**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**

# APPLICANT'S LEGAL BRIEF

## I. OVERVIEW

1. The Applicant, Rickcola Brinton ("**Brinton**"), seeks judicial review of a decision of Chief Justice Michael Wood, Chair of the Judicial Council (the "**Chair**") to dismiss a complaint (the "**Complaint**") brought by Brinton against (then) Chief Judge Pamela Williams ("**Williams**"), also of the Provincial Court of Nova Scotia (the "**Decision**"). Brinton filed the Complaint in the Judicial Council of Nova Scotia (the "**Judicial Council**") in response to Williams's decision to threaten Brinton with suspension and referral to the same Judicial Council for choosing not to disclose her Covid-19 vaccination status, among other things.

2. The Chair's Decision was *ultra vires* because it dismissed Brinton's complaint without resort to the statutorily defined grounds for doing so. Further, the Chair solicited submissions from Williams without authority to do so. This error was compounded by the fact that Brinton was not

allowed to see or respond to Williams's submissions, which rendered the Decision procedurally unfair.

3. The Decision is also reviewable on a standard of correctness due to the Chair's failure to conduct the necessary "*Doré* analysis", which, in the circumstances of this case, was required.

4. Finally, the Decision is unreasonable because the Chair failed to grapple with the submissions of Brinton and justify the Decision in light of the relevant facts and law.

5. Brinton asks this Court to quash the Decision and substitute a decision referring her complaint to a review committee for further investigation.

## II. FACTUAL SUMMARY

### A. The Parties

6. Brinton was appointed to the Provincial Court of Nova Scotia (the "**Provincial Court**") as a puisne judge on March 31, 2017.

7. Williams is also a judge of the Provincial Court. From February 27, 2013 until August 27, 2023, Williams served as Chief Judge of the Provincial Court. She continues to serve as a puisne judge.

### B. Background

8. On September 29, 2021, in the midst of the Covid-19 public health crisis, Williams emailed the puisne judges of the Provincial Court inquiring whether they believed that the Provincial Court should "share [their Covid-19] vaccination status with each other" and if they were all vaccinated, whether they would "want to advise the public of" that fact.[1]

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[1] Record of Decision Making Authority, Tab 3B, *Various E-Mails from and to Chief Judge Williams dated September 29 to November 5, 2021* at p. 41.

9. Multiple judges responded stating that they were vaccinated and expressed support for disclosure of vaccination status. Two judges expressed hesitation short of disagreement. For example, one judge noted that there may be privacy concerns for judges who cannot be vaccinated for a "legitimate medical reason" while adding that he had less sympathy for judges who were unvaccinated for other reasons.[2]

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

> I realize I may be in the minority, but I echo some of what [another judge] said, as I have concerns with medical privacy. I also know that the vaccination mandates and passports may be disproportionately impacting racialized communities. And as an essential service, will we be creating a two-tiered society for those who already feel as though we are not free to serve them.[3]

11. While this discussion continued over e-mail, on October 6, 2021, the Government of Nova Scotia announced that it would require all employees of the Province to be vaccinated against the virus that causes Covid-19. The requirement went into force on November 30, 2021. Any employees who were unvaccinated on that date would be placed on unpaid leave. Provincial Court judges were unaffected by the new policy.[4]

12. In response to Brinton's comment, another judge replied, "Either we all voluntarily declare we are vaccinated, or the Chief should use her powers and order that all the [Provincial Court] judges be vaccinated."[5]

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[2] Record of Decision Making Authority, Tab 3B, *Various E-Mails from and to Chief Judge Williams dated September 29 to November 5, 2021*
[3] *Ibid* at p. 67.
[4] Record of Decision Making Authority, Tab 3A, *News Release: "Vaccination Required for Provincial Government Employees" dated October 6, 2021.*
[5] Record of Decision Making Authority, Tab 3B, *Various E-Mails from and to Chief Judge Williams dated September 29 to November 5, 2021* at p. 72.

13. On October 7, 2021, Williams requested to meet with Brinton. When they spoke, Williams attempted to persuade Brinton to change her mind. Brinton explained that her position was a matter of conscience and a result of prayerful contemplation. Brinton told Williams that she felt compelled to speak up because she believed that the Covid-19 vaccine question was a political issue causing division and that the Court should remain neutral.[6]

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

15. Williams then advised Brinton that the only option (to which Williams in any event doubted that the other judges would agree) was to limit her work to presiding over arraignment court from home if the other judges agreed to take on the trials assigned to her. Brinton was willing to co-operate but shared Williams's doubt that the other judges would agree to such an arrangement. Williams then advised Brinton that if the above possible solution was not accepted by the other judges, then Brinton would have to find another solution.[7]

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

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

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[6] Record of Decision Making Authority, Tab 3C, *E-Mails between Brinton J. and Williams CJ. Dated October 7, 2021* at p. 85.

[7] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at paras. 24-25.

any form of discipline at all. At no time did Williams advise Brinton that she was considering implementing a Covid-19 vaccination policy.[8]

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

> I can advise that only fully vaccinated judges will be assigned to sit in our courtrooms for the foreseeable future. I am not inclined to issue a public statement to this effect but each of you are at liberty to advise staff, lawyers and members of the public that Provincial Court judges sitting in courtrooms are fully vaccinated.[9]

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

19. Also on November 1, 2021, Williams sent a letter to Brinton, advising, "*I cannot assign you to sit in the Courtroom, for the foreseeable future, as things stand.*" Williams did not explain how she believed she had the authority to make such a decision.[10]

20. In the same letter, Williams advised Brinton that their "options" were limited: either Williams could assign Brinton to preside over virtual court hearings from home, or she could suspend Brinton pursuant to section 15(2) of the Act. Williams did not explain how or why she believed that she was able to invoke section 15(2) in the circumstances.[11]

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

> ...all Provincial Court judges presiding in courtrooms, both now and in the future, are fully vaccinated. While some members of our Bench may not be sitting due to

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[8] *Ibid* at para. 27.
[9] Record of Decision Making Authority, Tab 3B at p. 80.
[10] Record of Decision Making Authority, Tab 4 at p. 243.
[11] Record of Decision Making Authority, Tab 3B at p. 243.

