

In the Matter of Complaints against Judge Alain Bégin
made pursuant to the *Provincial Court Act*, RSNS 1989, c 238

REPORT OF THE REVIEW COMMITTEE
March 24, 2025

Judge Alan Tufts, Chair
Melanie Petrunia, NSBS representative
Joseph Gillis, public representative

Members of the Review Committee

Overview of complaints and role of the Review Committee

1. Chief Judge Perry Borden initiated three complaints against Judge Alain Bégin, pursuant to s. 17(D)(2) of the *Provincial Court Act* (“PCA”), by letter to the Chair of the Nova Scotia Judicial Council:
 - a. On December 4, 2023, Chief Judge Borden initiated a complaint based on issues identified in the decision of the Nova Scotia Court of Appeal in *R. v. KJMJ*, 2023 NSCA 84 (the “KJMJ complaint”);
 - b. On February 26, 2024, Chief Judge Borden initiated a complaint based on an anonymous letter received on January 10, 2024, by Chief Justice Smith regarding the judicial conduct of Judge Bégin, including at a specific sentencing hearing in September 2021 in the matter of *R. v. Cairns* (the “anonymous complaint”); and
 - c. On April 3, 2024, Chief Judge Borden initiated a complaint based on his review of materials filed at the Nova Scotia Court of Appeal on behalf of the appellant in *R v. Nevin* (the “Nevin complaint”). That appeal was heard on June 11, 2024, and the decision was later reported at 2024 NSCA 64.
2. On January 2, 2024, in accordance with s. 17E of the *PCA*, Chief Justice Deborah Smith, in her capacity as Acting Chair of the Nova Scotia Judicial Council, empaneled a Review Committee to consider the *KJMJ* complaint. The anonymous complaint was referred to the same Review Committee on February 27, 2024. The *Nevin* complaint was referred to the same Review Committee on April 17, 2024.
3. The Review Committee’s mandate is set out in s. 17G of the *PCA*, which provides:

Duties and powers of review committee

17G The review committee shall investigate the complaint and may

(a) dismiss the complaint;

(b) resolve the complaint with the agreement of the judge; or

(c) refer the complaint to a hearing before the Judicial Council.

4. As explained by previously constituted Review Committees under the *PCA*, the role of the Review Committee is to determine “whether allegations could objectively amount to findings of judicial misconduct that warrant a formal

hearing”.¹ In making this determination, the Review Committee is required to consider:²

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 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?

5. The Review Committee has no power to make an order or to make a finding of judicial misconduct. Instead, if a complaint against a judge is referred to a hearing before a quorum of the Judicial Council, the potential outcomes are set out in s. 17K of the *PCA* as follows:

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

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

¹ *Re Judge Lenehan*, para 4; 2024 NSSC 397 at para 143.

² See *Re Judge Lenehan*, para 45; *Re Judge Murphy*, para 23; 2024 NSSC 397 at para 144.

6. Only the Governor in Council can remove a judge from office, following the recommendation of the Attorney General, per s. 17L and 17M of the *PCA*.
7. During the course of the investigation, the member of the Review Committee appointed by Council of the Nova Scotia Barristers' Society (NSBS) became unable to carry out their duties due to illness. That member was replaced by Melanie Petrunia in accordance with s. 16(2)(f) of the *PCA*, in July 2024.
8. Judge Bégin was represented throughout by counsel, Frank Addario and Cori Singer.

Investigation

9. The scope of the *KJMJ* and *Nevin* complaints were those issues raised by the decision of the Court of Appeal and by the appeal record that the Court considered. Aside from the reference to proceedings in *R v Cairns*, the Review Committee concluded that there were not sufficient particulars to reasonably investigate other aspects of the anonymous complaint. No individual ever came forward to take responsibility for making that complaint or to offer additional evidence to support the allegations contained therein.
10. The Review Committee's investigation included a review of the following materials collected by the committee or submitted by the judge;
 - a. Complete appeal record from *R v. KJMJ*;
 - b. Complete appeal record from *R v. Nevin*;
 - c. Audio recording from *R v. Cairns* in Truro Provincial Court;
 - d. Interviews of individuals involved in court proceedings which were the subject of the complaints:
 - i. Laura Barrett (Crown attorney, *R v KJMJ*);
 - ii. Nicholas Hoehne (defence, *R v KJMJ*);
 - iii. Malcolm Jeffcock (defence, *R v Cairns*);
 - iv. Judge Pamela Williams (former Chief Judge of the Provincial Court);
 - v. Mona O'Brien and Paula Marshall (MLSN, *R v Nevin*); and

