is directed at first instance to the Chief Judge of the Family Court, or, in their absence, to the Chief Justice of Nova Scotia.[58] In this case, because Chief Judge Williams was the Chief Judge of both the Provincial Court and the Family Court, the Applicant's complaint went to the Chief Justice at first instance. In such cases, the Chief Justice has the powers and duties of the chief judge under s. 17B.[59]

47. As noted above, under s. 17B, the chief judge (or in this case the Chair) is empowered to dismiss the complaint if it is outside the jurisdiction of the council, is frivolous or vexatious, or there is no evidence to support it.[60] In this case, the Chair dismissed the complaint as frivolous.

48. The Chair assessed the complaint's merit against the backdrop of the test that the review committee would be required to apply: whether the impugned conduct *could* support a finding of

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[58] *Act*, s 17A(2).
[59] *Act*, s 17A(2).
[60] *Act*, s 17B(1)(a).

judicial misconduct warranting one of the sanctions in s. 17K (considering the high bar for such misconduct).[61] If the complaint—even if proven—did not raise issues of judicial misconduct of sufficient seriousness to warrant one of the sanctions under the *Act*, a review committee could never refer it to a hearing. It would therefore necessarily be frivolous.

49. Accepting the factual allegations in the complaint as true, the Chair concluded that they could not possibly support any findings of judicial misconduct warranting sanction. All of Chief Judge Williams' actions were within her authority to administer the court as chief judge.[62]

50. This is consistent with the way courts have considered claims to be "frivolous". For example, the Nova Scotia courts, in the context of striking pleadings,[63] have considered a frivolous action as one that has "no substance" or is "obviously unsustainable or without arguable merit".[64] A claim is "frivolous" if it has no "arguable basis", lacks "sufficient merit", is "devoid of merit in that there can be little prospect that it can ever succeed", or "if it is plain and obvious or beyond reasonable doubt the claim it advances is groundless and cannot succeed".[65]

51. These definitions of 'frivolous' align with the Chief Justice's findings regarding the complaint, namely that it had no reasonable prospect of succeeding before a review committee, even if all the factual allegations were proven.

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[61] ***Decision***, at pp 2, 5, RoDA, Tab 7, pp 285, 288.
[62] See: *Act*, s 15 (chief judge is responsible for the "judicial functions of the court" including the "assignment of judicial duties); ***Duties of the Chief Judge and Administrator of the Provincial Court Regulations***, NS Reg 250/83.
[63] See, for example, ***Nova Scotia Civil Procedure Rules***, r 88. See also: ***Nova Scotia Civil Procedure Rules***, r 13.01(3) ("This Rule is not for disposal of frivolous, vexatious, scandalous, or otherwise abusive pleadings, which purpose is served by Rule 88).
[64] See: ***Layes v Bowes***, 2019 NSSC 298, at para. 31, CBoA, Tab 14, pp 828-829, citing ***Hynes v Pro Dive Marine Services Ltd.***, 2016 NLCA 17, at para 13, CBoA, Tab 15, p 850. See also: ***Mercier v Nova Scotia (Police Complaints Commissioner)***, 2014 NSSC 79, at paras 25-31, CBoA, Tab 16, pp 870-872.
[65] ***R v Perrier***, 2009 NLCA 61, at para 24, CBoA, Tab 17, p 884; ***CAS v DLS***, 1995 CanLII 16902 (NBCA), at para 4, CBoA, Tab 18, pp 891-892; ***Wilchuck v Westfield Twins Condominium Corp***, 2020 SKQB 40, at para 28, CBoA, Tab 19, p 904.

52. Thus, far from usurping the role of the review committee, the Chief Justice acted squarely within his power to dismiss the complaint as frivolous under s. 17B(1)(a).

(iii) The Chair could have also dismissed the complaint under s. 17C

53. In this case, the Chair also had the power to dismiss the complaint under the broader dismissal discretion granted to him in s. 17C of the *Act*.

54. As noted above, because the complaint in this case was against the Chief Judge, the Chair exercised both the powers of the chief judge under s. 17B(1) of the *Act*, as well as the powers of the Chair under s. 17C. As the Applicant rightly explains, "the first two steps are collapsed" in this case.[66] This provides a broader power to dismiss complaints at an early stage.

55. Under s. 17B(c)(i), the chief judge may refer the complaint to the chair with a recommendation that the complaint be dismissed. The chair can then accept that recommendation and dismiss the complaint under s. 17C. This dismissal power is necessarily broader than the three dismissal grounds available to the chief judge under s. 17B(1)(a) (lack of jurisdiction, frivolous or vexatious, or no evidence). If this dismissal power could be exercised only on the same grounds as those set out in s. 17B(1)(a), there would be no purpose in the chief judge referring the complaint to the chair with a recommendation to dismiss—the chief judge could just dismiss the complaint themself. Therefore, s. 17B(1)(c)(i) must cover other grounds.

56. The Council agrees with the Applicant that "greater discretion is exercised by decision-makers at later steps in the procedure".[67] The chair, acting on the recommendation of the chief

[66] **Applicant's Legal Brief**, at para 53.
[67] **Applicant's Legal Brief**, at para 55.

judge, has a broader discretion to dismiss a complaint under s. 17C than does the chief judge acting alone under s. 17B(1)(a).

57. Section 17B(1)(c)(i) does not set out the grounds on which the chief judge can recommend dismissal. The Legislature has left to the chief judge and the chair a broad discretion to determine what grounds justify a dismissal under the combined operation of s. 17B(1)(c)(i) and s. 17C. It is not necessary in this case to exhaustively define all possible grounds. However, consistent with the purposes of the Council, they are likely to include situations where the complaint is an abuse of the complaint process or not in the public interest to pursue.[68]

58. In this case, because the Chair occupied dual roles, he could have effectively referred the complaint to himself with a "recommendation" to dismiss it under s. 17B(1)(c)(i) and then accepted his own recommendation and dismissed the complaint under s. 17C. This gave him the discretion to dismiss this complaint beyond the grounds listed in s. 17B(1)(a).

C. The Council did not breach the Applicant's procedural fairness rights

59. In assessing the complaint, the Chair provided sufficient procedural fairness to the Applicant. He had the power (and potentially the duty) to provide the complaint to Chief Judge Williams and give her an opportunity to respond. On the other hand, the Applicant, as the complainant, had no right to receive and reply to Chief Judge Williams' submissions.

[68] See, for example, **CJC Review Procedures 2023**, at s 6.7.

