

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Coalition of Interested Advocates v. Nova Scotia (Judicial Council)*,  
2026 NSSC 48

**Date:** 20260129

**Docket:** Hfx, No. 543060

**Registry:** Halifax

**Between:**

The Nova Scotia Criminal Lawyers' Association, The Mi'kmaw Legal Support  
Network, and  
The Elizabeth Fry Society of Mainland Nova Scotia (The Coalition of Interested  
Advocates)

*Applicants*

v.

Nova Scotia (Judicial Council), The Honourable Alain Bégin

*Respondent*

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| <b>Decision – Motion for Public Interest Standing</b> |
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**Judge:** The Honourable Justice John Keith

**Heard:** December 22, 2025, in Halifax, Nova Scotia

**Oral Decision (Bottom  
Line):** January 29, 2026

**Written Decision:** February 6, 2026

**Counsel:** Lee Seshagiri and David Mahoney, K.C. for the Applicants  
Andrea Gonsalves and Sarah Fooks, for the Respondent,  
Nova Scotia (Judicial Council)  
  
Frank Addario and Nicola Langille, for the Respondent,  
The Honourable Alain Bégin

**By the Court:****Introduction and Brief Conclusion**

[1] The Applicants applied for judicial review of a review panel's decision resolving certain complaints regarding Provincial Court Judge Alain Bégin.

[2] The Nova Scotia Criminal Lawyers' Association, the Mi'kmaw Legal Support Network, and the Elizabeth Fry Society of Mainland Nova Scotia (identified collectively in the pleadings as the "Coalition of Interested Advocates" and referred to below as the "**Coalition's**") motion for public interest standing was heard on December 22, 2025.

[3] On January 29, 2026, and at the parties' request, I rendered a "bottom-line" decision granting the Coalition public interest standing, with reasons to follow. These are my reasons.

[4] In *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45 ("**Downtown Eastside**"), the Supreme Court of Canada established that the following three factors inform the inquiry into public interest standing:

1. Whether there is a serious justiciable issue which includes a preliminary, non merits check ensuring a non frivolous, justiciable claim.
2. Whether the person seeking public interest standing exhibits a genuine interest in the issue or, put differently, has a real stake or engagement with the issue, not a personal legal interest.
3. Whether the proposed litigation is, in all the circumstances, a reasonable, efficient and effective means of adjudicating the issues in question.

[5] These factors do not represent essential elements that must each be satisfied, in checklist fashion. Rather, they are weighed cumulatively, purposively, and flexibly. No single factor predominates; and none is determinative.

[6] In my view:

1. The Coalition raises serious justiciable issues regarding the scope of the Review Committee's statutory authority. Specifically, it questions

whether the Committee can interpret s. 17G(b) as allowing it to assess whether a judge's removal is necessary or appropriate while simultaneously acknowledging that it lacks the power to make findings of misconduct or final determinations on the merits. The Coalition also raises a serious justiciable issue as to the reasonableness of interpreting s. 17G(b) to permit resolution agreements imposing reprimands and ongoing remedial measures, given that s. 17K expressly assigns those powers to the Judicial Council following a hearing.

2. The Coalition has a genuine interest and real stake in the issues.
3. The proposed litigation is, in all the circumstances, a reasonable, efficient and effective means of adjudicating the issues in question.

[7] The *Downtown Eastside* approach is sufficiently robust as to acknowledge and accommodate the unique and acutely important concerns which arise in this case regarding the independence of the judiciary and the unique, highly specialized nature of judicial disciplinary proceedings. As will be discussed in greater detail below, I have integrated and balanced these considerations in my analysis and conclusions.

