Federal Court  Cour fédérale

Date: 20240911

Docket: T-234-23

Citation: 2024 FC 1434

Ottawa, Ontario, September 11, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

ADAN MCINTOSH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Adan McIntosh, seeks judicial review of the Canadian Judicial Council's (CJC) decisions that dismissed his complaints against three judges of the Ontario Superior Court of Justice.

[2] The CJC is a council created under Part II of the *Judges Act*, RSC, 1985, c J-1 [*Judges Act*] with the power to investigate complaints made in respect of a judge. The *Judges Act* and the

procedures governing the CJC's complaint process were amended after Mr. McIntosh commenced this application. These reasons refer to the pre-amendment versions that were in effect when the CJC reviewed Mr. McIntosh's complaints in 2022 and early 2023.

[3] Mr. McIntosh's complaints stem from family law proceedings in the Ontario Superior Court of Justice, which included disputes regarding parenting time and decision-making responsibility for his children. Mr. McIntosh filed three complaints with the CJC. First, he filed a complaint alleging that Justice Sharon Shore, who was case managing his family law proceedings, made an inappropriate and derogatory comment about him in a case history report and emailed it to about 90 other judges in an attempt to influence them against him (Shore Complaint). He subsequently filed complaints alleging that Associate Chief Justice McWatt failed to take appropriate and timely action in response (McWatt Complaint), and that Chief Justice Morawetz failed to act at all (Morawetz Complaint).

[4] The early stages of the CJC's review process were governed by the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*, effective 29 July 2015 [*Review Procedures*]. The first stage of the review process was early screening: *Review Procedures*, s 4-5. At the early screening stage, a complaint is reviewed by the CJC's Executive Director to determine whether it warrants consideration: *Review Procedures*, s 4. Section 5 of the *Review Procedures* states that the following matters do not warrant consideration: (a) complaints that are trivial, vexatious, made for an improper purpose, are manifestly without substance or constitute an abuse of the complaint process; (b) complaints

that do not involve conduct; and (c) any other complaints that are not in the public interest and the due administration of justice to consider.

[5] The CJC dismissed Mr. McIntosh's complaints at the screening stage, on the basis that his allegations did not raise issues of judicial conduct and/or they were manifestly without merit and vexatious. Ms. Jacqueline Corado, in her capacity as Acting Executive Director, dismissed the Shore Complaint on August 9, 2022. Mr. McIntosh was granted a reconsideration. Mr. Marc Giroux, in his capacity as Interim Executive Director, issued the reconsideration decision on January 5, 2023. Ms. Corado dismissed the McWatt Complaint and the Morawetz Complaint on January 5, 2023.

[6] Mr. McIntosh argues that the CJC's review was procedurally unfair because: (i) his supplementary submissions in the McWatt Complaint and the Morawetz Complaint were not considered; (ii) the decisions demonstrate bias; and (iii) he has been denied natural justice because the CJC refuses to accept further complaints from him and refuses to investigate his complaint into the decision makers' conduct. He also argues the decisions are unreasonable, including because the decision makers misunderstood the basis of the complaints, omitted facts, and acted in a manner that was inconsistent with previous decisions of the CJC.

[7] Mr. McIntosh asks this Court to set aside the decisions, find that all three judges acted contrary to the CJC's *Ethical Principles for Judges* [*Ethical Principles*], and order that the matter be referred back to the CJC for further investigation under the CJC's recently amended review procedures, without involvement from Ms. Corado or Mr. Giroux.

II. **Issues and Standard of Review**

[8] There are two main issues for determination: (i) whether the CJC's review was procedurally unfair, and (ii) whether the CJC's decisions were unreasonable.

[9] Mr. McIntosh's allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is "eminently variable", inherently flexible, and context-specific: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*], citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22-23, among other cases. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[10] The reasonableness standard of review applies to the merits of the decisions: *Patel v Canada (Attorney General)*, 2023 FC 922 at para 60 [*Patel*]. This is a deferential but robust form of review that considers whether a decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Vavilov* at paras 13, 99.