(i) The Chair was entitled to seek a response from Chief Judge Williams

60. The Applicant claims that the Chair lacked the jurisdiction to solicit submissions from Chief Judge Williams.[69] This is incorrect. Not only was the Chair *entitled* to do so, but he was arguably *required* to do so if contemplating referring the complaint to a review committee.

61. The *Act* provided the Chair with the power to request and consider comments from Chief Judge Williams, even at the initial screening stages. The *Act* expressly grants the Council the discretion to "determine its own procedures and any procedures governing a review committee".[70] The Council is therefore entitled to select its procedures in exercising its powers to receive, assess, and dismiss or adjudicate complaints, except where explicitly set out in the *Act* itself. In the course of "determin[ing] its own procedures", the chief judge and chair have the authority to forward a complaint to the respondent judge and solicit comments before deciding whether to refer the complaint to a review committee.

62. The *Act* contemplates such a scenario. As discussed above, s. 17B outlines the powers of the chief judge upon receipt of a complaint. Subsection 17B(2) states: "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". This necessarily implies that the chief judge and the judge who is the subject of the complaint will have discussions about the complaint, while the chief judge is considering their decision under s. 17B.

63. The Chair was acting well within his jurisdiction in seeking a response from Chief Judge Williams about the complaint.

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[69] **Applicant's Legal Brief**, at para 68.
[70] *Act*, s 17(1)(i).

64. The jurisprudence confirms that a respondent judge is entitled to extensive procedural fairness when a judicial council considers a complaint against them.

65. The Supreme Court in *Moreau-Bérubé* noted the high level of procedural fairness rights that judicial councils owe to the judges subject to their proceedings, in part because the implications for the judge "are very serious".[71]

66. In *Cosgrove*, the Federal Court of Appeal highlighted the aspects of the judicial inquiry process that ensure it is fair to the respondent judge, including that *the judge is given notice of the allegations and an opportunity to respond*.[72] The Federal Court in *Smith* found that the Canadian Judicial Council ("**CJC**") breached the duty of fairness by failing to provide the judge with the full details of the allegations and failing to give him an opportunity to respond during the initial screening phase before referring the complaint to a review committee.[73]

67. The procedural rules for other judicial councils expressly require the judge to receive the details of the complaint at early stages of the process. For example, in CJC matters, the "reviewing member" must give the subject judge "an opportunity to make written submissions about the complaint" before referring the complaint to a review panel.[74]

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[71] ***Moreau-Bérubé***, at para 75, CBoA, Tab 4, pp 294-295. In general, procedural fairness rights are high where one's ability to continue in his or her profession is at stake: ***Baker v Canada (Minister of Citizenship and Immigration)***, [1999] 2 SCR 817, at para 25, CBoA, Tab 20, p 945-946.
[72] ***Cosgrove***, at para 65, CBoA, Tab 7, p 493.
[73] ***Smith v. Canada (Attorney General)***, 2020 FC 629 (CanLII), [2020] 4 FCR 3, at paras 162-63, CBoA, Tab 21, p 1020. See also: ***Canada (Attorney General) v Slansky***, 2013 FCA 199, at para 120, per Mainville JA, concurring, CBoA, Tab 22, p 1073 (The CJC has "a legal duty to provide to a judge who is the subject of investigation sufficient information about the allegations and the material evidence to permit the judge to make a full response").
[74] *Judges Act*, RSC 1985, c J-1, s 93; **CJC Review Procedures (2023)**, s 7.3(1).

68. Accordingly, not only was the Chair permitted by the *Act* to provide Chief Judge Williams with an opportunity to respond to the complaint, he was potentially *required* to do so in accordance with the duty of procedural fairness in this case.

(ii) The Applicant was owed minimal procedural rights

69. The Applicant, as the complainant, was entitled to only nominal procedural fairness, at most. The Chair did not breach any duty of procedural fairness by not providing the Applicant with Chief Judge Williams' response or giving her an opportunity to respond to it.

70. It makes no difference that the complainant in this case also happened to be another judge on the same court as Chief Judge Williams. "Any person" may make a complaint to the Council.[75] All complainants surely must stand on equal ground in terms of procedural fairness, regardless of their position. The Applicant should not receive enhanced procedural rights simply because she is a Provincial Court judge; in the Council's process, she is a complainant—no more and no less.

71. A public body owes an individual a duty of procedural fairness when it makes a decision affecting the "rights, privileges or interests" of that individual.[76] The Chair's decision to dismiss the complaint, rather than refer it to a review committee, did not impact any rights, privileges, or interests of the Applicant. Unlike for Chief Judge Williams, the Chair's decision could not lead to any form of discipline against the Applicant. It could not result in any order against the Applicant requiring her to do anything or pay any damages. It could not result in any award of compensation to the Applicant. It could not result in an order to overturn the Provincial Court's vaccination

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[75] *Act*, s 17A(1).
[76] ***Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)***, 2004 SCC 48, at para 3 ("***Lafontaine***"), CBoA, Tab 23, p 1139; ***Baker***, at para 20, CBoA, Tab 20, pp 943-944.

policy, permit the Applicant to preside over in-person hearings, or revoke the Applicant's short-term or long-term disability benefits.

72. In the Applicant's own submissions to the Chair, she clarified that she did "not seek to challenge any *actual decision(s)* made by the Respondent", she was not asking to have any policy or suspension set aside, and she reserved her rights to pursue appropriate legal remedies for the same matters in a civil claim before this Court.[77]

73. Ultimately, it is not necessary to decide in this case whether the Council owes complainants a duty of fairness. Assuming the Chair owed the Applicant a duty of procedural fairness, the content of that duty was necessarily minimal and was satisfied. Any duty owed would not include a right to receive and reply to the submissions of Chief Judge Williams. The Chair did not breach any duty of procedural fairness to the Applicant, if he owed her one at all.

74. The existence of a duty of fairness does not determine its contents, which are variable and depend on the circumstances of the particular case.[78] In order to determine the content of any duty of fairness owed to the Applicant, it is necessary to understand the role of complainants in judicial council proceedings. A Review Committee of the Council, in dismissing a complaint against Judge Murphy, explained the limited role of the complaint in the Council's procedures:

> A person who makes a complaint against a judge does not control the process. They are not a formal party to the process that is set out in the *Act* and that is in accordance with the principles relating to judicial independence.[79]

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[77] **Letter from Applicant's Counsel**, September 11, 2023, at pp 1-2, RoDA, Tab 5, pp 274-275 (emphasis in original).
[78] ***Baker***, at para 21, CBoA, Tab 20, p 944.
[79] ***Murphy Decision***, at para 19, CBoA, Tab 8, p 507.