- vi. Jeremiah Raining Bird (defence, *R v Nevin*).
 - e. Interview of Judge Bégin;
 - f. A letter of support from psychologist Dr. Alana Lord regarding her experiences with Judge Bégin in the Truro Wellness Court;
 - g. Letters of support provided by four Judges of the Provincial Court;
 - h. A letter of support from Chief Judge Borden which indicated his belief that “Judge Bégin does not need to be suspended or removed from the Bench in order to protect the administration of justice” and that he “would be pleased to continue to work with him in his capacity as a Judge moving forward”; and
 - i. Medical evidence submitted by Judge Bégin from treating providers and two independent experts regarding his mental health.
11. In assessing Judge Bégin’s conduct, the Review Committee referred to the Canadian Judicial Council’s *Ethical Principles for Judges*.³
 12. All of the investigative materials (including transcripts of interviews conducted by the Review Committee) were provided to Judge Bégin for his response before the conclusion of the Review Committee’s process.

Submissions

13. Counsel for Judge Bégin were provided with the opportunity to make written and oral submissions on the evidence collected by the Review Committee.
14. The Nova Scotia Barristers’ Society released *Regaining Trust: The Ruck Report*, on October 29, 2024, after counsel for Judge Bégin had completed their submissions. The Ruck Report was received and considered by the Review Committee. Accordingly, counsel for Judge Bégin was offered the opportunity to and did make supplementary submissions regarding the impact of the Ruck Report on the Review Committee’s work, in writing.
15. The last submissions on behalf of Judge Bégin were received by the Committee on January 13, 2025.

³ *Re Judge Lenehan*, para 27, 118.

Outcome of Review Committee process

16. After completing an investigation into all three complaints, the Review Committee agreed that the impugned conduct, if proven or admitted, could support a finding of judicial misconduct and that dismissal of the complaints was not appropriate.
17. However, the Review Committee was not unanimous regarding the outcome of the investigation process.
18. A majority of the Review Committee comprised of Judge Alan Tufts and public representative Joseph Gillis concluded that it was appropriate to resolve the three complaints with the agreement of Judge Bégin.
19. NSBS nominee Melanie Petrunia concluded that the complaints should have been referred to a hearing before the Judicial Council, and did not join in support of the resolution.
20. The reasons for the majority decision, as well as Ms. Petrunia's dissenting reasons are set out in the following sections of the Report.

MAJORITY DECISION

21. A majority of the Review Committee members and Judge Bégin have agreed that the investigation supports the following conclusions about Judge Bégin's judicial conduct, which have been admitted by the judge:

Complaint #1: re R. v. KJMJ

- a) Judge Bégin's conduct as trial judge in R. v. KJMJ was described by the Nova Scotia Court of Appeal in its decision overturning the conviction of the accused based on a reasonable apprehension of bias, 2023 NSCA 84. In addition to legal errors outlined by the Court of Appeal, the Judge's conduct also offended the ethical principles applicable to judges.
- b) The Judge's conduct undermined public respect for the judiciary and fell below the standard of integrity required of a judge (EPJ, s. 2.A), when he:
 - a. requested that certain comments he made on the record not be included in the trial transcript;
 - b. asserted to the Court of Appeal that there had been "a clear agreement" between himself and counsel that his impugned remarks would be "off the record", when no such agreement had been made; and
 - c. asserted to the Court of Appeal that his comments on the record were covered by a non-existent legal privilege, and therefore should not form part of the appeal record.
- c) The Judge's conduct breached his responsibility to treat everyone with civility and respect in the performance of his judicial duties (EPJ, s. 2.C.4) in his comments directed at the accused.
- d) The Judge's conduct fell below the standard of competence and diligence in his demonstration of knowledge of substantive and procedural law, as well as his understanding of the impact of the law (EPJ, s. 3.C.2), when he:
 - a. offered comment on the merits of a criminal matter prior to hearing argument, contrary to the accused's presumption of innocence and right to make full answer and defence; and
 - b. claimed that his comments were off the record or covered by a non-existent legal privilege, contrary to the open court principle and the accused's right to meaningful appellate review.
- e) The Judge's conduct violated the requirement of judicial impartiality (EPJ, s. 5.A.5) when he:

- a. expressed a predetermination of guilt on one charge, in advance of hearing argument;
- b. expressed comment on the accused's character and credibility, in advance of hearing argument; and
- c. attempted to expunge his comments from the record at trial.

Complaint #2: anonymous complaint

- f) On September 13, 2021, Judge Bégin presided over the sentencing in R. v. Cairns, a sexual assault case. During his sentencing decision, Judge Bégin attempted to offer the defendant some encouragement about her rehabilitation following conviction. In doing so, he referred to the sexual assault as an "aggressive pass" and used other language which could have reasonably been interpreted as minimizing of the seriousness of the sexual assault. His comments did not reflect the evidence he heard or his trial decision in the matter. In making these comments, Judge Bégin's conduct could lead a reasonable and informed member of the public to lack confidence in the Judge's respect for and commitment to equality and dignity of the complainant or victims of sexual assault more broadly (EPJ, s. 4.B.1, s. 4.C.1).