> medical leave at present, any judge returning to sit in the Provincial Court will be fully vaccinated.[12]

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

22. Upon recovering and completing her quarantine, Brinton found herself suffering from overwhelming exhaustion and anxiety arising from Williams's actions. Brinton visited her doctor, Dr. Babatolu, and informed him that the greatest source of her anxiety was work e-mails. She explained that the anxiety was so severe that her body would shut down. Dr. Babatolu advised Brinton to go off work for four weeks during which time he instructed her to avoid e-mails.[13]

23. On November 15, 2021, Brinton submitted a "Proof of Illness" form, signed and dated by Dr. Babatolu, to Williams, thereby satisfying the requirements set out at section 9(1) of Part 2 of the *Supplementary Report on Income Protection* prepared by the Nova Scotia Tribunal on Provincial Court Judges' Salaries and Benefits, which requires a judge to provide "evidence of a disability" to the "satisfaction of the Chief Judge".[14] The "Proof of Illness" form did not request or require Brinton to provide medical records of any kind to satisfy the "evidentiary" requirements of section 9(1). [15]

24. During her short-term disability leave, Brinton appropriately did share (and continued to share) the details of her medical diagnosis and treatment plan with Sarah Giavroutas, Disability

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[12] Record of Decision Making Authority, Tab 3D, *Statement form the Chief Judge regarding the Vaccination Status of Provincial Court Judges dated November 25, 2021* at p. 88.
[13] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at paras. 31-32.
[14] Record of Decision Making Authority, Tab E, *Supplementary Report on Income Protection, prepared by the Nova Scotia Tribunal on Provincial Judges' Salaries and Benefits.*
[15] Record of Decision Making Authority, Tab F, *Proof of Illness Form dated November 15, 2021.*

Case Manager with Lifeworks, the group insurance benefits administrator at that time for government employees and Provincial Court judges.[16]

25. On December 15, 2021, while Brinton was still on short-term disability leave, Williams sent an e-mail to Brinton advising that the other judges were unwilling to take on her scheduled trials. Williams added: "...they are of the view that a judge must perform all aspects of the work, including trials. I agree with them." As she was avoiding work e-mails pursuant to her doctor's orders, Brinton did not see the e-mail at this time.[17]

26. On December 17, 2021, Brinton informed Williams that she had been told to take another 4-6 weeks off of work by her doctor. Brinton submitted a second Proof of Illness to that effect.[18]

27. On February 22, 2022, Williams wrote a letter to Brinton stating that she would not approve Brinton's request for short-term disability benefits unless she provided "evidence of a disability" (the **"February 22 Letter"**). Williams also stated that the "Proof of Illness" form previously provided was insufficient in her eyes because it lacked "information on the nature of [the] illness." This was the first time that Williams did anything to indicate that Brinton's "Proof of Illness" form was not enough to satisfy the "evidentiary" requirement of section 8(1).[19]

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

> In the event you are medically cleared to return to work, there is still the issue of your vaccination status. As of November 5, 2021, you were still unwilling to divulge your private vaccination status. In my December 15, 2021, e-mail to you, I

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[16] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at para. 34.
[17] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at para. 35, fn 13; see also Tab 3G, *Letter from Williams C.J. to Brinton J. dated February 22, 2022* at p. 120.
[18] Record of Decision Making Authority, Tab 3H, *Proof of Illness form dated December 17, 2021.*
[19] Record of Decision Making Authority, Tab 3G, *Letter from Williams C.J. to Brinton J. dated February 22, 2022* at p. 118.

> reiterated the need for you to be fully vaccinated upon your return, in keeping with the Provincial Court policy; see enclosed. If you continue to choose not to disclose your vaccination status, you will be considered non-vaccinated and unable to preside over in-person trial and sentencings in the Court Room, which is a large part of the daily functions of a Provincial Court Judge. Regrettably, I will have no recourse other than to suspend you and refer the matter to the Judicial Council.[20]

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

30. Brinton replied in writing indicating that she would apply for long-term disability.[21]

31. On March 21, 2022, Dr. Babatolu provided a note confirming that Brinton would be off work due to medical reasons from December 17, 2021 until at least May 16, 2022.[22]

32. In April 2022, Brinton was approved for long-term disability by Manulife.[23] Before then, however, on March 28, 2022, without any warning or further attempt to contact Brinton, and without Brinton's consent, Williams wrote to Dr. Babatolu to request that he supply her with details of Brinton's medical issues. Williams advised:

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

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[20] Record of Decision Making Authority, Tab 3G, *Letter from Williams C.J. to Brinton J. dated February 22, 2022* at p. 120.
[21] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at para 41.
[22] Record of Decision Making Authority, Tab 3I, *Note from Dr. Babatolu dated March 21, 2022.*
[23] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at para 43.

> As Chief Judge, I am tasked with authorizing short-term illness claims for Judges of the Provincial Court. Without this information, regrettably I am not able to authorize the 100 days of short-term illness taken.[24]

33. Brinton received a copy of the letter but did not realize it had been addressed to her doctor until she received a call from Dr. Babatolu informing her of the letter he had received. Brinton became concerned that Williams's statement that she was "not able to authorize the 100 days of short-term illness taken" (which had already been incurred by this point) meant that Williams would seek or was seeking to recover the benefits that had already been paid to Brinton. During the call, Brinton declined to consent to the release of her records.[25]

34. Thereafter, Williams's office called Dr. Babatolu, following up on the request in Williams's earlier letter. Dr. Babatolu's office called Brinton a second time to ask if she had given consent for the release of her medical information. Brinton repeated that she had not.[26]

35. Ultimately, Dr. Babatolu did not provide Williams with the requested records. By this time, Brinton had already provided the necessary information to her long-term disability benefits provider, Manulife.[27]

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

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[24] Record of Decision Making Authority, Tab 3J, *Letter from Chief Judge Williams to Dr. Babatolu dated March 28, 2022.*
[25] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023* at para 45.
[26] *Ibid* at para 46.
[27] *Ibid* at para 47.