75. This is consistent with how other judicial councils across the country treat the role of complainants. For example, under the CJC procedures, a complainant is explicitly not a party to the proceedings and does not have standing.[80] They are entitled only to a written decision if the complaint is dismissed.[81] As the CJC explained in its guide for Chief Justices:

> Because of the inquisitorial nature of the process, the complainant is not a party to the process, as such, although the Chairperson may sometimes decide to go back to the complainant for further information. Generally, after filing the initial complaint, the complainant takes no further part in the process, although they are informed of the eventual disposition of the complaint.[82]

76. In the context of assessing the procedural rights of complainants before other professional disciplinary bodies, this Court has noted that the role of a complainant is akin to that of a witness, not a prosecutor or party.[83]

77. Similarly, complainants before judicial councils or other professional disciplinary bodies are entitled to nominal procedural fairness. Mainville J.A., concurring in *Slansky*, held that "the content of any duty of fairness that the [CJC] may owe to the complainant in dismissing the complaint is at the low end of the spectrum" and that the complainant has no right to disclosure beyond being notified of the disposition of the complaint.[84] This Court has similarly held that the

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[80] **CJC Review Procedures (2023)**, s 4.2. The complainant cannot even apply to appear as a party before a hearing panel (**CJC Review Procedures (2023),** s 9.8). See also: **Canadian Bar Association, *Review of Judicial Conduct Process of the Canadian Judicial Council* (July 2014)**, at p 11, CBoA, Tab 31, p 1578.

[81] **CJC Review Procedures (2023)**, ss 7.13, 8.11(2). The Federal Court of Appeal in ***Taylor v Canada (Attorney General)***, 2003 FCA 55, at paras 85, CBoA, Tab 24, p 1217, did find that, at the very least, complainants to the CJC were entitled to a duty of impartiality.

[82] **Canadian Judicial Council**, ***Judicial Conduct: A Reference Guide for Chief Justices***, at p 10 (emphasis added), CBoA, Tab 32, p 1602.

[83] ***Patient X v College of Physicians and Surgeons of Nova Scotia***, 2013 NSSC 165, at para 36, CBoA, Tab 25, pp 1244-1245.

[84] ***Slansky***, at para 165, CBoA, Tab 22, pp 1088-1089. Ten years earlier, the Federal Court of Appeal held in ***Taylor v Canada (Attorney General)***, 2003 FCA 55, at para 105, CBoA, Tab 24, p 1222, that the CJC's failure to disclose the judge's response to the complainant was not evidence of bias. However, the Court did not address the impact on other aspects of procedural fairness because the parties did not raise it.

level of procedural fairness owed to complainants when their complaints are dismissed falls on the "lower end of the spectrum".[85]

78. Applying the well-known *Baker* analysis[86] arrives at the same conclusion: any duty of procedural fairness is minimal and does not include the rights the Applicant is claiming here. The relevant factors are as follows:

(a) **The nature of the decision:** The process of judicial councils to review complaints is, by its very nature, "inquisitorial".[87] It is very different from an adversarial context, where two opposing parties advance their own interests before the adjudicator. This inquisitorial structure is the only way judicial councils can properly fulfill their role—an adversarial model between judges and complainants would be "potentially devastating to judicial integrity".[88] The courts (including this Court) have held that this "inquisitorial" nature of professional disciplinary bodies points to lower procedural fairness.[89]

(b) **The statutory scheme:** Under the *Act*, a dismissal decision is final and there is no right of appeal. In some contexts, the absence of an appeal right may point towards higher procedural fairness.[90] However, under the *Act*, the absence of an appeal right indicates the very limited role of a complainant. A complainant is not entitled to any participatory rights at later stages if the complaint is not dismissed; they are

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[85] ***McDougall v Nova Scotia (Human Rights Commission)***, 2016 NSSC 118, at paras 21, 30, CBoA, Tab 26, p. 1277, 1281. Notably, ***McDougall*** concerned a complaint to the Human Rights Commission, which has far greater powers than the Council to issue orders that directly impact the complainant, such as orders for compensation or for the respondent to take steps to accommodate the complainant (*Human Rights Act*, RSNS 1989, c 214, s 34(8)). Nevertheless, this Court still held that the complainant was only entitled to a low level of procedural fairness. See also: ***Stamp v Newfoundland and Labrador English School District***, 2015 NLTD(G) 121, at paras 44, 56, 71, CBoA, Tab 27, p 1310, 1313-1314, 1318 (the complainant was entitled to "a relatively low degree of procedural fairness" that did not include a right to disclosure).
[86] ***Lafontaine***, at para 5, CBoA, Tab 23, p 1139-1140.
[87] **Canadian Judicial Council**, ***Review of the Judicial Conduct Process of the Canadian Judicial Council*** (March 25, 2014), at p 45, CBoA, Tab 33, p 1664.
[88] **Canadian Bar Association**, ***Review of Judicial Conduct Process of the Canadian Judicial Council*** (July 2014), at p 4, CBoA, Tab 31, p 1571.
[89] ***Patient X***, at para 38, CBoA, Tab 25, p 1246; ***Aylward v Law Society of Newfoundland and Labrador***, 2013 NLCA 68, at paras 39, 41, CBoA, Tab 28, p 1336, 1337.
[90] ***Baker***, at para 24, CBoA, Tab 20, p 945.

entitled only to a copy of the Council's decision.[91] Further, the *Act* explicitly states that discussions between the chief judge and the judge complained of are confidential.[92] On balance, this factor points against a right of the complainant to review the submissions of the judge who is the subject of the complaint.

(c) **The importance of the decision for the Applicant:** The stringency of procedural fairness is "directly proportional to the importance of the decision to the lives of those affected and the nature of its impact on them".[93] Participation rights are required only for those who will be "significantly affected or directly and necessarily affected by a decision".[94] There is no absolute duty on a decision-maker to afford non-parties the opportunity to participate in a proceeding, even if the tribunal may make adverse findings against them.[95]

As noted above, the impact of the Council's Decision—whether to dismiss the complaint or refer it to a review committee—was of minimal importance to the rights, privileges, and interests of the Applicant. This factor points heavily towards lower procedural fairness rights.