Complaint #3: re R. v. Nevin

- g) Judge Bégin's conduct as trial judge in R. v. Nevin was described by the Nova Scotia Court of Appeal in its decision overturning the conviction of the accused based on a reasonable apprehension of bias, 2024 NSCA 64. In addition to legal errors outlined by the Court of Appeal, the Judge's conduct also offended the ethical principles applicable to judges.
- h) The Judge's conduct breached his responsibility to treat everyone with civility and respect in the performance of his judicial duties (EPJ, 2.C) when he:
 - i. commented about indigenous offenders not before the Court (EPJ, 2.C.4);
 - ii. improperly attributed negative comments about a member of the Bar to another sitting judge; and
 - iii. in the manner that he treated defence counsel, Jeremiah Raining Bird.
- i) The Judge's conduct fell below the standard of competence and diligence in his demonstration of knowledge of substantive and procedural law, as well as his understanding of the impact of the law (EPJ, s. 3.C.2), when he:

- i. violated basic principles of procedural fairness in his conduct of the recusal motion;
- j) The Judge's conduct violated the requirement of judicial impartiality during the conduct of the recusal motion (EPJ, s. 5.A.5) when he:
 - i. expressed a predetermination of the merits of the motion by characterizing the basis of the motion as a "baseless allegation";
 - ii. entered into the fray by calling his own witnesses and deprived the defence of a fair and unbiased hearing;
 - iii. ruled on objections to his own questions during examination of his own witnesses; and
 - iv. made inappropriate and unjustified allegations against defence counsel which undermined the integrity of the defence.
- k) The Judge abused his authority and conducted himself in a manner which would lead a reasonable and informed member of the public to lack confidence in the Judge's respect for and commitment to equality (EPJ, s. 2.E.2, s. 4.A.2, s. 4.B.1, s. 4.C.1), when he:
 - i. referred to Indigenous court workers as representatives of the Indigenous community at large, despite their clear evidence to the contrary;
 - ii. used his influence as a judge to elicit supportive testimony from Indigenous court workers regarding his "relationship with Indigenous persons" without consideration of how his authority would impact on the voluntariness of their participation;
 - iii. placed Indigenous court workers in a position in conflict with their duties to Indigenous clients and community, by asking them to serve the interests of the Judge or the court instead;
 - iv. failed to consider the adverse impact of his actions on the witnesses he asked to appear as a result of their individual and professional identities as Indigenous court workers;
 - v. made inappropriate reference to the circumstances of other Indigenous offenders, and his own role and involvement in their cases;
 - vi. overstepped boundaries in his role as a provincial court judge during interactions with representatives of MLSN;

- vii. demonstrated discourtesy and unfair treatment towards an Indigenous member of the bar by unfairly questioning his integrity and competence, without consideration of the discriminatory impact of his actions, which included personal impact on Mr. Raining Bird, impact on the Indigenous defendant, and community impact by depriving Millbrook First Nation of an Indigenous lawyer willing to take on legal aid work.
22. The majority of the Review Committee has determined that it is appropriate to resolve the complaints with the agreement of Judge Bégin in accordance with s. 17G(b) of the *PCA*, on the terms set out in **Appendix A** to this Report. The majority concluded that Judge Bégin's removal from judicial office was not necessary and that the agreed resolution would be 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.
23. This determination was made based on substantial admissions made by the Judge about his conduct in respect of all three complaints, with reference to the applicable *Ethical Principles for Judges*, and in light of medical evidence submitted to the Review Committee. In particular, the majority was satisfied that the Judge was capable of performing the duties of his office going forward, and that the public's confidence in the administration of justice could be addressed by the remedial provisions of the resolution agreement and by the publication of Judge Bégin's admissions. Judge Bégin's agreement to be reprimanded conveys a public denunciation of the conduct.
24. The majority considered medical evidence from independent experts in psychology and psychiatry, his treating professionals, as well as Judge Bégin's own account of his experiences struggling with his mental health. This evidence satisfied the majority of the Review Committee that he was suffering from a untreated and undiagnosed mental health disorder during the period of time when the impugned conduct arose, and that mental health was a significant factor in understanding Judge Bégin's conduct. The evidence also demonstrated that Judge Bégin had taken the positive steps to seek treatment and make the lifestyle changes necessary to address these concerns going forward. Though Judge Bégin's mental health disorder was in remission, ongoing treatment will be required. Mental health challenges are not unknown in the legal community in Canada, including among the judiciary.⁴
25. The relationship between Judge Bégin's personal medical issues and his conduct was a key factor for the majority's conclusion that removal was not an appropriate

⁴ See for example, The Honorable Justice Michelle O'Bonsawin, *Provincial Judges Journal* Vol. 37 No. 2 at Pg. 42.

outcome for the complaints. While it did not excuse or mitigate its impact, it does help to explain how and why the misconduct occurred.