## Analysis

[8] Three matters concerning the conduct or fitness for office of Provincial Court Judge Alain Bégin came before Chief Judge Perry Borden of Nova Scotia's Provincial Court. Very briefly, the matters were:

1. Concerns arising out of the Nova Scotia Court of Appeal's decision in *R. v. K.J.M.J.*, 2023 NSCA 84 ("**KJMJ**"). The concerns included "disturbing comments [that] betray a fundamental misconception of the role of judge and counsel in a criminal trial" and "transcend injudicious musing" (at paras. 47 and 97); and "highly disturbing" errors that involved factually and legally misstating the nature of remarks which the judge incorrectly claimed to be "off the record" and "privileged" (at paras. 42, 96 and 98);
2. Concerns arising out of the Nova Scotia Court of Appeal's decision in *R. v. Nevin*, 2024 NSCA 64 ("**Nevin**"). At trial, the appellant/offender was convicted of sexual assault and sexual interference. He and the complainant were both Indigenous. At the sentencing phase, defence counsel (who was also Indigenous) brought a motion asking that the judge recuse himself. The Court of Appeal described the process

which followed as a “reasonable apprehension of bias case unlike any other.” Among other things, the judge entered the fray by bringing his own motion where he called and questioned his own witnesses to elicit positive testimony regarding the judge’s conduct towards Indigenous people and, as well, less positive commentary regarding defence counsel’s conduct, professionalism and preparedness (at paras. 38, 56 and 70). The judge launched other attacks on defence counsel, and sought to justify those criticisms by saying they were shared by another Provincial Court judge (at paras. 103 – 105). Ultimately, the Court of Appeal found that the judge pre-determined the recusal motion and expressly signalled that he “was no longer open to persuasion on the issue and would not listen to further evidence or submissions with an open mind” (at para. 77); and

3. Concerns arising out of an anonymous letter regarding a sexual assault sentencing decision in *R v Cairns* in which the judge described the sexual assault as an “aggressive pass”.

[9] Pursuant to s. 17(D)(2) of the *Provincial Court Act*, RSNS 1989, c 238 (the “*PCA*”), Chief Judge Borden referred these matters to Chief Justice Deborah Smith of the Nova Scotia Supreme Court, in her capacity as Acting Chair of the Judicial Council.<sup>1</sup>

[10] Chief Justice Smith empanelled a three-person review committee in accordance with ss. 17(E) and (F) of the *PCA*. (the “**Review Committee**”).

[11] S. 17G of the *PCA* describes the Review Committee’s mandate:

“The review committee shall investigate the complaint and may

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<sup>1</sup> The Decision of the Review Panel struck to consider these three matters begins by stating that “Chief Judge Perry Borden initiated three complaints against Judge Alain Bégin, pursuant to s. 17(D)(2) of the *PCA*, by letter to the Chair of the Nova Scotia Judicial Council....” Section 17(D)(2) does not formally characterize Chief Judge Borden’s actions as a “complaint”. Rather, s. 17(D)(2) states: “The Chief Judge of the Provincial Court may, at any time, without a complaint having been made, review any matter respecting the conduct or fitness for office of a Judge of the Provincial Court and may refer the matter in writing to the Chair of the Judicial Council.” (emphasis added) That said, once the referral was made by Chief Judge Borden to the Chair of the Judicial Council:

1. s. 17(E) requires the Chair of the Judicial Council to empanel a review committee; and
2. s. 17(G) of the *PCA* describes the Review Committee’s mandate in the context of a “complaint”.

There is no question that Chief Judge Borden and Chief Justice Smith properly acted within the scope of their authority under the *PCA* and there is no question that the Review Committee was properly empanelled. The technical characterization of Chief Judge Borden’s referral as a “complaint” under s. 17(G) despite it being a referral “without a complaint being made” under s. 17(D)(2) is not in issue.

- (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.”

[12] The scope of the Review Committee’s investigation focussed on the Court of Appeal decisions in *KJMJ* and *Nevin* and the appeal record related to those decisions; and the sentencing hearing in *Cairns*.<sup>2</sup>

[13] The Review Committee released its report on March 24, 2025, and were divided as to how the matters should be determined (the “**Decision**”).