In *Patient X*, this Court explained that the stakes are low for complainants with respect to decisions of professional disciplinary bodies to dismiss their complaints at a preliminary stage because "it is a decision with no grave repercussions for the complainant; it does not jeopardize her livelihood, her freedom, or her continued residence in this country, for instance".[96] Further, "the objective of the discipline process is ultimately not to vindicate the complainant or provide compensation", it is only to regulate the profession and discipline misconduct.[97] The purpose of the

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[91] *Act*, s 17O.
[92] *Act*, s 17B(2).
[93] ***Lafontaine***, at para 9, CBoA, Tab 23, pp 1141-1142.
[94] ***Hay v Ontario Provincial Police***, 2014 ONSC 2858 (Div. Ct.), at paras 130-32, CBoA, Tab 29, pp 1367-1368.
[95] ***Hay***, at para 132, CBoA, Tab 29, p 1368.
[96] ***Patient X***, at para 43, CBoA, Tab 25, p 1248.
[97] ***Patient X***, at para 44, CBoA, Tab 25, p 1248; ***Aylward***, at para 43, CBoA, Tab 28, p 1337.

judicial conduct process "is not to vindicate an individual complainant's rights or interests";[98] rather, it is aimed at promoting the public interest.[99]

(d) **Legitimate expectations:** the Applicant did not have any legitimate expectation of an opportunity to respond to Chief Judge Williams' submissions—nor does she claim one on this application. Indeed, the lack of the Applicant's legitimate expectations in this case is evident from the fact that neither she nor her counsel ever objected to the Chair sharing her submissions with Chief Judge Williams or requested access to Chief Judge Williams' response, despite being notified and being given the opportunity to provide supplementary submissions.

(e) **Deference to the administrative body:** The Council's choice of procedures attracts a very high level of deference. In *Baker*, the Supreme Court explained that reviewing courts should respect the administrative body's choice of procedures "particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances".[100]

Here, the *Act* expressly states that the Council may "determine its own procedures".[101] This is a strong expression of legislative intent to defer to the Council's procedural choices. The Council determined that it is not necessary for complainants to have a right of reply at the preliminary screening stages of a complaint. That choice is entitled to deference.

79. Considering the *Baker* factors, the content of any duty of procedural fairness to the Applicant in this case was very low, and certainly did not include a right to reply to Chief Judge Williams' submissions.

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[98] **Canadian Bar Association**, ***Review of Judicial Conduct Process of the Canadian Judicial Council*** **(July 2014)**, at p 9, CBoA, Tab 31, p 1576.
[99] **Canadian Judicial Council**, ***Review of the Judicial Conduct Process of the Canadian Judicial Council*** **(March 25, 2014)**, at p 25, CBoA, Tab 33, p 1644.
[100] ***Baker***, at para 27, CBoA, Tab 20, p 947.
[101] *Act*, s 17(1)(i).

80. This conclusion reflects the screening functions of professional discipline bodies. In *Patient X*, for example, this Court explained that providing complainants with extensive procedural rights when a professional disciplinary body is performing a screening role could "impede the efficiency of the process" that is meant to be simple and expeditious.[102] These comments apply equally to the preliminary screening functions of the Council.

81. A rule that complainants are always entitled to receive a copy of a judge's response would lead to foreseeable problems. For example, complainants are often litigants with pending or recently decided matters before the judge who is the subject of their complaint. To defend themselves against complaints, judges' responses might contain confidential discussions of the judicial decision-making process or deliberative secrets to which litigants or the public are not entitled.[103] A judge may also wish to provide confidential personal information that is relevant to the complaint.[104] Litigants could use the complaint process to gather additional information from the judge to gain an unfair advantage in their proceedings or assist them in an appeal. A rule of automatic disclosure to complainants thus impedes the respondent judge's ability to make a full, fair, and candid response, and impairs the integrity of the judiciary.

82. The Council is not arguing that it will *never* provide a judge's response to the complainant. However, this must be a discretionary decision for the Council in the context of a particular case. There can be no *legal right* to such information for complainants. Similarly, the CJC directs its

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[102] ***Patient X***, at para 33, CBoA, Tab 25, pp 1243-1244. See also: ***Aylward***, at paras 34-36, CBoA, Tab 28, p 1333-1336.
[103] See: ***Slansky***, at para 161, CBoA, Tab 22, p 1087.
[104] **Canadian Judicial Council**, ***Judicial Conduct: A Reference Guide for Chief Justices***, at p 12, CBoA, Tab 32, p 1604.

chairperson to decide, on a case-by-case basis, whether to share the judge's response with the complainant.[105]

83. In this case, the Chair provided the Applicant with prompt notice of all steps in the process, the ability to make additional submissions on an issue that arose in his review, and a written decision with reasons for the dismissal. Nothing else was required.

(iii) The Applicant's standing on this application

84. On this Application, the Council is not challenging the Applicant's standing, as a complainant, to bring an application for judicial review. However, the test for standing in these circumstances is a low threshold and does not dictate what rights were available to the Applicant before the Council.

85. Further, the Council agrees with and adopts the submissions of Judge Williams that the Applicant, as a complainant, does not have standing to challenge the merits or the reasonableness of the Chair's decision to dismiss the complaint.

D. The Appropriate Remedy

86. If this Court concludes that the Chair acted unreasonably in rendering the Decision, the appropriate remedy is to remit the matter to the Chair to fulfill his screening role under ss. 17B(1) and 17C of the *Act*, in accordance with this Court's reasons.

87. The choice of remedy must account for the fact that the Legislature has assigned the role of screening complaints to the Council, not the courts.[106] These screening stages are a crucial

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[105] **Canadian Judicial Council**, ***Judicial Conduct: A Reference Guide for Chief Justices***, at p 12, CBoA, Tab 32, p 1604.

[106] ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65, at paras 140-42, CBoA, Tab 30, pp 1470-1471.

component of the regulatory scheme that supports the Council's goals of protecting judicial independence and the integrity of the judiciary. It would be inappropriate to circumvent these important screening steps by referring the complaint directly to a review committee, as the Applicant requests. As the Legislature intended, it should be left to the Chair to decide whether to dismiss the complaint under s. 17B(1)(a), dismiss the complaint under the broader power in ss. 17B(1)(c)(i) and 17C, or refer it to a review committee.