26. The majority considered whether public confidence in the administration of justice could be maintained by the resolution, and without a hearing to determine whether removal was the appropriate outcome. In coming to the conclusion that no hearing was necessary, the majority of the Review Committee considered:
- a. **The significant admissions made by the judge.** The majority concluded that Judge Bégin’s admission of very serious misconduct, as particularized above and reproduced in the resolution agreement, demonstrated his acknowledgment of the impropriety and negative impact of his actions on the individuals involved in the cases at issue and on the justice system more broadly. Judge Bégin has insight into the seriousness of his conduct and its impact on those directly affected as well as on the administration of justice generally. He is aware of his mental health challenges and has committed to ongoing monitoring and treatment.
 - b. **The broad remedial provisions of the agreed resolution.** The majority was 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;
 - c. **The input of the Chief Judge, who had referred the complaints for investigation.** In August 2024, the Chief Judge provided an unequivocally supportive and positive letter to Judge Bégin’s counsel to advise the Review Committee noting that he had not suspended Judge Bégin during the investigation process and continued to believe that it was not necessary for Judge Bégin to be suspended or removed from office as a result of the complaints in order to protect the administration of justice; and
 - d. **The absence of any evidence of ongoing concerns.** After a brief medical leave, Judge Bégin has been sitting as a provincial court judge on a part-time basis since March 2024, and on a full-time basis since June 2024, without any new issues being reported to the Review Committee.



Judge Alan Tufts, Chair



Joseph Gillis, public representative

DISSENTING REASONS

27. After conducting an investigation, this Review Committee was required to exercise its authority under s. 17G of the *Provincial Court Act* to either (a) dismiss the complaints; (b) resolve the complaints with the agreement of the judge; or (c) refer the complaints to a hearing before the Judicial Council.

28. As set out in the Report of the Review Committee, in determining the appropriate outcome for the complaints, this committee is mandated to consider 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 a dismissal of the complaints in order to restore that confidence?⁵

29. The Review Committee has answered this question in the affirmative. Judge Bégin's impugned conduct could support a finding of misconduct. Indeed, Judge Bégin has acknowledged in the Resolution Agreement numerous instances in which his conduct breached the Canadian Judicial Council's "Ethical Principles for Judges" (EPJ).

30. In finding that the impugned conduct could support a finding of misconduct, the Review Committee is unanimous in its agreement that a disposition other than dismissal of the complaints is warranted in order to restore the public's confidence in the ability of the judge to perform the duties of office, or in the administration of justice, generally.

31. Judge Bégin acknowledges that his conduct breached the expected standards set out in the EPJ and is willing to engage in the remedial steps set out in the Resolution Agreement. The question then, for the Review Committee, is whether the matters should be referred to a hearing, despite the willingness of the judge to resolve the complaints.

⁵ See *Re Judge Lenehan*, para 45; *Re Judge Murphy*, para 23; 2024 NSSC 397 at para 144.

32. There is no precedent in Nova Scotia concerning when a hearing, as opposed to a resolution, is required or preferred. Past Review Committee decisions in Nova Scotia have focused on whether the conduct at issue could support a finding of judicial misconduct. In those cases, the Review Committees determined that the conduct complained of could not support such a finding.⁶
33. It is up to the Review Committee to determine what factors to consider in deciding whether to resolve the complaints by agreement or to refer to a hearing. As recently noted by the Nova Scotia Supreme Court in *Brinton v. The Judicial Council of Nova Scotia et al*:

While the *Act* establishes the Judicial Council and outlines the basic complaints process, the statute is silent on many important matters faced by the Judicial Council. There are no regulations governing the Judicial Council's procedures. Instead, the legislature has provided the Judicial Council with significant latitude to interpret the relevant provisions of the *Act* and fill in any gaps.⁷

34. I am of the view that a complaint should be referred to a hearing panel in the following circumstances:
- i. the conduct rises to the level where removal *may* be warranted;
 - ii. public confidence in the administration of justice requires a hearing;
 - or
 - iii. the complaint raises contested evidentiary or novel legal issues.
35. In light of the totality of the information reviewed by the Review Committee in considering the referred complaints, I am of the opinion that all of the above considerations apply in this matter.

Removal *may* be warranted

36. In my view, if the conduct rises to the level where removal might be justified, it is not appropriate for the Review Committee to resolve the complaint with agreement of the judge to a lesser sanction, and the matter should be referred to a hearing.

⁶ See *Re Judge Lenehan* and *Re Judge Murphy*

⁷ *Brinton v. The Judicial Council of Nova Scotia et al*, 2024 NSSC 397 at para 68.