[14] Two of its three members<sup>3</sup> (with Judge Bégin’s agreement) resolved the three complaints under s. 17(G)(b) of the *PCA* having regard to:

1. The judge’s admission of (and insight into) his very serious misconduct;  
(Decision, at para. 26(a))
2. The cumulative impact of:
  - a. Evidence of an “untreated and undiagnosed mental health disorder during the period of time when the impugned conduct arose”, which the majority described as a “significant factor in understanding” the judge’s conduct (Decision, at para. 26(a));
  - b. A finding that the mental disorder was in “remission”; and
  - c. Ongoing monitoring and treatment of this issue.  
(Decision, at paras. 24 and 26(a))
3. The majority being satisfied that “the public would be protected by the ongoing obligations for treatment and education contained in the agreement, and the fact that the resolution provided that breach of the agreement could result in a new complaint against the judge”; and  
(Decision at para. 26(b))
4. Chief Judge Borden’s “unequivocally supportive and positive letter” which expressed his “belief that it was not necessary for Judge Begin

<sup>2</sup> The Review Committee unanimously concluded that “there were no sufficient particulars to reasonably investigate other aspects of the anonymous complaint” in *Cairns*. (Review Committee’s Decision at para. 9)

<sup>3</sup> The Chair, Provincial Court Judge Alan Tufts, and public representative Joseph Gillis comprised the majority.

to be suspended or removed from office as a result of the complaints in order to protect the administration of justice”; and

(Decision at para. 26(c))

5. The absence of any subsequent issues following the judge’s brief medical leave and return to active duty as a judge.

(Decision at para. 26(d)).

[15] The third member of the Review Panel<sup>4</sup> concluded that the complaints should be referred to a hearing before the Judicial Council under s. 17(G)(c) of the *PCA*, and did not support the resolution. The minority’s decision focussed on:

1. The conclusion that removal from office “*may*” (emphasis in the Decision) be warranted in the circumstances and that, if the matters were referred to a hearing, the Hearing Panel could conclude that the judge’s impugned conduct rendered him “incapable of performing the duties of his office on the basis that allowing him to continue in his role would undermine the confidence of the reasonable, dispassionate, and informed public in the justice system”;

(Decision, at para. 42)

2. Public confidence in the administration of justice would be fundamentally undermined absent a full hearing, having regard to the concerns expressed by the Court of Appeal in *KJMJ* and *Nevin*. The minority acknowledged the judge’s admissions and willingness to undertake remedial measures, but questions remained as to whether such steps alone could restore confidence, particularly where the misconduct included the inappropriate treatment of Indigenous counsel and court workers. In addition, the perspective of Indigenous lawyers, court staff, and Indigenous people who may appear before the court is identified as a necessary component of the “reasonable, dispassionate and informed public” whose confidence is at stake; and

(Decision, at paras. 43 – 51)

3. The Judge’s mental health concerns were deserving of further, careful consideration and were not properly resolved at the Review Committee

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<sup>4</sup> Melanie Petrunia as nominee of the Nova Scotia Barristers’ Society.

stage, particularly given the serious nature of the misconduct to which they contributed.

(Decision, at paras 52 – 56)

[16] The Coalition filed for judicial review of the decision reached by the Review Committee’s majority. However, the Coalition requires public interest standing to proceed.

[17] In *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45 (“**Downtown Eastside**”), the Supreme Court of Canada confirmed that the following three factors inform the inquiry into public interest standing:

1. Whether there is a serious justiciable issue. This factor requires a preliminary assessment of the merits to confirm the existence of a non frivolous, justiciable claim. “Justiciability is linked to the concern about the proper role of the courts and their constitutional relationship to other branches of state. By insisting on the existence of a justiciable issue, the courts ensure that the exercise of their discretion with respect to standing is consistent with their proper constitutional role.” (*British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 (“**Council of Canadians with Disabilities**”), at para 48)
2. Whether the person seeking public interest standing exhibits a genuine interest in the issue, or, put differently, has a real stake or engagement with the issue, not a personal legal interest.
3. Whether the proposed litigation is, in all the circumstances, a reasonable, efficient and effective means of adjudicating the issues in question.