## C. The Complaint

37. On June 7, 2023, Brinton, through her counsel, submitted a complaint against Williams (the "**Complaint**") to Chief Justice Michael Wood (the "**Chair**") asking that the Complaint be forwarded to a review committee of the Judicial Council for further investigation. The Complaint was submitted to the Chair because s. 17A(2) of the *Provincial Court Act*, R.S.N.S. 1989, c. 238 (the "**Act**") provides that where a complaint is made against the Chief Judge of the Provincial Court of Nova Scotia, it should be presented to the Chief Judge of the Family Court of Nova Scotia or, in the absence of the Chief Judge of the Family Court, to the Chief Justice of Nova Scotia (i.e. the Chair). Williams was Chief Judge of both the Provincial Court and the Family Court of Nova Scotia.[28]

38. In the Complaint, Brinton argued that:

a) Williams applied undue pressure on Brinton to disclose her vaccination status;

b) Brinton was not given a meaningful opportunity to respond to Williams' decision to suspend Brinton and refer her to the Judicial Council; and

c) Williams improperly contacted Brinton's physician to obtain details of Brinton's medical condition.

Brinton argued that Williams' actions seriously violated her ethical obligation to act with integrity towards Brinton, her obligation to respect Brinton's medical privacy, and several aspects of the principles of judicial independence and impartiality.[29]

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[28] Record of Decision Making Authority, Tab 1, *June 7, 2023 Letter.*
[29] Record of Decision Making Authority, Tab 2, *Complaint dated June 7, 2023.*

39. On June 8, 2023, the Chair forwarded the Complaint to Williams for her submissions and informed Brinton that he had done so.[30]

40. On June 12, 2023, Williams responded to the Chair to inform him that she had retained counsel and to request one month to prepare her response.[31] That same day, the Chair granted the request and informed Brinton that he had done so.[32]

41. On July 12, 2023, Williams provided her submissions to the Chair.[33] On August 15, 2023, the Chair sent another letter to Brinton's counsel, advising, among other things, that he had received "comments from Chief Judge Williams".[34]

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

43. Rather, the Chair's letter dated August 15, 2023 requested Brinton, through her counsel, only to provide additional written submissions on the issue of whether the Judicial Council had jurisdiction to handle Brinton's Complaint.[35] The same request was made to Williams's counsel.[36] In response, on or about September 11, 2023, Brinton, through her counsel, provided the Chair

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[30] Record of Decision Making Authority, Tab 8A, *June 8, 2023 Letter*; Tab 8B, *June 8, 2023 Letter*.
[31] Record of Decision Making Authority, Tab 8C, *June 12, 2023 Letter*.
[32] Record of Decision Making Authority, Tab 8D, *June 12, 2023 Letter*; Tab 8E, *June 12, 2023 Letter*.
[33] Record of Decision Making Authority, Tab 4, *July 12, 2023 Response to Complaint*.
[34] Record of Decision Making Authority, Tab 8F, *August 15, 2023 Letter*.
[35] Record of Decision Making Authority, Tab 8F, *August 15, 2023 Letter*.
[36] Record of Decision Making Authority, Tab 8G, *August 15, 2023 Letter*.

with additional written submissions in support of her Complaint.[37] On September 15, Williams responded to the Chair's request through her counsel.[38]

44. On October 10, 2023, Brinton, through her counsel, received the Chair's Decision, in which the Chair dismissed Brinton's Complaint in its entirety, with reasons, pursuant to section 17B(1)(a) of the Act. The Decision concluded that Williams's actions as described in the Complaint could not support a finding of judicial misconduct.[39]

## III. LAW AND ANALYSIS

45. Brinton raises the following issues on this application for judicial review:

a) Was the Chair's Decision to dismiss the Complaint pursuant to section 17B(1) of the Act *ultra vires* the Chair's authority?

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

c) Did the Chair fail to employ the "Doré/Loyola analysis" in determining whether to refer the Complaint to a review committee for further investigation?

d) Was the Chair's decision to dismiss the Complaint reasonable?

46. These issues, along with the standards of review applicable to each issue, are discussed in the following paragraphs.

### A. The Chair's Actions Were *Ultra Vires* the Act

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[37] Record of Decision Making Authority, Tab 5, *September 11, 2023 Letter.*
[38] Record of Decision Making Authority, Tab 6, *September 15, 2023 Response Letter.*
[39] Record of Decision Making Authority, Tab 7, *October 10, 2023 Decision Outline.*

**The Chair's Dismissal of the Complaint was *Ultra Vires* the Act**

47. In *Vavilov*, the Supreme Court of Canada clarified that on judicial review, questions concerning jurisdiction or *vires* are now to be reviewed on a standard of review of reasonableness.[40]

48. In this case, the Chair acted outside the narrow bounds of the statutory authority conferred on him under s. 17B of the Act. Rather than properly exercising that narrow statutory authority, the Chair in effect summarily (and without authority) determined the outcome of the Complaint on its merits, in the guise of a dismissal under s. 17B(1)(a). In doing so, he encroached on the jurisdiction granted by the Act *only* to a review committee, and not to the Chair.