This approach is consistent with the Canadian Judicial Council (CJC) procedures applicable to the review of complaints about federally appointed judges.⁸

37. The well-established test for removal from judicial office is whether the conduct is “so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office”.⁹
38. In *National Council of Canadian Muslims v. Canada (Attorney General)*,¹⁰ the Federal Court judicially reviewed a decision of the Judicial Conduct Committee of the CJC not to refer complaints against a judge to an Inquiry Committee.
39. The Court found that the decision of the CJC was reasonable, and endorsed the test applied by the Review Panel when considering whether the conduct was serious enough to warrant the constitution of an Inquiry Committee, under the previous CJC By-laws.¹¹ The Court states:

[155] The Review Panel noted that its task was to determine whether an Inquiry Committee should be constituted to inquire into Justice Spiro’s conduct. In accordance with subsection 2(4) of the *By-laws*, the Review Panel may do so “only if it determines that the matter might be serious enough to warrant the removal of the judge.” The Review Panel acknowledged that the “might be serious enough” threshold is undefined, but falls somewhere between a probability of “slim to none” and a “balance of probabilities.”

[156] In other words, the Review Panel is required to determine whether there is some (even slim) chance that an Inquiry Committee would find the judge’s conduct so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that public confidence would be irreparably undermined.

40. In the absence of any precedent in Nova Scotia, I find the test articulated by the Review Panel, and cited with approval by the Federal Court, instructive. Applying

⁸ See *Canadian Judicial Council Procedures for the Review of Complaints or Allegation About Federally Appointed Judges*, [Review Procedures (2023)] at s. 8.9.

⁹ *Therrien (Re)*, 2001 SCC 35 at para 147.

¹⁰ *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087.

¹¹ See *Canadian Judicial Council Inquiries and Investigations By-Laws*, 2015 at ss. 2(4) which stated that a review panel may decide that an Inquiry Committee should be constituted only when removal could be warranted. The new *Review Procedures (2023)* at s. 8.9 provide that the Review Panel shall refer when removal could be justified.

this test to the complaints at hand, considering the seriousness of the alleged misconduct, I find that there is some chance that a Hearing Panel could determine that removal is warranted. Or put another way, I cannot agree that there is no chance a Hearing Panel could make such a determination.

41. The Resolution Agreement includes numerous breaches of the principles of integrity and respect, equality and impartiality outlined in the EPJ. These principles are noted in the commentary to be closely linked to public confidence in the administration of justice.¹² The fact that Judge Bégin’s alleged misconduct includes such serious breaches of these principles supports a determination that removal *could* be an appropriate outcome to these complaints.
42. I find that the conduct rises to a level which *could* render the judge 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. The complaints should be referred to a Hearing Panel to determine whether such a serious sanction is necessary.

Public confidence in the administration of justice warrants a hearing

43. In my view, the Court of Appeal’s comments about Judge Bégin’s conduct (as distinct from legal errors he may have committed) in *R v. KJMJ* and *R v. Nevin* establish that public confidence in the administration of justice is very much at issue.¹³
44. For example, the conduct of Judge Bégin was variously described in *R v. KJMJ* as “astonishing”, “startling”, “alarming” and “disturbing”.¹⁴ The Court concluded:

[97] The judge’s statements prior to conclusion of trial concerning K.J.M.J.’s credibility and his guilt respecting at least one charge transcend injudicious musing. They displace the high bar of the presumption of judicial impartiality. They give rise to a reasonable apprehension of bias. That apprehension is amplified, not dispelled, by the judge’s attempt to conceal the remarks provoking that apprehension.

[98] The judge’s premature conclusions and intemperate conduct denied K.J.M.J. the presumption of innocence, the right to make full answer and defence, and could have impaired the open court principle and appellate review.

¹² See Canadian Judicial Council, Ethical Principles for Judges, Commentary at 2.A.1, 4.A.2 and 5.A.1.

¹³ *R. v. K.J.M.J.*, 2023 NSCA 84 (*KJMJ*) and *R. v. Nevin*, 2024 NSCA 64 (*Nevin*).

¹⁴ *KJMJ* at paras 1, 14, 42, 47, 96.

[99] It is most unfortunate that the judge's behaviour has resulted in much wasted time, expense and distress for all concerned. But for the foregoing reasons, the convictions should be set aside and a new trial ordered.