[18] These factors are not essential elements that must each be satisfied, in checklist fashion. Rather, they are considered and weighed flexibly and purposively. No single factor predominates; and none is necessarily determinative. Generally speaking, this approach allows the Court to balance:

1. The need to draw boundaries around when/why a person is granted public interest standing, having regard to the following constraints or imperatives:

- a. Avoiding busybody litigants;
  - b. Conserving scarce judicial resources;
  - c. Ensuring important legal issues are adjudicated with the benefit of contending viewpoints; and
  - d. Respecting institutional roles.
2. The principle of legality and related concerns around access to justice. Cromwell J. observed in *Downtown Eastside* that the principle of legality refers to two ideas: that state action must occur within the boundaries set by the Constitution and legislation and “that there must be practical and effective ways to challenge the legality of state action” (at para. 31). As to the second point, Cromwell J. emphasized that “*it would be strange and, indeed, alarming if there was no way in which a question of alleged excess of legislative power, a matter traditionally within the scope of judicial process, could be made the subject of adjudication.*” (at para. 31, emphasis in original decision).<sup>5</sup> In *Council of Canadians with Disabilities*, Wagner C.J. elaborated at paras. 33 - 34 that “if people cannot challenge government actions in court, individuals cannot hold the state to account – the government will be, or be seen to be, above the law” and that “[a]ccess to justice, like legality, is “fundamental to the rule of law”.”<sup>6</sup>

[19] The holistic and purposive test established in *Downtown Eastside* and elaborated upon in *Council of Canadians with Disabilities* (including the factors which guide the application of that test) is sufficiently robust to fully incorporate the unique concerns which arise in the context of decisions made by highly specialized judicial councils and, in particular, the critical need to recognize and safeguard the integrity of an independent judiciary which, together with the rule of law, stand as foundational principles for a constitutional democracy.

[20] Protecting the integrity of judicial independence engages two distinct and sometimes competing priorities:

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<sup>5</sup> Cromwell J. was quoting from the decision of Laskin J. in *Thorson v Canada (Attorney General)*, [1975] 1 S.C.R. 138

<sup>6</sup> Wagner CJ was quoting from the decision of McLachlin C.J. in *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59

1. Ensuring that judges remain intellectually and institutionally separated from all external influences—whether from government, litigants, the public, or personal financial interests—so they can decide cases impartially, based only on their understanding of the law and the evidence. Freedom from external pressures, inducements, or interference is not incidental but essential to independence; and
2. Where necessary, ensuring judges are accountable for their conduct. Maintaining public confidence and guaranteeing the institutional legitimacy of an independent judiciary may, at times, demand accountability in the form of investigative and disciplinary procedures which are capable of addressing judicial conduct issues in a way that formal appeal proceedings cannot. In *Re. Therrien*, 2001 SCC 35, Gonthier J. discussed the central and profoundly important role of judges as “the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect.” (at para. 109, but see paras. 108 – 111 generally)

[21] In *Moreau-Bérubé v. N.B. (Judicial Council)*, 2002 SCC 11 (“*Moreau-Bérubé*”), Arbour J. explained at para. 46, citations omitted:

“The integrity of the judiciary comprises two branches which may at times be in conflict with each other. It relates, first and foremost, to the institutional protection of the judiciary as a whole, and public perceptions of it, through the disciplinary process that allows the Council to investigate, reprimand, and potentially recommend the removal of judges where their conduct may threaten judicial integrity. Yet, it also relates to constitutional guarantees of judicial independence, which includes security of tenure and the freedom to speak and deliver judgment free from external pressures and influences of any kind.”

See also *Mackin v New Brunswick (Minister of Justice)*, 2002 SCC 13, at paras. 34 – 37.

### Serious Justiciable Issue

[22] In *Democracy Watch v. Ontario (Integrity Commissioner)*, 2025 ONCA 153, leave to appeal denied, [2025] S.C.C.A. No. 164, the Ontario Court of Appeal noted that it may be more difficult to establish a serious issue in applications challenging individual exercises of discretion:

[52] Although cases of public interest standing most often involve the validity of legislation, as in *CCD* and *Downtown Eastside*, it is now clear that public interest standing can be granted to challenge administrative state action: see *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6. In the final cumulative weighing required by *Downtown Eastside*, the seriousness of an issue may be viewed on a spectrum. **Applications challenging individual exercises of discretion may not always weigh as strongly in support of public interest standing as constitutional challenges to legislation, particularly when the decision under review does not affect many people:** see Lorne M. Sossin and Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed. (Toronto: Thomson Reuters Canada, 2024), at §3:19.