PART IV - ORDER REQUESTED

88. The Council takes no position on the ultimate disposition of this application.



May 7, 2024

Andrea Gonsalves / Spencer Bass

STOCKWOODS LLP
[redacted]

Andrea Gonsalves [redacted]

Spencer Bass [redacted]

[redacted]

Lawyers for the Respondent,
The Judicial Council of Nova Scotia

SCHEDULE "A"
LIST OF AUTHORITIES

Case Law

1. *Ontario Energy Board v Ontario Power Generation*, 2015 SCC 44
2. *Ruffo v Conseil de la magistrature*, [1995] 4 SCR 267
3. *Therrien (Re)*, 2001 SCC 35
4. *Moreau-Bérubé v New Brunswick (Judicial Council),* 2002 SCC 11
5. In the Matter of Complaints Against Judge Gregory Lenehan, made pursuant to the *Provincial Court Act*, RSNS 1989, c. 238, Decision of the Review Committee, March 29, 2018
6. *R v Edwards*, 2024 SCC 15
7. *Cosgrove v Canadian Judicial Council*, 2007 FCA 103
8. In the Matter of Complaints Against Judge Alanna Murphy made pursuant to the *Provincial Court Act*, RSNS 1989, c 238, Decision of the Review Committee, March 30, 2022
9. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 SCR 3
10. *Turner-Lienaux v Canada (Attorney General)*, 2022 FCA
11. *Cosentino v Canada (Attorney General)*, 2021 FCA 193
12. *Valente v The Queen*, [1985] 2 SCR 673
13. *Murray v New Brunswick Police Commission*, 2012 CanLII 34210, [2012] NBJ no 211 (CA)
14. *Layes v Bowes*, 2019 NSSC 298
15. *Hynes v Pro Dive Marine Services Ltd.*, 2016 NLCA 17
16. *Mercier v Nova Scotia (Police Complaints Commissioner)*, 2014 NSSC 79
17. *R v Perrier*, 2009 NLCA 61
18. *CAS v DLS*, 1995 CanLII 16902 (NBCA)
19. *Wilchuck v Westfield Twins Condominium Corp*, 2020 SKQB 40
20. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

21. *Smith v. Canada (Attorney General)*, 2020 FC 629 (CanLII), [2020] 4 FCR 3

22. *Canada (Attorney General) v Slansky*, 2013 FCA 199

23. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48

24. *Taylor v Canada (Attorney General)*, 2003 FCA 55

25. *Patient X v College of Physicians and Surgeons of Nova Scotia*, 2013 NSSC 165

26. *McDougall v Nova Scotia (Human Rights Commission)*, 2016 NSSC 118

27. *Stamp v Newfoundland and Labrador English School District*, 2015 NLTD(G) 121

28. *Aylward v Law Society of Newfoundland and Labrador*, 2013 NLCA 68

29. *Hay v Ontario Provincial Police*, 2014 ONSC 2858 (Div. Ct.)

30. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

Secondary Sources

31. Canadian Bar Association, *Review of Judicial Conduct Process of the Canadian Judicial Council* (July 2014)

32. Canadian Judicial Council, *Judicial Conduct: A Reference Guide for Chief Justices*

33. Canadian Judicial Council, *Review of the Judicial Conduct Process of the Canadian Judicial Council* (March 25, 2014)

SCHEDULE "B"
TEXT OF STATUES, REGULATIONS & BY-LAWS

1. *Provincial Court Act,* RSNS 1989, c 238, s 15, 16(1), 17(1), 17(1)(i), 17A(1), 17A(2), 17B(1)(a), 17B(1)(b), 17B(1)(c), 17B(2), 17C, 17G, 17K, 17O.

2. Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges, ss 6-7, s 6.7, s 7.3(1), s 9.8

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

4. *Nova Scotia Civil Procedure Rules*, r 13.01(3), r 88.

5. *Judges Act*, RSC 1985, c J-1, s 93

6. *Human Rights Act*, RSNS 1989, c 214, s 34(8)

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. R.S., c. 238, s. 15; 1992, c. 16, s. 27.

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.

(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. 2000, c. 28, s. 90.

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. 2000, c. 28, s. 90.

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. 2000, c. 28, s. 90.

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. 2000, c. 28, s. 90.

Distribution of decision

17O The decision of the Judicial Council shall be provided to the complainant, the judge who is the subject of the complaint and the Attorney General. 2000, c. 28, s. 90.

CANADIAN JUDICIAL COUNCIL PROCEDURES FOR THE REVIEW OF COMPLAINTS OR ALLEGATIONS ABOUT FEDERALLY APPOINTED JUDGES

6. Early Screening by a Screening Officer

6.1 In accordance with s. 88 of the Act, a screening officer shall meet the following criteria:

(a) have legal education and legal experience;

6. Examen préalable par un agent de contrôle

6.1 Conformément à l'article 88 de la Loi, un agent de contrôle doit répondre aux critères suivants:

a) possède une formation juridique et une expérience juridique;

(b) have experience writing decisions or advising decision makers;

b) possède de l'expérience dans la rédaction de décisions ou dans la prestation de conseils aux décideurs;

(c) be knowledgeable of the mandate of Council;

c) possède une bonne connaissance du mandat du Conseil;

(d) communicate well in writing.

d) communique bien par écrit.

6.2 In accordance with s. 89 of the Act, all complaints, other than those made by the Council itself or anonymously, must be referred to a screening officer.

6.2 Conformément à l'article 89 de la Loi, toutes les plaintes, autres que celles déposées par le Conseil lui-même ou de manière anonyme, doivent être transmises à un agent de contrôle.

6.3 At their sole discretion, a screening officer who deems it necessary may order the recordings or transcripts of a hearing related to the complaint for the purpose of considering a complaint.

6.3 À sa seule discrétion, l'agent de contrôle qui le juge nécessaire peut ordonner l'enregistrement ou la transcription d'une audience relative à la plainte afin de l'examiner.

6.4 If the screening officer determines that a matter warrants consideration by a reviewing member, the Council Secretariat must refer it to a member of the Judicial Conduct Committee, other than one who is a member of the same court as the judge who is the subject of the complaint.

6.4 Si l'agent de contrôle décide qu'une plainte doit être considérée par un examinateur, le secrétariat du conseil doit la renvoyer à un membre du comité sur la conduite des juges, autre qu'à un membre de la même cour que le juge qui fait l'objet de la plainte.

6.5(1) If at any time it appears to the screening officer or the reviewing member that the judge remains seized with a matter that is the subject of the complaint, they may defer any communication with the judge by sending a letter addressed to the judge's Chief Justice requesting that they provide the letter to the judge when the Chief Justice considers it appropriate to do so.