45. The Court of Appeal described *R v. Nevin* as a “reasonable apprehension of bias case unlike any other”, and commented that the hearing of the appeal was “a sad day for the administration of justice in Nova Scotia”.¹⁵ It concluded that Judge Bégin’s conduct was “so offensive to societal notions of fair play that to continue with the proceeding would be harmful to the integrity of the judicial system”.¹⁶ The Court noted that “if this case is not an affront to the administration of justice, it is hard to imagine a case that would be”.¹⁷
46. These comments from the Court of Appeal signal a need to provide transparency and accountability to the public in the review of judicial conduct. There may well be a basis for Judge Bégin to establish that his removal from the bench is not warranted. In my view, that determination should happen before a Hearing Panel, and not by agreement between the judge and the Review Committee without the opportunity to test the evidence or hear alternative perspectives.
47. In saying this, I am mindful that Judge Bégin has made significant admissions regarding his conduct and has agreed to engage in meaningful remedial steps. I do not discount the positive impact that the Resolution Agreement may have on public confidence in the justice system.
48. It is worth noting that a number of the instances of alleged misconduct arose in the *Nevin* matter a result of Judge Bégin’s inappropriate treatment of Indigenous counsel and court workers.¹⁸ In determining the point of view of the “reasonable, dispassionate and informed public” the views of Indigenous lawyers, court workers, and Indigenous people who may come before the Provincial Court as complainants, witnesses or accused persons must be considered.
49. In a matter before the CJC regarding complaints about a federally appointed judge in relation to his conduct during a sexual assault trial, the Inquiry Committee noted the importance of including the perspectives of sexual assault victims when considering the reasonable person. The Inquiry Committee stated:

¹⁵ *Nevin* at paras 1 and 128.

¹⁶ *Nevin* at para 121.

¹⁷ *Nevin* at para 128.

¹⁸ See the Resolution Agreement at 1(h) and (k).

The Intervener Coalition submitted that, conceptually, the reasonable person “must include the perspective of survivors of sexual assault, and marginalized women generally, as they are entitled to a judiciary that rejects sexual myths and stereotypes and understands and respects equality.” We agree. A judge performs a unique role in society and his or her capacity to continue in the execution of that role cannot be judged without regard to the perspective of those who would most likely be affected by the Judge remaining in office. That is not to say that such a perspective is the sole or the dominant one in evaluating public confidence, but it is one that should be included, and must be understood.¹⁹

50. A hearing would allow for proper consideration of the impact of the Judge’s behaviour on the Indigenous community, in light of the principle of reconciliation. If the matter was referred to a hearing, the Judicial Council could hear directly from affected individuals and groups and could accept submissions from qualified interveners such as public interest organizations or members of the community.²⁰
51. Without taking into account the perspective of the Indigenous community, I cannot conclude, as the majority has, that a resolution by agreement made directly with the judge can restore “the public’s confidence in the ability of the judge to perform the duties of office, or in the administration of justice generally,” in this context.

Mental illness as a factor requires determination at a hearing

52. Judge Bégin has submitted that the Judicial Council is obliged to consider his mental health in determining the appropriate outcome in relation to his alleged misconduct, and that the proper question for the Review Committee to consider is whether he is fit to continue on the bench or can be accommodated. The majority has considered the medical evidence advanced by Judge Bégin during the course of the Review Committee’s investigation and relied on this evidence to conclude that a resolution is a preferable outcome to a hearing.
53. I do not diminish the significance of the mental health concerns raised by Judge Bégin. However, in light of the nature and seriousness of the judge’s alleged

¹⁹ *Report and Recommendation of the Inquiry Committee in the Matter Concerning the Honourable Justice Robin Camp* [Camp Inquiry] at para 252.

²⁰ See the *Camp Inquiry* at paras 32 to 34 where limited intervener status was granted to two groups representing women’s equality groups and front-line service providers to sexual assault survivors, who were invited to make written submissions.

misconduct, I find that it would be more appropriate for a Hearing Panel to determine whether or not Judge Bégin’s medical condition mitigates his conduct. This would require a more rigorous examination of the medical evidence, including the relationship between his medical condition and the specific conduct at issue, and a proper consideration of the intersection between judicial wellness and the public interest.

54. These issues have not been considered before by the Judicial Council under its own statutory framework. I do not believe that it is intended that the Review Committee resolve complaints by way of agreement when novel determinations of law or principle must be made.
55. The Supreme Court of Canada has commented on the important and specialized role of Judicial Councils which are uniquely situated to preserve the integrity of the whole of the judiciary, largely as a result of their composition.²¹ Comprised mostly of judges, Judicial Councils are considered highly qualified “to draw conclusions where considerations of judicial independence, security of tenure and apprehension of bias are concerned.”²²
56. Complaints such as those before this Review Committee are properly determined by a Hearing Panel “composed primarily of judges, alive to the delicate balance between judicial independence and judicial integrity.”²³

Conclusion

57. Given the circumstances of these complaints, for the reasons outlined above, I am unable to agree that the Resolution Agreement in this case maintains or restores the confidence of the reasonable, dispassionate and informed public in the justice system.
58. Instead, I would have referred the complaints to a hearing before the Judicial Council pursuant to subsection 17G(c) of the *Provincial Court Act*.