[Emphasis added]

[23] The Coalition has not challenged the constitutionality of the *PCA* which establishes the Nova Scotia Judicial Council and the judicial complaint process for Provincial Court judges. As a result, the Coalition's application must raise a serious justiciable issue regarding the statutory authority for the Review Committee's decision to resolve the complaints with Judge Bégin's agreement.

[24] The Coalition's application raises serious justiciable issues as to:

1. Whether the Review Committee's statutory interpretation of the scope of its discretion under s. 17G(b) of the *PCA* to resolve complaints of very serious misconduct with the judge's agreement is reasonable or whether it arrogates powers to a review committee that cannot be justified given the surrounding context. In particular, the Coalition raises a serious justiciable issue as to whether/how the Review Committee's statutory interpretation that s. 17G(b) empowers it to draw conclusions on the question of whether a judge's removal is "necessary"<sup>7</sup> or "an appropriate outcome"<sup>8</sup> may be reconciled with the simultaneous recognition, consistent with previous review committee decisions, that the Review Committee lacks the statutory power to make findings of judicial misconduct or to otherwise reach final conclusions on the merits of complaints.
2. Whether the Review Committee's statutory interpretation of s. 17G(b) of the *PCA* is reasonable in terms of authorizing a resolution agreement which purports to reprimand the judge and includes requirements for

<sup>7</sup> Review Committee Report dated March 24, 2025, Majority Decision, at paras. 22 and 26

<sup>8</sup> Review Committee Report dated March 24, 2025, Majority Decision, at para. 26

continuing, ongoing measures (e.g. psychological treatment and a three-year mentorship with a senior judge of the Provincial Court) in light of s. 17K, which grants certain powers to the quorum of the Judicial Council after a hearing, including the power to require the judge to obtain counseling, remedial treatment or instruction, and to impose such other non-monetary sanctions including reprimand, as the Judicial Council considers appropriate in the circumstances.

[25] It is neither necessary nor prudent to identify further legal issues raised by the Coalition’s application. In *Downtown Eastside*, Justice Cromwell cautioned that the Court should not examine the merits other than in a preliminary manner, and that “[o]nce it becomes clear that the statement of claim reveals at least one serious issue, it will usually not be necessary to minutely examine every pleaded claim for the purpose of the standing question” (at para. 42). That said, and recalling the necessity of recognizing the constitutional importance associated with preserving and protecting an independent judiciary, I am compelled to note that, for the reasons discussed below, these are sufficiently narrow and important as to warrant further discussion, particularly in light of the sparse case law regarding s. 17G(b) and the minimal manner in which the *PCA* addresses the judicial disciplinary process generally and the workings of a Review Committee specifically.<sup>9</sup>

[26] Finally and, again, while it is not necessary to address other legal issues raised, counsel for the Coalition confirmed that its application is focussed on an issue of statutory interpretation; namely, the nature and scope of the Review Committee’s