49. The Act provides a four-step procedure for receiving complaints against judges of the Provincial Court. First, a complaint is normally received by the Chief Judge. The Chief Judge then exercises the preliminary screening function under s. 17B of the Act, and may (a) dismiss the complaint on limited, defined grounds set out at subsections 17B(1)(a)(i), (ii) and (iii); (b) attempt to resolve the matter; or (c) refer the matter to the Chair with a recommendation that the complaint be dismissed, resolved, or referred to a review committee for the further investigation.[41]

50. Second, if the complaint is received by the Chief Judge and then referred to the Chair, the Chair may accept the recommendation of the Chief Judge or empanel a review committee.[42]

51. Third, if the Chair refers the matter to a review committee, the review committee, consisting of three members, investigates the complaint and may dismiss the complaint, resolve the complaint, or further refer it for hearing before a five-member panel of the Judicial Council.[43]

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[40] *Canada (Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65 at paras. 65-68 (SCC), **Applicant's Book of Authorities ("ABOA"), Tab 1**.
[41] *Provincial Court Act*, RSNS 1989, c 238, s. 17B, **ABOA, Tab 2**.
[42] *Ibid*, s. 17C, **ABOA, Tab 2**.
[43] *Ibid*, ss. 17F-17G, **ABOA, Tab 2**.

52. Fourth, the five-member panel of the Judicial Council is empowered to hold a hearing and take disciplinary action as appropriate.[44]

53. In the present case, the first two steps are collapsed because the Complaint, being made against the Chief Judge of both the Provincial Court and the Family Court, was made directly to the Chair who exercises "the powers and duties of the Chief Judge."[45]

54. Thus, the Act's four-step procedure provides for three opportunities to screen out complaints prior to requiring a hearing to be held. Viewed in context, the Chair's role upon receiving a complaint is to conduct a preliminary screening. Accordingly, the Act *only* permits the Chair (acting in the stead of the Chief Judge) to dismiss a complaint for one of three limited grounds:

i) the complaint is not within the jurisdiction of the Judicial Council;

ii) the complaint is frivolous or vexatious; or

iii) there is no evidence to support the complaint.[46]

55. The Act is structured to provide greater accountability as greater discretion is exercised by decision-makers at later steps in the procedure. The Chief Judge may only dismiss a complaint on limited grounds. If those grounds are not present and a resolution cannot be reached, the Chief Judge must refer the matter to the Chair. Then, the Chair is limited to either accepting the recommendation of the Chief Judge or empanelling a review committee. The review committee is empowered with a greater discretion to dismiss complaints – being unconstrained by the defined grounds which bind the Chief Judge's discretion – but also provides greater accountability by

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[44] *Ibid*, ss. 17H, 17K, **ABOA, Tab 2**.
[45] *Ibid*, s. 17A(2), **ABOA, Tab 2**.
[46] *Ibid*, s. 17B(1)(a)(i)-(iii), **ABOA, Tab 2**.

incorporating the perspectives of one member of the provincial judiciary, one member of the provincial bar, and a third member who is neither a judge nor a lawyer.[47]

56. The Chair's Decision in Brinton's case was *ultra vires* the Act because it dismissed the Complaint without making any of the necessary findings under s. 17B(1)(a)(i)-(iii), and also because it arrogated the authority granted to the review committee.

57. **First**, the Chair dismissed the Complaint without proper grounds. The Chair, acting in the stead of the Chief Judge, could only dismiss the Complaint for being outside the Judicial Council's jurisdiction, frivolous or vexatious, or unsupported by evidence. The Chair made no such findings; the Decision is silent on those issues. Indeed, the Decision only concludes that the Complaint is dismissed "by virtue of the authority in s. 17B(1)(a) of the Act".[48] The Decision does not specify whether the dismissal was predicated on subsections 17B(1)(a)(i), (ii), or (iii).

58. Moreover, there was no basis for the Complaint to have been dismissed on any of those grounds in any event. First, the Complaint was squarely within the jurisdiction of the Judicial Council as it pertained to a misuse of authority by a Chief Judge which impacted Brinton's judicial independence and impartiality and the impartiality of the Court as a whole.

59. Nor was the Complaint frivolous or vexatious. By analogy to civil matters, a case is only frivolous or vexatious if it is "obviously unsustainable", "devoid of all merit", or "certain to fail because it contains a radical defect." It is a finding only to be made "in the clearest of cases."[49] The Chair did not make such a finding, nor would it have been reasonable to do so.

60. Further, this matter is not unsupported by evidence. In fact, the Chair found that the evidence provided to him by Brinton established a sequence of events as detailed in his reasons.

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[47] *Ibid*, ss. 16(1), 17F, **ABOA, Tab 2**.
[48] Record of Decision Making Authority, Tab 7, *October 10, 2023 Decision*, page 5.
[49] *Sherman v. Giles*, 1994 NSCA 226 (CanLII) at 7, **ABOA, Tab 3**.

In Brinton's submission, that sequence of events *clearly* provides enough support to warrant an investigation into the matter by a review committee.

61. In short, subparagraphs 17B(1)(a)(i)-(iii) create conditions precedent to the Chair's authority to dismiss a complaint. In dismissing the Complaint without making a finding that one of the required grounds were met, he overstepped his authority.

62. **Second**, in dismissing the Complaint on the basis that he did, the Chair encroached on the authority granted to a review committee. The Act grants a review committee a broader discretion to dismiss complaints. The Chair relied on the decision of a review committee empanelled to investigate a complaint against Judge Gregory Lenehan which found that the issue for the review committee is whether the alleged conduct "could" support a finding of judicial misconduct. The Chair erred in adopting and applying the same test.

63. In his Decision, the Chair mischaracterized his role. At page 5 of the Decision, the Chair stated:

> The question which I must decide is whether Chief Judge Williams engaged in judicial misconduct, as that term was defined in the Lenehan report… I must also be satisfied that the conduct in question could justify one of the dispositions other than dismissal set out in s. 17K of the Act.
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> […]
>
> Having considered all of the material provided to me as well as the applicable principles, I conclude that the actions of Chief Judge Williams could not support a finding of judicial misconduct as defined in *Lenehan*.[50]

64. With great respect, this was *not* the Chair's role, but rather that of a subsequent review committee. The Chair's function at this early stage of the process was simply to inquire whether (a) the Judicial Council lacked jurisdiction to consider the Complaint; (b) the Complaint was frivolous or vexatious; or (c) there was no evidence to support the Complaint. The Chair was thus

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[50] Record of Decision Making Authority, Tab 7, *October 10, 2023 Decision*, page 5.

performing a function that the *review committee*, and not the Chair, was meant (and indeed required) to perform under the statutory regime under the Act. The review committee is granted a broader discretion commensurate with the greater accountability provided by input from members of the bar and the public. In stepping outside the narrow grounds for dismissal provided by s. 17B(1)(a), the Chair placed himself in the position of a review committee and arrogated to himself the broader power of dismissal contained in s. 17G. The Act provides no such power to the Chair; accordingly, the Chair's actions were *ultra vires*.