6.5(1) Si, en tout temps, il appert à l'agent de contrôle ou à l'examinateur que le juge est saisi d'une affaire visée par la plainte, ils peuvent différer toute communication avec le juge en envoyant une lettre adressée au juge en chef du juge lui demandant de fournir la lettre au juge lorsque le juge en chef estime qu'il est approprié de le faire.

(2) The Chief Justice may decide when the judge should be advised of the complaint.

(2) Le juge en chef peut décider quand le juge devrait être informé de la plainte.

(3) In any event, the judge's Chief Justice must advise the screening officer of when the screening officer's decision is provided

(3) Dans tous les cas, le juge en chef du juge doit informer l'agent de contrôle du moment où la décision est envoyée au juge afin que la

to the judge so that it is sent to the complainant at the same time.

6.6 When a communication to the judge is deferred, so is a communication to the complainant accordingly.

6.7(1) Except for complaints that allege sexual misconduct or sexual harassment or that allege discrimination within the meaning of the Canadian Human Rights Act, which complaints, according to s. 90(3) of the Act, may not be dismissed by a screening officer, a screening officer may, pursuant to s. 90(1) of the Act, dismiss any other complaint if of the opinion that it:

(a) is frivolous, vexatious or made for an improper purpose or is an abuse of process;

(b) was not made for a reason referred to in paragraphs 80(a) to (d) of the Act; or

(c) does not meet the other screening criteria specified by the Council.

(2) Pursuant to s. 90(1)(c) of the Act, the screening officer may also dismiss the complaint if:

(a) the matter is trivial, manifestly unsupported or without substance;

(b) it relates to the substance of judicial decision-making such as, but not limited to, the exercise of judicial discretion, findings of fact, findings of law, orders, directions, decisions, assessment of evidence, rejection of arguments, release of transcripts, decorum in the courtroom and such other similar matters;

(c) it does not involve judicial conduct;

(d) it contains foul or aggressive language;

décision soit envoyée au plaignant en même temps.

6.6 Lorsqu'une communication au juge est différée, il en va de même pour la communication au plaignant.

6.7(1) À l'exception des plaintes alléguant une inconduite sexuelle ou un harcèlement sexuel ou alléguant une discrimination au sens de la Loi canadienne sur les droits de la personne, lesquelles plaintes, en vertu du paragraphe 90(3) de la Loi, ne peuvent être rejetées par un agent de contrôle, l'agent de contrôle peut, en vertu du paragraphe 90(1) de la Loi, rejeter toute autre plainte s'il est d'avis qu'elle:

a) est frivole, vexatoire ou faite dans un but inapproprié ou encore constitue un abus de procédure;

b) n'a invoqué aucun des motifs prévus aux alinéas 80a) à d) de la Loi

c) ne remplit pas l'un ou l'autre des critères de sélection précisés par le Conseil.

(2) Conformément à l'alinéa 90(1)c) de la Loi, l'agent de contrôle peut également rejeter la plainte dans les cas suivants:

a) elle est frivole, n'est manifestement appuyée par aucune preuve ou est sans fondement;

b) elle porte sur le fond de la décision judiciaire, notamment, l'exercice du pouvoir discrétionnaire judiciaire, aux conclusions de fait, aux conclusions de droit, aux ordonnances, aux directives, aux décisions, à l'évaluation de la preuve, au rejet des arguments, au dépôt des transcriptions, au décorum dans la salle d'audience et à toute autre question semblable;

c) elle n'implique pas la conduite d'un juge;

d) elle contient un langage grossier ou agressif;

(e) it contains threats of violence;

(f) the form provided is incomplete;

(g) it fails to specify allegations;

(h) it fails to specify the name of the judge;

(i) it is a request for reconsideration of a previous reconsideration;

(j) it has already been the subject of a decision;

(k) it is not written in a manner that is comprehensible or legible;

(l) it is not in the public interest and contrary to the due administration of justice to consider; or

(m) the complaint is not against a federally appointed judge.

6.8 In accordance with s. 91 of the Act, a screening officer must refer to the Council, for the designation of a reviewing member, a complaint that is not dismissed or one that alleges sexual misconduct or sexual harassment or that alleges discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act.

7. Consideration by a reviewing member

7.1 In accordance with s. 92 of the Act, the Chairperson must designate one of its members to review a complaint referred by a screening officer, a complaint made by the Council itself or an anonymous complaint.

7.2 The reviewing member must review a matter referred under s. 7.1 of these procedures and may, before making a determination and before asking for the

e) elle contient des menaces de violence;

f) le formulaire de plainte qui est déposé est incomplet;

g) elle ne précise pas d'allégations;

h) elle ne précise pas le nom du juge;

i) elle est en fait une demande de réexamen d'une décision rendue en réexamen;

j) elle a déjà fait l'objet d'une décision;

k) elle n'est pas compréhensible ou lisible;

l) il n'est pas dans l'intérêt public et contraire à la bonne administration de la justice de la considérer; ou

m) la plainte n'est pas contre un juge de nomination fédérale.

6.8 Conformément à l'article 91 de la Loi, l'agent de contrôle doit saisir le Conseil, en vue de la désignation d'un examinateur, d'une plainte non rejetée ou d'une plainte alléguant une inconduite sexuelle ou un harcèlement sexuel ou alléguant une discrimination fondée sur un motif de distinction illicite au sens de la Loi canadienne sur les droits de la personne.

7. Considération par le membre examinateur

7.1 Conformément à l'article 92 de la Loi, le président doit désigner un de ses membres pour examiner une plainte transmise par un agent de contrôle, une plainte déposée par le Conseil lui-même ou une plainte anonyme.

7.2 Le membre examinateur doit examiner une affaire renvoyée en vertu de l'article 7.1 des procédures et peut, avant de rendre une décision et avant de demander les observations

judge's submissions referred to in s. 7.3(1) of these procedures:

(a) seek additional information from the complainant;

(b) request the Council Secretariat to retain an investigator to gather further information.

7.3(1) In accordance with s. 93 of the Act, the reviewing member shall give the judge who is the subject of the complaint, as well as their chief justice, an opportunity to make submissions in writing.

(2) Such submissions shall be provided within no more than 30 days of the request by the reviewing member.

7.4 Upon request from the judge who is the subject of the complaint, the reviewing member may grant an extension of time of no longer than seven additional days to provide submissions.