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<sup>9</sup> For comparison purposes, I note in *obiter* that the Review Committee’s procedures and mandate under the *PCA* are limited to the relatively brief provisions of ss. 17(F) and 17(G) under the *PCA*. Section 17(S) confirms that the Governor in Council may make regulations regarding payment of reasonable legal fees incurred by a judge in proceedings before the review and hearing committees.” However, no such regulations have been enacted. By contrast, the procedures and mandate for the Review Committee’s counterpart under the federal *Judges Act*, R.S.C. 1985, c. J-1 (called the “review panel”) is covered in detail between ss. 98 – 105 and specifically address a central concern which arises here. Section 101 states that “The review panel shall refer the complaint to the Council for the establishment of a full hearing panel if it determines that the judge’s removal from office could be justified.” Ontario’s Judicial Council developed a detailed “Procedural Document” for its complaint process consisting of an initial review by the complaint subcommittee. (primarily sections 8 -10). The subcommittee may recommend to a review panel that a hearing be held if the complaint alleges judicial misconduct that has a basis in fact and “could result in a finding of judicial misconduct if such facts are accepted by the Hearing Panel” (s. 10.5) The review panel’s procedures are detailed primarily in section 12. The remedial or procedural options available to the review panel are described in sections 12.4 – 12.11. Section 12.6 provides that the complaint *may* be ordered to a hearing if the majority of the review panel are of the opinion that the allegation of judicial misconduct has a basis in fact and the allegations, if believed by the Hearing Panel, could result in a finding of judicial misconduct. Section 12.8 provides the discretion to dismiss a complaint where, for example, “the evidence could not support a finding of judicial misconduct” (section 12.8(e)). S. 12.9 requires (the language is mandatory) that the complaint be referred to the Chief Justice of the Ontario Court of Justice if this is a “suitable means” of informing the judge that their conduct “was not appropriate in the circumstances”; the conduct “does not warrant another disposition”; and “there is some merit to the complaint”.

statutory power to resolve a complaint under s. 17G(b) of the *PCA*. Thus, for example, it would not delve into the propriety of the outcome in terms of the judge's mental health concerns.

[27] In response, Judge Bégin argued that the Coalition has not raised a serious justiciable issue and that its application has no prospect of success on the merits. Relying on *Brinton v. The Judicial Council of Nova Scotia et al.*, 2024 NSSC 397, Judge Bégin contended that the legislature clearly gave a review committee the authority to resolve complaints with the agreement of the judge. Moreover, importantly, the legislature did not set criteria for when resolution is appropriate. Instead, the legislature left it to the Judicial Council to “fill in any gaps” in the legislation and determine its own policies and procedures. Judge Bégin argued that the majority's decision was an exercise of discretion which bears all the hallmarks of reasonableness: it was transparent, intelligible, and clearly anchored in its statutory authority. Under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (“*Vavilov*”), no issue of reasonableness arises. Judge Bégin accepts that the Coalition may legitimately dislike the process contemplated under the *PCA* and the result reached by a majority of the Review Committee. However, Judge Bégin maintains that does not amount to a justiciable issue. Rather, it is an issue for the legislature who might then consider potentially amending the *PCA*.

[28] In my view, having assessed the claim in a preliminary manner, the Coalition's application for judicial review raises a serious issue regarding the Review Committee's statutory authority to resolve complaints of very serious judicial misconduct with the judge's agreement rather than referring them to a hearing. These issues are far from frivolous and are linked to fundamental concerns regarding judicial misconduct and, more specifically, the manner in which these issues may be addressed under the *PCA*.

[29] While Judge Bégin is correct that the legislature did not expressly limit the Review Committee's discretion to resolve a complaint under s. 17G(b), it does not follow that this discretion is unlimited. “There is no such thing as absolute and untrammelled ‘discretion’”, and any exercise of discretion must accord with the purposes for which it was given.” (*Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 140, and cited in *Vavilov*, at para. 108).

[30] In interpreting the scope of its discretion to resolve complaints under s. 17G(b), the Review Committee, like any other statutory decision maker, was constrained by the relevant legal and factual considerations, including “the

governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies” (*Vavilov*, at para. 106).

[31] In this case, the majority decided that removal from judicial office was unnecessary as the resolution was sufficient to maintain public confidence in the administration of justice because the judge made significant admissions; the broad nature of the terms of resolution; positive input from the Chief Judge; and the absence of any ongoing concerns since March 2024. (Decision, at para. 26)

[32] Against the backdrop of that outcome and in accordance with *Vavilov*, the additional, relevant surrounding context begins with the facts and evidence before the Review Committee. Here, those facts that featured most prominently relate to the nature of the behaviour in question. The judge admitted to “very serious misconduct” (Decision at para. 26(a)) – an admission which is otherwise plain from the Court of Appeal’s findings in *K.J.M.J.* and *Nevin*. These specific facts also help dispel any concerns that public interest standing may be abused in a way which undermines or otherwise threatens judicial independence. This decision is informed, in part, by these specific, exceptional facts. To the extent they support a finding that a serious justiciable issue has arisen, they cannot reasonably also be misconstrued as an external threat to judges or, for example, promoting or easily permitting disciplinary proceedings against judges whose decisions may be disliked or unpopular.