**The Chair's Decision to Invite Submissions from Williams was *Ultra Vires* the Act**

65. The Chair further encroached upon the authority granted to the review committee under the Act by undertaking his own investigation and inviting formal submissions from Williams. The procedure set out by the Act reserves investigation into the substance of a complaint for the review committee. Section 17G provides that the "review committee shall investigate the complaint and may" dismiss, resolve, or refer the complaint for a hearing.[51]

66. By contrast, no such investigative power or duty is assigned to the Chief Judge/Chair's preliminary screening function. Subsection 17B(1) merely provides that the "Chief Judge to whom a complaint is made pursuant to Section 17A may dismiss the complaint on specified grounds, attempt to resolve it, or refer it to the Chair with a recommendation.[52]

67. The Act provides no authority to the Chief Judge or Chair receiving the complaint at first instance to engage in an investigation. Indeed, the grounds for dismissal provided by s. 17B(1)(a) are limited to grounds related to a summary review of a complaint. Whether the Complaint was out of jurisdiction, frivolous or vexatious, or unsupported by evidence merely required the Chair

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[51] *Provincial Court Act*, *supra*, s. 17G, **ABOA, Tab 2**.
[52] *Ibid*, s. 17B(1), **ABOA, Tab 2**.

to consider the materials provided to him along with the Complaint. The Chair's duty was to determine if the Complaint met the threshold to be referred to a review committee for investigation.

68. By soliciting submissions from Williams, the Chair undertook his own investigation, contrary to the text and scheme of the Act. In doing so, he stepped outside the jurisdiction granted by the Act and his Decision was also *ultra vires* on this basis.

## B. The Chair Violated Brinton's Right to Procedural Fairness by Failing to Provide her an Opportunity to See and Reply to Williams' Submissions

69. In *Barney v. Halifax (Regional Municipality)*, this Court reconfirmed that correctness continues to be the standard of review when it is asked to review and overturn an administrative decision on the grounds that there has been a breach of natural justice and/or the duty of procedural fairness.[53]

70. In this case, the Chair violated Brinton's right to procedural fairness and acted contrary to the principles of natural justice by soliciting and relying on submissions from Williams without providing Brinton an opportunity to see or respond to them. This was incorrect.

71. Decision makers owe a duty of procedural fairness whenever their decisions affect "the rights, privileges or interests of an individual." The scope of procedural fairness owed is dependent on the *Baker* factors, that is: 1) the nature of the decision, 2) the statutory scheme, 3) the importance of the decision to the individual affected, 4) the legitimate expectations of affected individuals, and 5) the choices of procedure made by the decision maker.[54]

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[53] *Barney v. Halifax (Regional Municipality)*, 2023 NSSC 138 at paragraph 18 (SC) **ABOA, Tab 4**. See also *Canada (Minister of Citizenship & Immigration v. Vavilov*, 2019 SCC 65 at paragraph 23 (SCC), **ABOA, Tab 1**.

[54] *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras. 20-28, **ABOA, Tab 5**.

72. Brinton submits the following with respect to the application of the relevant *Baker* factors in this case:

a) **Nature of the Decision** – this is a serious matter, involving allegations of judicial misconduct by one judge against another. The allegations in the Complaint raise issues of grave importance to the proper functioning of the judiciary, both in Nova Scotia and across Canada. They engage the principles of individual judicial independence, judicial impartiality and, by extension, the rule of law itself. They concern the working relationship between a chief judge and a puisne judge, and the proper scope of the chief judge's authority within that relationship. This militates in favour of a greater degree of procedural fairness, particularly in this case where the Chair decided to embark on an investigation into the Complaint rather than limiting himself to a preliminary screening;

b) **Statutory Scheme** – the Act does not provide for any particular procedure to be followed when a Chief Judge (or Chair) conducts a preliminary screening under section 17B of the Act. Nonetheless, the ultimate purpose of section 17B is to provide for the oversight and discipline of Provincial Court judges, which is undoubtedly a serious matter that calls for an appropriate level of procedural fairness;

c) **Importance of the Decision to Brinton** – given the allegations in the Complaint, the Chair's Decision to dismiss the Complaint out of hand is of great importance to Brinton. As particularized below, Brinton alleges that Williams compromised her judicial independence and impartiality in several ways, interfering with her ability to fulfill her role as a judge. Brinton also alleges that Williams violated Brinton's freedom of expression by attempting to force Brinton to disclose information that she did not wish to disclose. Finally, Brinton alleges that Williams violated her medical privacy rights. These are all very serious infringements of an individual's civil liberties. Brinton has, accordingly, asked

the Judicial Council to investigate this matter and take such remedial action as it considers appropriate. The Chair's Decision was thus of clear importance to Brinton, in terms of both vindication and also ensuring that such conduct between a chief judge and a puisne judge does not take place again;

d) **Choices of Procedure by the Decision-Maker** – here, to the extent that the Chair had decided to engage in an investigation rather than simply conduct a preliminary screening, an increased degree of procedural fairness was owed.

73. At minimum, decision makers must comply with the principles of natural justice. To "abrogate the rules of natural justice, express language or necessary implication must be found in the statutory instrument."[55]

74. A fundamental component of natural justice is the principle of *audi alterem partem* which requires that decision makers "must listen fairly to both sides, giving the parties to the controversy *a fair opportunity 'for correcting or contradicting* any relevant statement prejudicial to their views'[*emphasis added*]."[56]

75. As argued above, the Chair should not have solicited Williams's submissions at this stage of the complaint process. Had he not done so, a different degree of procedural fairness might have been expected by the parties. However, because the Chair did decide to do so, he was bound by the principles of natural justice to forward Williams' submissions to Brinton so that she could correct, contradict, or otherwise reply to the submissions as necessary. The Chair's failure to do so renders the Decision procedurally unfair.