Melanie Petrunia, NSBS representative

²¹ *Therrien (Re)* at para 57.

²² *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11 (*Moreau-Bérubé*) at para 50.

²³ *Moreau-Bérubé* at para 60.

APPENDIX A

In the Matter of Complaints against Judge Alain Bégin made pursuant to the *Provincial Court Act* RSNS 1989, c 238

RESOLUTION AGREEMENT

1. The Chair of the Judicial Council referred three complaints to the Review Committee pursuant to s. 17C of the *Provincial Court Act*. With respect to the allegations contained in the three complaints, Judge Bégin admits that his conduct breached the standards set out in the Canadian Judicial Council's "Ethical Principles for Judges" as set out below.

Complaint #1: re R. v. KJMJ

- a) Judge Bégin's conduct as trial judge in R. v. KJMJ was described by the Nova Scotia Court of Appeal in its decision overturning the conviction of the accused based on a reasonable apprehension of bias, 2023 NSCA 84. In addition to legal errors outlined by the Court of Appeal, the Judge's conduct also offended the ethical principles applicable to judges.
- b) The Judge's conduct undermined public respect for the judiciary and fell below the standard of integrity required of a judge (EPJ, s. 2.A), when he:
 - a. requested that certain comments he made on the record not be included in the trial transcript;
 - b. asserted to the Court of Appeal that there had been "a clear agreement" between himself and counsel that his impugned remarks would be "off the record", when no such agreement had been made; and
 - c. asserted to the Court of Appeal that his comments on the record were covered by a non-existent legal privilege, and therefore should not form part of the appeal record.
- c) The Judge's conduct breached his responsibility to treat everyone with civility and respect in the performance of his judicial duties (EPJ, s. 2.C.4) in his comments directed at the accused.
- d) The Judge's conduct fell below the standard of competence and diligence in his demonstration of knowledge of substantive and procedural law, as well as his understanding of the impact of the law (EPJ, s. 3.C.2), when he:
 - a. offered comment on the merits of a criminal matter prior to hearing argument, contrary to the accused's presumption of innocence and right to make full answer and defence; and

- b. claimed that his comments were off the record or covered by a non-existent legal privilege, contrary to the open court principle and the accused's right to meaningful appellate review.
- e) The Judge's conduct violated the requirement of judicial impartiality (EPJ, s. 5.A.5) when he:
 - a. expressed a predetermination of guilt on one charge, in advance of hearing argument;
 - b. expressed comment on the accused's character and credibility, in advance of hearing argument; and
 - c. attempted to expunge his comments from the record at trial..

Complaint #2: anonymous complaint

- f) On September 13, 2021, Judge Bégin presided over the sentencing in R. v. Cairns, a sexual assault case. During his sentencing decision, Judge Bégin attempted to offer the defendant some encouragement about her rehabilitation following conviction. In doing so, he referred to the sexual assault as an "aggressive pass" and used other language which could have reasonably been interpreted as minimizing of the seriousness of the sexual assault. His comments did not reflect the evidence he heard or his trial decision in the matter. In making these comments, Judge Bégin's conduct could lead a reasonable and informed member of the public to lack confidence in the Judge's respect for and commitment to equality and dignity of the complainant or victims of sexual assault more broadly (EPJ, s. 4.B.1, s. 4.C.1).

Complaint #3: re R. v. Nevin

- g) Judge Bégin's conduct as trial judge in R. v. Nevin was described by the Nova Scotia Court of Appeal in its decision overturning the conviction of the accused based on a reasonable apprehension of bias, 2024 NSCA 64. In addition to legal errors outlined by the Court of Appeal, the Judge's conduct also offended the ethical principles applicable to judges.
- h) The Judge's conduct breached his responsibility to treat everyone with civility and respect in the performance of his judicial duties (EPJ, 2.C) when he:
 - i. commented about indigenous offenders not before the Court (EPJ, 2.C.4);
 - ii. improperly attributed negative comments about a member of the Bar to another sitting judge; and