7.5 The reviewing member may seek further information after receiving the judge's submissions, in addition to that gathered in s. 7.2 of these procedures, if the reviewing member is of the view that it would assist in considering the matter.

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.

(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.

du juge visées au paragraphe 7.3(1) des présentes procédures :

a) demander de l'information additionnelle au plaignant;

b) demander au secrétariat du conseil d'engager un enquêteur pour recueillir des informations supplémentaires.

7.3(1) Conformément à l'article 93 de la Loi, le membre examinateur donne au juge faisant l'objet de la plainte ainsi qu'à son juge en chef l'occasion de présenter des observations écrites.

(2) Ces observations sont fournies dans les 30 jours après la demande de l'examinateur.

7.4 Sur demande du juge faisant l'objet de la plainte, l'examinateur peut accorder une prolongation de délai d'au plus sept jours supplémentaires pour fournir des observations.

7.5 L'examinateur peut demander la collecte d'information additionnelle après avoir reçu les observations du juge et en plus des informations prévues à l'article 7.2 de ces procédures, s'il est d'avis qu'elle pourrait aider à l'examen de l'affaire.

7.6(1) Aux fins des articles 7.2 ou 7.5 des présentes procédures, l'examinateur peut demander le secrétariat du conseil de retenir les services d'un enquêteur pour recueillir des informations supplémentaires sur une affaire et préparer un rapport si nécessaire.

(2) Si nécessaire et avec l'autorisation du membre examinateur ou du président, l'enquêteur peut procéder à des entretiens confidentiels et donner des garanties de confidentialité aux personnes qui fournissent des informations.

7.7 Where information is obtained in confidence, the investigator must include in the report written reasons for having provided the assurance of confidentiality.

7.8 The Council Secretariat must provide any additional information gathered and a copy of any investigator's report to the reviewing member and to the judge who is the subject of the complaint.

7.9 When an investigator provides additional information or provides a report, the reviewing member must give the judge an opportunity to comment on the information it contains.

7.10 Any comments under s. 7.9 of these procedures must be provided within 15 days of the receipt by the judge or their counsel of the additional information or report or within the time extended by the reviewing member.

7.11 The reviewing member shall consider all relevant information received and the submissions received from the judge and their chief justice, and may:

(a) dismiss the matter in accordance with s. 94(1) of the Act, if the reviewing member concludes that it should be dismissed for any of the reasons set out in s. 90(1)(a) to (c) of the Act or if it is wholly without merit; or

(b) refer the matter to a review panel, in accordance with s. 95 of the Act.

7.12 When proposing to dismiss a matter that involves a member of the Council, the reviewing member must refer the matter and its proposed disposition to a lawyer with at least 10 years standing at the bar of any province or territory of Canada, or who otherwise possesses the same requirements for eligibility in accordance with s. 3(a) of the Act, and that person must provide their

7.7 Si de l'information est obtenue à titre confidentiel, l'enquêteur doit inclure dans son rapport écrit les motifs de la garantie de confidentialité qui a été donnée.

7.8 Le secrétariat du conseil doit remettre toute information supplémentaire recueillie et une copie du rapport de l'enquêteur à l'examinateur et au juge qui fait l'objet de la plainte.

7.9 Lorsqu'un enquêteur fournit des informations supplémentaires ou un rapport, le membre examinateur doit donner au juge la possibilité de commenter les informations recueillies.

7.10 Les observations visées à l'article 7.9 de ces procédures doivent être communiquées dans les 15 jours suivant la réception de la part du juge ou son avocat des informations supplémentaires ou du rapport ou dans le délai prorogé par l'examinateur.

7.11 L'examinateur doit considérer toute information pertinente ainsi que les observations reçues du juge et de son juge en chef, et peut :

a) rejeter l'affaire conformément au paragraphe 94(1) de la Loi, si le membre chargé de la révision conclut qu'elle devrait être rejetée pour l'un des motifs énoncés aux alinéas 90(1)(a) à (c) de la Loi, ou si elle est dénuée de tout fondement ; ou

b) renvoyer l'affaire à un comité d'examen, conformément à l'article 95 de la Loi.

7.12 Lorsqu'il propose de rejeter une affaire mettant en cause un membre du Conseil, l'examinateur doit soumettre l'affaire et sa proposition de règlement à un avocat ayant au moins 10 ans d'expérience au barreau d'une province ou d'un territoire du Canada, ou qui satisfait par ailleurs aux mêmes exigences d'admissibilité conformément à l'alinéa 3a) de la Loi, et cette personne doit donner son avis

views on the proposed disposition for the consideration of the reviewing member.

sur la proposition de règlement pour examen par l'examinateur.

7.13 If the complaint is dismissed, the reviewing member shall provide the complainant with a written decision with reasons. In accordance with s. 94(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.

7.13 Si la plainte est rejetée, l'examinateur fournit au plaignant une décision écrite motivée, à condition toutefois que, conformément au paragraphe 94(3) de la Loi, les motifs ne comprennent pas d'informations confidentielles ou personnelles, ou dont la divulgation n'est pas dans l'intérêt public.

7.14 In accordance with s. 96 of the Act, the reviewing member must give notice of the decision to the judge who is the subject of the complaint and to the chief justice of the court of which the judge is a member.

7.14 Conformément à l'article 96 de la Loi, l'examinateur doit donner avis de la décision au juge qui fait l'objet de la plainte et au juge en chef de la cour dont le juge est membre.

7.15 If a reviewing member is satisfied that a complainant has persistently instituted vexatious proceedings, has filed complaints in a vexatious manner or has abused the complaint process, the reviewing member may declare the complainant vexatious and order that no further complaints be received by Council or that a complaint previously filed by the complainant not be continued.

7.15 Si un examinateur est convaincu qu'un plaignant a constamment engagé des procédures vexatoires, a déposé des plaintes de manière vexatoire ou a abusé de la procédure de plainte, l'examinateur peut déclarer le plaignant comme étant quérulent et ordonner qu'aucune autre plainte ne soit reçue par le Conseil ou qu'une plainte précédemment déposée par le plaignant ne soit pas poursuivie.

DUTIES OF CHIEF JUDGE AND ADMINISTRATOR OF THE PROVINCIAL COURT REGULATIONS, NS Reg 250/83

Duties of Chief Judge of the Provincial ~~Magistrate's~~ Court

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

1 deal generally with judicial matters belonging to the office of a judge of the Provincial ~~Magistrate's~~ Court;

2 make rules or guidelines providing for the scheduling and hearing of the cases;

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

4 subject to budgetary provisions, approve and authorize the holding of meetings of judges of the Provincial ~~Magistrate's~~ Court and the attendance of judges at out of Province meetings;

5 make rules providing for the safe-keeping and release of exhibits tendered and received by the Court;

6 direct the records to be kept, reports and statistical returns to be made by the judges as the Chief Judge considers necessary, advisable or required.