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[55] *Kane v. Bd. of Governors of U.B.C.*, 1980 CanLII 10 (SCC), at para 2, [1980] 1 SCR 1105 at 1113, **ABOA, Tab 6**.

[56] *Ibid.* at para 4 cit'g *Board of Education v. Rice*, [1911] A.C. 179 (H.L.) at 182 and *Local Government Board v. Arlidge,* [1915] *A.C.* 120 at 133, 141.

## C. The Chair Failed to Undertake the *Doré* Analysis

76. Administrative decision makers must proportionately balance "*Charter* protections – values and rights – at stake" with the relevant statutory objectives.[57] This is the "*Doré* analysis". Reviewing courts must consider whether the decision at issue "engages the *Charter* by limiting *Charter* protections" including both rights and values.[58]

77. While substantive review of administrative decisions is normally conducted on a reasonableness standard, a failure to consider an applicable *Charter* value attracts a correctness standard of review.[59]

78. The *Doré* analysis is applicable in the context of judicial council proceedings.[60]

79. The Decision engaged the *Charter* values of freedom of expression and judicial independence. The Chair was thus obligated to undertake the *Doré* analysis and consider the limitation on these values and to balance such limitations with the statutory objectives of the Act.

80. In this case, Brinton's *Charter* right to judicial independence was engaged. Alternatively, the *Charter* value of judicial independence was engaged. Section 11(d) of the *Charter* guarantees the right of those charged with an offence to a public hearing by an independent and impartial tribunal. It embodies the *Charter* value of judicial independence which is enshrined elsewhere in

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[57] *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at paras. 3-4, 35, **ABOA, Tab 7**. See also *Doré v. Barreau du Québec*, 2012 SCC 12 at paras. 35, 55-56 (SCC), **ABOA, Tab 8**.

[58] *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at paras. 61, 64-65, **ABOA, Tab 9**.

[59] *Canadian Broadcasting Corporation v. Ferrier*, 2019 ONCA 1025 at para. 35, **ABOA, Tab 10**. See also *McCarthy v. Whitefish Lake First Nation #128*, 2023 FC 220 at paragraphs 91-95 [*McCarthy*] (FC), **ABOA, Tab 11**.

[60] See, e.g., *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 at paras. 11, 139 (CA), **ABOA, Tab 12**.

the Constitution, including in the Preamble and ss. 99 and 100.[61] Judicial independence consists of security of tenure, financial security, and administrative independence. They have individual and institutional dimensions.[62]

81. As stated in the Complaint, the principles and jurisprudence are clear: *a judge must at all times be completely free from external interference*.[63] There are no exceptions. This includes being free from undue influence from government, other judges, or even a chief judge such as Williams.

82. The bottom line in this matter is that Williams's conduct toward Brinton, at several points along the way, violated both the principles of judicial independence and judicial impartiality, as follows:

a) Williams should never have pressured Brinton to reveal her Covid-19 vaccination status in the first place. Such pressure was entirely inappropriate, and placed Brinton in a situation where her own perception of how to remain impartial (and to be *seen* to be impartial) towards litigants in her court was compromised;

b) Williams should never have met with Brinton to try to persuade Brinton to change her mind and agree to disclose her vaccination status. When Brinton

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[61] *The Constitution Act, 1867*, 30 & 31 Vict, c 3, Preamble, ss 99, 100, **ABOA, Tab 13**; *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, 1997 CanLII 317 (SCC), [1997] 3 SCR 3 at paras. 99-109, **ABOA, Tab 14**.

[62] *Ibid* at para. 118, **ABOA, Tab 14**.

[63] See, e.g., *R. v. Valente (No. 2)*, [1985] 2 S.C.R. 673 (SCC), **ABOA, Tab 15**; *Beauregard v. Canada*, [1986] 2 S.C.R. 56 paras. 21, 24, 29 (SCC), **ABOA, Tab 16**; *Lippé v. Charest*, [1991] 2 S.C.R. 114 (SCC), **ABOA, Tab 17**; *Therrien v. Québec (Ministre de la justice)*, 2001 SCC 35, **ABOA, Tab 18**; and *Mackin v. New Brunswick (Minister of Justice)*, 2002 SCC 13, at paras. 34-40, **ABOA, Tab 19**.

refused at first instance, Williams's only viable course of action was, if she thought it necessary, to refer the matter to the Judicial Council;

c) Williams should never have advised Brinton that the only way to proceed was for Brinton to work from home while her colleagues took over her in-person trials, and if her colleagues were not willing to do so, then it was up to Brinton to find another solution. There was no requirement for provincial court judges to be vaccinated against COVID-19, and there were no such obligations on Brinton's part whatsoever; Williams's pressure on this point was unacceptable – essentially, the clear message to Brinton was "*disclose your vaccine status... or else you won't be able to hear cases anymore*". This seriously undermines the principle of judicial independence;

d) Williams should not have unilaterally created a policy whereby only fully vaccinated judges would be assigned to sit in courtrooms and hear cases. The policy represents a further clear violation of the principle of judicial independence and judicial impartiality. Furthermore, such a policy goes far beyond a chief judge's limited administrative powers. It matters not that many of the other judges supported the policy – the reality is that not all judges did, and those who did not were unable to hear cases freely. This is unacceptable;

e) Williams should not have unilaterally suspended Brinton, or even have threatened to do so, as indicated in the February 22 Letter. Williams did not

have the power to do so simply because Brinton was unwilling to disclose her vaccination status;

f) Williams should not have written to Brinton's doctor, Dr. Babatolu, to ask him to supply Williams with the details of Brinton's medical issues. This was obviously inappropriate, as evidenced by the fact that the Brinton's insurer approved both her short-term and long-term disability applications without Williams's involvement. This placed financial pressure on Brinton, who began to wonder whether her disability claim would be cancelled, and her livelihood compromised, and thereby violated the principle of judicial independence by compromising Brinton's financial security.