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- iii. in the manner that he treated defence counsel, Jeremiah Raining Bird.
- i) The Judge's conduct fell below the standard of competence and diligence in his demonstration of knowledge of substantive and procedural law, as well as his understanding of the impact of the law (EPJ, s. 3.C.2), when he:
 - i. violated basic principles of procedural fairness in his conduct of the recusal motion;
 - j) The Judge's conduct violated the requirement of judicial impartiality during the conduct of the recusal motion (EPJ, s. 5.A.5) when he:
 - i. expressed a predetermination of the merits of the motion by characterizing the basis of the motion as a "baseless allegation";
 - ii. entered into the fray by calling his own witnesses and deprived the defence of a fair and unbiased hearing;
 - iii. ruled on objections to his own questions during examination of his own witnesses; and
 - iv. made inappropriate and unjustified allegations against defence counsel which undermined the integrity of the defence.
 - k) The Judge abused his authority and conducted himself in a manner which would lead a reasonable and informed member of the public to lack confidence in the Judge's respect for and commitment to equality (EPJ, s. 2.E.2, s. 4.A.2, s. 4.B.1, s. 4.C.1), when he:
 - i. referred to Indigenous court workers as representatives of the Indigenous community at large, despite their clear evidence to the contrary;
 - ii. used his influence as a judge to elicit supportive testimony from Indigenous court workers regarding his "relationship with Indigenous persons" without consideration of how his authority would impact on the voluntariness of their participation;
 - iii. placed Indigenous court workers in a position in conflict with their duties to Indigenous clients and community, by asking them to serve the interests of the Judge or the court instead;
 - iv. failed to consider the adverse impact of his actions on the witnesses he asked to appear as a result of their individual and professional identities as Indigenous court workers;

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- v. made inappropriate reference to the circumstances of other Indigenous offenders, and his own role and involvement in their cases;
 - vi. overstepped boundaries in his role as a provincial court judge during interactions with representatives of MLSN;
 - vii. demonstrated discourtesy and unfair treatment towards an Indigenous member of the bar by unfairly questioning his integrity and competence, without consideration of the discriminatory impact of his actions, which included personal impact on Mr. Raining Bird, impact on the Indigenous defendant, and community impact by depriving Millbrook First Nation of an Indigenous lawyer willing to take on legal aid work.
2. The Review Committee has received evidence which establishes that at the time of the events described in the three complaints, Judge Bégin was experiencing the impacts of an undiagnosed and untreated mental health disorder. The Review Committee is satisfied that Judge Bégin's health had an impact on his conduct in all three complaints, though it does not remove his ethical responsibility for the conduct, nor excuse the conduct. The Review Committee is further satisfied that Judge Bégin has since undertaken treatment which addresses the relationship between his mental health and his judicial conduct, such that he is able to continue in the role of a provincial court judge. Judge Bégin agrees that his mental health disorder is not "cured" and requires ongoing active and long-term monitoring and treatment. The Review Committee has considered Judge Bégin's mental health in resolving this complaint in the public interest.
3. Judge Bégin has agreed to resolve the three complaints on the following basis:
 - a. Judge Bégin is reprimanded for his judicial conduct as described above.
 - b. Judge Bégin will apologize to the individuals and communities directly impacted by his conduct, and to the legal community and the public for the impact his conduct had on the administration of justice.
 - c. Judge Bégin will continue to engage in regular medical and psychological treatment for his mental illness, and will comply with all treatment advice. Judge Bégin commits to taking responsibility for his own wellness to ensure his ongoing competence to fulfil his role as a provincial court judge, in accordance with EPJ s. 3.D.2. Judge Bégin will report his treatment progress to the Chief Judge every three months, and will provide consent for the disclosure of medical information directly by his medical providers to the Chief Judge for this purpose, for a period of three years.
 - d. Judge Bégin will engage in ongoing mentorship with a senior judge of the provincial court, chosen by the Chief Judge, for a period of three years. The

mentor will be required to observe Judge Bégin's conduct in the courtroom (remotely or in person), and will report to the Chief Judge every three months on mentorship activities including any concerns.

e. Judge Bégin will engage at his own expense in continuing professional development programs, within 12 months of this agreement (or such time as the Chief Judge deems appropriate), as follows:

- i. Seminar on Personal Prejudices and Cognitive Biases (CIAJ);
- ii. The Path – Indigenous Cultural Awareness Course (CBA);
- iii. Building Indigenous Intercultural Capacity (CBA);
- iv. Communicating Effectively in Your Courtroom (NJL); and
- v. Any other judicial courses or seminars as recommended by the Chief Judge.

4. Judge Bégin agrees that breach of the requirements set out in s. 3 above or further conduct contrary to the standards set out in the *Ethical Principles for Judges* will constitute grounds for a fresh complaint under s. 17A of the *Provincial Court Act*.

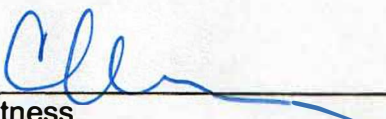
Dated this 11th day of February, 2025.



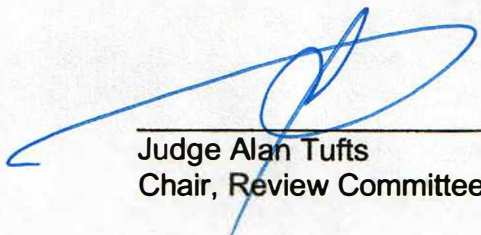
Witness



Judge Alain Bégin



Witness



Judge Alan Tufts
Chair, Review Committee