The Chief Judge shall have the duty to advise the Attorney General on the following:

1 all matters pertaining to the judges of the Provincial ~~Magistrate's~~ Court in respect to

(a) preparation of estimates,

(b) salaries,

(c) pensions,

(d) expenses, [and]

(e) [the] library;

2 all representations and submissions by judges of the Provincial ~~Magistrate's~~ Court;

3 the support staff required to service the Provincial ~~Magistrate's~~ Court and the support staff required to be in attendance during sittings of the Court;

4 suggested changes in Magisterial Districts, place or places where the Court should hold sittings, and where a judge should establish and maintain an office;

5 determine the duties of the Justices of the Peace when acting as support staff to the Court;

6 all matters referred to the Chief Judge by the Attorney General or his Deputy relating to the Provincial ~~Magistrate's~~ Court, or any judge thereof, which is considered to be in the public interest or in the interest of the better administration of justice in the Province.

Duties of the Administrator of the Provincial Court

The Administrator of the Court shall have the power and authority to attend upon all non-judicial matters in respect to the office of a judge of the Provincial ~~Magistrate's~~ Court and the ~~Court of the Provincial Magistrate~~ [Provincial Court], including but not limiting the generality of the foregoing:

1 make necessary administrative arrangements to facilitate the provision of all replacement or substitute judges approved of and requested by the Chief Judge;

2 determine and institute appropriate ministerial or Governor in Council action to provide the support staff necessary to service the Provincial ~~Magistrate's~~ Court and make rules governing the functions and duties, procedures and dress of such support staff;

3 direct the implementation of administrative procedures and practices required to satisfy the management and policy directives of the Attorney General or the Auditor General and insure the

safe-keeping and proper accounting of all moneys received and disbursed and process issued out of the Provincial ~~Magistrate's~~ Court;

4 direct the support staff to make such statistical returns as the Attorney General may require and provide for the safe-keeping, inspection and maintenance of books, documents and papers;

5 in consultation with the Chief Judge, prepare the annual estimates in respect to the Provincial ~~Magistrate's~~ Court and the judges thereof and attend upon all necessary financial accounting in respect thereto;

6 implement procedures and issue such directives and take such action as required concerning the collection and accounting of all fines, penalties, fees and court costs payable or ordered by the Court;

7 in consultation with the Chief Judge, attend upon all matters relating to providing the place or places where and when the Provincial ~~Magistrate's~~ Court shall sit; the use of the courtroom, town hall, council chamber or other premises, so as not to interfere with the use of such premises by others for purposes for which the same are maintained;

8 communicate to the Chief Judge such matters of an administrative nature in respect to the Provincial ~~Magistrate's~~ Court as he shall request;

9 determine and make recommendations to the Attorney General on the following matters:

(a) all support staff requirements and replacement thereof,

(b) courts, judges' offices and staff space, furniture and equipment required,

(c) the designation of limited powers to be exercised by Justices of the Peace and the appointment of additional Justices of the Peace;

10 attend upon such non-judicial matters in respect to the Provincial Magistrate's Court as may be directed by the Attorney General or his Deputy.

NOVA SCOTIA CIVIL PROCEDURE RULES

Rule 13 – Summary Judgment

13.01 Scope of Rule 13

(3) This Rule is not for disposal of frivolous, vexatious, scandalous, or otherwise abusive pleadings, which purpose is served by Rule 88 - Abuse of Process.

Rule 88 - Abuse of Process

88.01 Scope of Rule 88

(1) These Rules do not diminish the inherent authority of a judge to control an abuse of the court’s processes.

(2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.

(3) This Rule provides procedure for controlling abuse.

88.02 Remedies for abuse

(1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:

(a) an order for dismissal or judgment;

(b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;

(c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;

(d) an order to indemnify each other party for losses resulting from the abuse;

(e) an order striking or amending a pleading;

(f) an order expunging an affidavit or other court document or requiring it to be sealed;

(g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;

(h) any other injunction that tends to prevent further abuse.

(2) A person who wishes to make a motion under section 45B of the Judicature Act may do so by motion in an allegedly vexatious proceeding or a proceeding allegedly conducted in a vexatious manner, or by application if there is no such outstanding proceeding.

88.03 Unsustainable pleading

(1) It is not an abuse of process to make a claim, or raise a defence or ground of contest, that may on the pleadings alone be unsustainable, and such a claim, defence, or ground may be challenged under Rule 13 - Summary Judgment.

(2) A party or the prothonotary may make a motion to strike a pleading on the basis that it amounts to an abuse of process.

88.04 Motion by prothonotary

A prothonotary's motion to dismiss a proceeding on the basis of abuse may be made by appearance motion.

88.05 Separation of allegation that proceeding is abusive

(1) A judge may order that a defence or ground of contest alleging that a claim is an abuse of process be separated from the other issues raised in a proceeding and be tried or heard before the rest of the proceeding is determined.

(2) A judge who is required to decide whether to separate a defence or ground of contest alleging abuse of process must consider all relevant factors, including each of the following:

(a) whether facts to be found by the judge who determines the allegation of an abuse of process will also be in issue when the rest of the proceeding is determined;

(b) if some facts will remain in issue, whether the benefit of avoiding a risk of contradictory findings of fact outweighs the disadvantage of continuing a proceeding, and conducting a trial or hearing in a proceeding, under an allegation that the proceeding itself is an abuse of the court's process.

(3) A judge who orders separation of a defence or ground of contest based on abuse of process may give directions for the determination of the defence or ground and, in an action, the directions may include that the determination continue under Rule 5 - Application.

***JUDGES ACT*, RSC 1985, c J-1, s 93**

PART IV
Conduct Review Process
DIVISION 1
Complaints Concerning Judges

Reviewing Member

Written submissions

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.

2023, c. 18, s. 12

HUMAN RIGHTS ACT, RSNS 1989, c 214

PART III

ADMINISTRATION

Public hearing

34 (8) A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor and, where authorized by and to the extent permitted by the regulations, may make any order against that party, unless that party is the complainant, as to costs as it considers appropriate in the circumstances.