[33] Turning to the statutory scheme and role of the Review Committee, under s. 17G and as indicated, the Review Committee maintains the initial authority to “investigate” a complaint and then either dismiss the complaint; resolve the complaint; or refer the complaint to hearing. However, under s. 17K, the power to make findings of misconduct; to require the judge to obtain counseling, remedial treatment or instruction; to impose non-monetary sanctions like reprimands; or to recommend that the judge be removed from office are reserved to a hearing committee. Here again, the manner in which these powers interact reinforces the serious justiciable nature of the questions raised by the Coalition.

[34] Before leaving the issue of the Review Committee’s proper role under s. 17G, I note that this issue was considered in the Review Committee’s decision in *Re Judge Lenehan* (“***Re Lenehan***”) and the Review Committee’s decision in *Re Judge*

*Murphy* (“**Re Murphy**”). In *Re Lenehan*, the Review Committee held that its role, as an investigative committee, was to answer the following question:

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?

[35] Judge Bégin argued that the majority’s decision to resolve the complaints rather than refer them to a hearing is consistent with the *Re Lenehan* test, since resolution under s. 17G(b) “is a disposition other than dismissal of the complaints.” The Coalition argued, on the other hand, that the majority of the Review Committee misapplied the *Re Lenehan* test, and that once it was satisfied that the complaints could result in a finding of judicial misconduct, the majority was required to refer the complaints to a hearing.

[36] In *Re Murphy*, the Review Committee described its role as follows:

**“It was not the function of the review committee to reach any final conclusion with respect to the merits of the complaint** by Mr. Howe. Any such determination was the responsibility of the Judicial Council in the event that the complaint was referred to them for a hearing. The committee’s role in the broadest sense is to investigate the complaint to determine whether the allegations could objectively amount to findings of judicial misconduct that warrant a formal hearing.”

[Emphasis added]

[37] Even if one accepts Judge Bégin’s argument that a review committee may resolve a complaint under s. 17G(b) in some cases even where it finds that the impugned conduct could support a finding of judicial misconduct, a serious justiciable issue exists as to the reasonableness of the majority’s interpretation that a review committee – an investigative committee with no power to make findings of judicial misconduct or to reach any final conclusions with respect to the merits of complaints – can resolve complaints of even very serious misconduct with the judge’s agreement as long as it concludes that the judge’s removal from judicial office is not necessary, and that the agreed resolution is capable of maintaining the public’s confidence in the judge’s ability to perform the duties of his office and in the administration of justice generally.

[38] For clarity and emphasis, I make no findings as to how the serious justiciable issues raised by the Coalition should be determined. These reasons should not be interpreted otherwise. I simply conclude that, in these circumstances, serious justiciable issues arise for the purposes of the test for public interest standing. Absent further review and direction on these issues, the process threatens public trust and risks being viewed as exceedingly *ad hoc* or, worse, arbitrary.

### **Genuine Interest**

[39] The Coalition has a genuine interest because each member organization works daily within Nova Scotia's justice system and has a direct connection to the misconduct underlying the Review Committee's decision. Their mandates, expertise, and experience give them a real stake in the fairness, transparency, and integrity of the judicial discipline process—not a merely ideological or generalized concern. (See the Coalition's written submissions at paras. 62 – 69)

[40] Judge Bégin relied on *Canadian Elevator Industry Education Program v. Nova Scotia (Elevators and Lifts)* 2016 NSCA 80 ("**Canadian Elevator**"), for the proposition that the Coalition's interest in the Review Committee's process is no greater than that of the legal community generally or public at large. In other words, its general interest in the outcome was simply too diffuse to be sufficiently genuine.