83. Similarly, Williams's decision limited Brinton's right to freedom of expression. The right to freedom of expression includes the right to say nothing.[64] Williams imposed significant consequences on Brinton for her decision not to disclose her vaccination status. In doing so, Williams undoubtedly limited Brinton's freedom of expression.

84. The Chair's decision to dismiss the Complaint engaged the *Charter* by (tacitly) approving the decisions made by Williams. The Chair was required to conduct a preliminary screening of the Complaint, according to section 17B of the Act. In the course of making the Decision, he was required to act consistently with *Charter* values.[65] In finding that Williams's actions "fell within her authority as Chief Judge" the Chair engaged the *Charter* protections for judicial independence

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[64] *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038, at p. 1080, *per* Lamer J. (as he then was), **ABOA, Tab 20**.

[65] *Doré v. Barreau du Québec*, 2012 SCC 12 at para. 24, **ABOA, Tab 8**.

and freedom of expression.[66] Accordingly, he was obligated to consider the limitations and balance them against the relevant statutory objectives.

85. Since the Chair failed to balance the infringement of Brinton's *Charter* rights with relevant statutory objectives (and, by extension, provide an explanation of how the Decision reflected a proper such balancing), the Decision should be set aside.[67] The failure of decision makers to acknowledge and explain how their decisions proportionately balance infringement of *Charter* rights and relevant objectives has been repeatedly held to be grounds to set aside their decisions.[68]

86. A court should be "*satisfied that a Charter analysis was actually undertaken*" in relation to the decisions being reviewed: lip service to the *Charter* without performing the *Charter* analysis is not enough.[69] As the Divisional Court stated in *Guelph and Area Right to Life v. City of Guelph*, "*the Doré/Loyola analysis requires an actual balancing and minimal impairment analysis.*"[70]

87. In *Guelph*, the Ontario Divisional Court addressed the same "*central issue on this application, namely whether the City undertook the analysis it was required to undertake*". There, the Court agreed "*that the decision is not reasonable because the City did not engage in the balancing exercise required by Doré/Loyola.*"[71]

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[66] Record of Decision Making Authority, Tab 7, *October 10, 2023 Decision Outline* at page 5.
[67] Daly, *The Doré Duty,* 2023 CanLIIDocs 1256, https://canlii.ca/t/7n4jt at paragraph 14:

"*Failure to take relevant Charter values into account before adopting a policy, exercising a discretion, making an individualized assessment or interpreting a statutory provision justifies invalidation of the decision.*" **ABOA, Tab 21**.

[68] See *Canadian Centre for Bio-Ethical Reform v South Coast British Columbia Transportation Authority*, 2018 BCCA 344 at paragraphs 54, 60, 71, **ABOA, Tab 22**; *Lethbridge and District Pro-Life Association v Lethbridge (City)*, 2020 ABQB 654, at para 112 [*Lethbridge*], **ABOA, Tab 23**.
[69] *See Lethbridge* at paras 105, 108, **ABOA, Tab 23**.
[70] *Guelph and Area Right to Life v. City of Guelph*, 2022 ONSC 43 at paragraph 61 (Div Ct) [*Guelph*], **ABOA, Tab 24**.
[71] *Guelph* at paragraph 78-79, **ABOA, Tab 24**.

88. Professor Paul Daly, who holds the University Research Chair in Administrative law and Government at the University of Ottawa, has recently provided an insightful article precisely outlining the constitutional duty the Chair failed to fulfill in issuing its Decision:

> The goal of the *Doré* duty is . . . to force administrative decision-makers—who may not be legally trained—to engage with the *Charter*.[72]

89. This goal was regrettably not met in this case.

**D. The Chair's Decision was Unreasonable**

90. The Decision does not withstand scrutiny upon review on a standard of reasonableness. Where, as here, the decision maker "has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first."[73]

91. Following *Vavilov*, a reasonable decision is one that bears the hallmarks of reasonableness – transparency, intelligibility and justifiability – and is justified in relation to the relevant factual and legal constraints bearing on the decision.[74] A decision may be unreasonable due to a failure of rationality or because it is "untenable in light of the relevant factual and legal constraints that bear on it."[75] Both errors are present in the Chair's reasons.

92. **First**, the decision is untenable in light of legal principles of judicial independence and impartiality. In her Complaint, through counsel, Brinton made substantial preliminary submissions on the nature of judicial independence and how Williams's conduct had interfered with Brinton's

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[72] Daly, *The Doré Duty,* 2023 CanLIIDocs 1256, https://canlii.ca/t/7n4jt at page 18, **ABOA, Tab 21**.
[73] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 84 [*Vavilov*], **ABOA, Tab 1**.
[74] *Ibid.* at paragraph 99, **ABOA, Tab 1**.
[75] *Ibid.* at para. 101, **ABOA, Tab 1**.

judicial independence.[76] Relying on Supreme Court jurisprudence, including *R. v. Valente (No. 2)*;[77] *Beauregard v. Canada*;[78] *Lippé v. Charest*;[79] *Therrien c. Québec (Ministre de la justice)*;[80] and *Mackin v. New Brunswick (Minister of Justice)*,[81] Brinton argued that Williams interfered with her security of tenure and financial security, both core characteristics of judicial independence.

93. Brinton also made analogy to the cases of *Rees et al. v. Crane*[82] and *Alberta (Provincial Court Judge) v. Alberta (Provincial Court Chief Judge)*[83]. In *Rees*, the Privy Council overturned the decision of the Chief Justice of Trinidad and Tobago not to list a puisne justice to hear any cases for the upcoming term. The Privy Council found that the arrangement "went beyond mere administrative arrangement" and amounted to a disciplinary action taken without lawful authority.[84] Similarly, Brinton argued that Williams's purported use of her authority as Chief Judge went beyond administrative management and effectively barred Brinton from exercising her functions as a sitting judge.