[41] However, *Canadian Elevator* turned on the absence of public interest standing because the applicant's claim of public safety amounted to a generalized concern shared by everyone, produced only marginal practical effects, and directly affected a small, identifiable group that could pursue its own remedies.

[42] *Canadian Elevator* was an appeal by the Trustees of the Canadian Elevator Industry Education Program ("CEIEP") from a declaration that they had no standing to object to certificates of competency issued by the Chief Inspector. Mechanics working on elevators in Nova Scotia were required to have a certificate of competency which required completion of a training program provided by CEIEP or another equivalent education program acceptable to the Chief Inspector. CEIEP training was unavailable to those who worked for non-unionized companies. The Chief Inspector accepted and the Director later approved, a program offered by the Elevating Devices Training Academy as an appropriate equivalent to CEIEP training. The individual respondents were employees of non-unionized businesses who took the Academy program. The corporate respondent employed five of them.

[43] Upon learning that the individual respondents had been granted certificates of competency, the Trustees of CEIEP applied for judicial review. The Chief Inspector and the Director (collectively the "Province") objected to the Trustees' standing to complain about authorization of a program which they did not offer, for which they were not responsible, and for mechanics whom they would not train.

[44] The Court of Appeal rejected the Trustees' claim of a "genuine interest," finding that their asserted expertise, regulatory recognition, and concern for public safety showed merely an interest in protecting their own program, not in the discretionary decision under review. Their safety concerns were no different from those of the public at large, and the challenged decision had only marginal impact, affecting five individuals and a program no longer offered. (at paras. 61 -66)

[45] Given the narrow scope and limited consequences of the dispute, pursuing judicial review was not a proper or economical use of judicial resources, particularly where those directly affected had their own avenues of appeal. By contrast, in this case, the issues at stake involve a distinct, systemic interest in the scope of judicial discipline and much wider public consequences.

[46] Finally, with respect to concerns around the integrity of an independent judiciary, non-parties must not be easily granted leave to insinuate themselves into judicial disciplinary proceedings and emerge as a external force that, directly or indirectly, begins to threaten or diminish judicial independence. I am satisfied that this is not the case here. The Coalition (collectively or as individual members) is decidedly not a "busybody" whose involvement may distort or undermine judicial independent. Each member of the Coalition has established reputations, ongoing engagement with the courts, and clear links to the issues raised by Judge Bégin's conduct and its implications for public confidence in the judiciary.

### **Reasonable, Efficient and Effective Means**

[47] The proposed judicial review is also a reasonable, efficient, and effective means of adjudicating the issues. This factor is assessed purposively, flexibly, and pragmatically. It has rarely been applied strictly and takes into account relevant contextual issues such as judicial economy, adversarial suitability, the capacity of the party seeking public interest standing, the public importance of the issue, realistic alternative proceedings, and the potential impact on others, rather than theoretical or mechanical criteria. (*Downtown Eastside*, at paras. 44 – 51)

[48] In *Council of Canadians with Disabilities*, Wagner C.J. elaborated upon the importance of legality and access to justice in connection with this factor. He confirmed that the principle of legality requires both that “state action must conform to the law” and that there be “practical and effective ways to challenge the legality of state action” (at para. 33). Without court access, Wagner, CJ continued, the spectre arises that “the government will be, or be seen to be, above the law” (at para. 33). Public interest standing serves these principles by providing “an avenue to litigate the legality of government action” where barriers prevent direct challenges (at para. 36).

[49] In this case, no other realistic challenger exists to bring these issues forward. The only formal parties - Judge Alain Bégin and the Judicial Council - agreed to the resolution. Chief Judge Borden wrote a letter in support. Without public interest standing, serious questions about the Review Committee’s statutory authority would be effectively immunized from review. The Coalition has the capacity, expertise, and perspective necessary to efficiently assist the court, and its challenge promotes legality, access to justice, and public confidence in judicial discipline. In my view, the judicial review process in these specific circumstances would enhance (not compromise) the integrity of an independent judiciary.

## **Conclusion**

[50] The Coalition’s motion for public interest standing is granted.

Keith, J.