94. In *Reilly*, a judge of the Provincial Court of Alberta successfully applied for judicial review of the Chief Judge to re-assign him from Canmore to Calgary, including relocation of his place of residence. The re-assignment had been made due to the Chief Judge's concerns about the nature of the puisne judge's decisions. In granting the application for judicial review, the court ruled that the exercise of disciplinary powers by the Chief Judge fell outside the scope allowed for by the

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[76] Record of Decision Making Authority, Tab 2, *Brinton Complaint* at 17-31.
[77] *R. v. Valente (No. 2)*, [1985] 2 S.C.R. 673 (SCC), **ABOA, Tab 15**.
[78] *Beauregard v. Canada*, [1986] 2 S.C.R. 56 at paras. 21, 24, 29 (SCC), **ABOA, Tab 16**.
[79] *Lippé v. Charest*, [1991] 2 S.C.R. 114 (SCC), **ABOA, Tab 17**.
[80] *Therrien v. Québec (Ministre de la justice)*, 2001 SCC 35, **ABOA, Tab 18**.
[81] *Mackin v. New Brunswick (Minister of Justice)*, 2002 SCC 13, at paras. 34-40, **ABOA, Tab 19**.
[82] *Rees et al. v. Crane*, [1994] 2 A.C. 173 (Trinidad & Tobago P.C.) [*Rees*], **ABOA, Tab 25**.
[83] *Alberta (Provincial Court Judge) v. Alberta (Provincial Court Chief Judge)*, 1999 ABQB 309 [*Reilly*], **ABOA, Tab 26**.
[84] *Rees*, *supra*, at 8, **ABOA, Tab 25**.

principles of judicial independence and the nature of the position of chief judge as first among equals. If disciplinary action was to be taken, it should have been done by the Judicial Council, not by the Chief Judge.[85] Brinton argued that Williams's decision to suspend Brinton was analogous. It was a disciplinary action that undermined Brinton's judicial independence.

95. The Chair's Decision to dismiss the Complaint was untenable in light of the facts before him and the legal constraints of the *Act*. He purported to dismiss the Complaint under s. 17B(1)(a) of the *Act*. The Chair did not specify which ground he found to apply.[86] However, it was unreasonable to find that any grounds were met.

96. **First**, the Complaint was clearly within the jurisdiction of the Judicial Council.[87] It pertained to allegations made by a puisne judge against her chief judge with respect to interference with judicial independence. **Second**, the Complaint is not frivolous or vexatious and it would have been unreasonable to find that it was.[88] The Chair's finding that Williams's actions fell within her authority as Chief Judge is untenable. The Complaint raised two issues: 1) the interference with Brinton's judicial independence by pressuring her to be vaccinated and suspending her; and 2) the interference with Brinton's medical privacy.

97. With respect to the interference with Brinton's judicial independence, while s. 15(2) of the *Act* permits the Chief Judge to suspend a puisne judge, she may only do so where "immediate action is necessary."[89] Such action is obviously intended to be used in urgent circumstances. That could not have been the case here. The discussions between Brinton and Williams extended over four months. If Williams believed that Brinton should not continue to sit as a judge, the only option

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[85] *Reilly*, *supra*, at para. 90, **ABOA, Tab 26**.
[86] Record of Decision Making Authority, Tab 7, *October 10, 2023 Decision Outline* at p. 288.
[87] *Provincial Court Act*, *supra*, s. 17B(1)(a)(i), **ABOA, Tab 2**.
[88] *Provincial Court Act*, *supra*, s. 17B(1)(a)(ii), **ABOA, Tab 2**.
[89] *Provincial Court Act*, *supra*, s. 15(2), **ABOA, Tab 2**.

was to refer her to the Judicial Council. By purporting to suspend Brinton of her own authority, Williams exceeded her authority as Chief Judge.

98. With respect to the interference with Brinton's medical privacy, even if Williams was obligated to request additional information to approve Brinton's request for leave, it was inappropriate to go around Brinton to ask her doctor directly for the medical information. Williams's conduct imposed upon Brinton's medical privacy, particularly when one considers that the request was coming from the Office of the Chief Judge of the Provincial Court. Notably, despite neither Brinton nor Dr. Babatolu providing the requested information to Williams, she never denied Brinton's request for leave. Accordingly, it would have been unreasonable for the Chair to find that Brinton's claims were frivolous or vexatious.

99. **Third**, it would have been unreasonable for the Chair to find that the Complaint was unsupported by evidence.[90] The Chair was able to make ample findings organized into a ten-point sequence of events based on the evidence before him.[91] The sequence of events was essentially uncontradicted. In the absence of any reasonable basis to conclude that the grounds in s. 17B(1)(a)(i)-(iii) were present, the Chair's Decision to dismiss is unreasonable.

100. Further, despite Brinton's ample submissions, the Chair made no reference to any cases cited by Brinton. He entirely failed to consider the issues of judicial independence engaged by Williams's conduct. This reflects a failure of rationality internal to the Chair's reasoning process.

101. In sum, the Chair's Decision does not bear the hallmarks of reasonableness. It cannot be justified in relation to the relevant factual and legal constraints bearing on it. Accordingly, this Court should find that the Decision was unreasonable.

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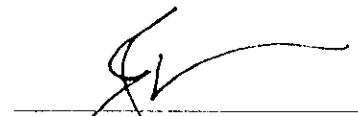
[90] *Provincial Court Act, supra*, s. 17B(1)(a)(iii), **ABOA, Tab 2.**

[91] Record of Decision Making Authority, Tab 7, *October 10, 2023 Decision Outline* at pp. 286-87.

## IV. REMEDY REQUESTED

102. Brinton requests that this Court set aside the Decision and substitute a decision referring the Complaint to a review committee of the Judicial Council for further investigation pursuant to s. 17B(1)(c)(iii) and 17C of the Act.

February 29, 2024



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