[11] Additionally, the respondent raises three preliminary issues: (i) that Mr. McIntosh requires leave of the Court to challenge multiple CJC decisions by way of a single application for judicial review; (ii) that the only decision in the Shore Complaint that is under review is the January 5, 2023 reconsideration decision, and Mr. McIntosh's arguments about the original August 9, 2022 decision are improper; and (iii) that paragraphs 5, 16, 17 and 18 of

Mr. McIntosh's amended affidavit include unsupported inferences that are inadmissible, or alternatively, should be given little weight.

III. **Preliminary Issues**

A. *Rule 302*

[12] Mr. McIntosh commenced a single application for judicial review to challenge multiple CJC decisions, contrary to Rule 302 of the *Federal Courts Rules*, SOR/98-106. His notice of application asks for an order allowing the decisions to be considered in one application for judicial review, since the complaints stem from the same facts and judicial resources would be saved. As noted above, the respondent's position is that the three January 5, 2023 decisions are the only decisions under review. The respondent does not oppose an order that would allow all three of them to be reviewed by way of a single application.

[13] I find that leave should be granted permitting Mr. McIntosh to challenge multiple administrative decisions by way of a single application. I agree with the respondent that there are three decisions under challenge (as explained below). All three decisions involve similar underlying facts and they were issued on the same day. It is likely that separate applications would have been consolidated or heard together, and the respondent is not prejudiced.

B. *Decisions at issue*

[14] The respondent notes that a number of Mr. McIntosh's arguments relate to the original CJC decision that dismissed the Shore Complaint on August 9, 2022. Relying on *Frank v Blood Tribe*, 2018 FC 1016 at paragraph 61 [*Frank*], the respondent argues that the Court should only

review the reconsideration decision. The original decision is not the subject of this application for judicial review and the certified tribunal record (CTR) for the original decision is not before the Court in this proceeding.

[15] Mr. McIntosh responds that he does not know how the matter could reasonably proceed without looking at the original decision that dismissed the Shore Complaint. He argues that the reconsideration decision is effectively an extension of the original decision, the record on reconsideration included the evidence that was before the original decision maker, and the Court should look at the totality of the evidence. Furthermore, he states he would be prejudiced if the reconsideration decision is set aside and he is effectively deprived of a remedy because the original decision still stands.

[16] I agree with the respondent that the reconsideration of the Shore Complaint is the decision under review. The original decision dismissing the Shore Complaint was made months earlier by a different decision maker, and Mr. McIntosh commenced his application for judicial review more than 30 days after the August 9, 2022 decision. Technically, a reviewable error confined to the original decision would not provide a standalone basis to return the Shore Complaint to the CJC for a fresh screening decision. Practically, however, the reconsideration decision rejected the Shore Complaint for essentially the same reasons as the original decision, and it effectively adopted and added to the original reasons. Therefore, I do not agree with the respondent that the circumstances in *Frank*, which involved judicial review of an appellate tribunal's decision, are analogous. In my view, Mr. McIntosh's arguments about the original decision in the Shore Complaint are relevant to a review of the reconsideration decision.

[17] The respondent concedes that if the reconsideration decision is set aside, the Court has the power to return the Shore Complaint to the CJC for a fresh screening decision. This would ensure that Mr. McIntosh is not deprived of a remedy.

C. *Admissibility of Mr. McIntosh's Evidence*

[18] The respondent states that, following an objection that Mr. McIntosh's application record included many documents that were not properly introduced, the parties agreed that Mr. McIntosh would provide an amended affidavit to avoid a motion. The respondent filed Mr. McIntosh's amended affidavit as part of the respondent's record.

[19] The respondent argues that Mr. McIntosh's amended affidavit includes unsupported belief statements or inferences amounting to speculation, including statements about the motives of judges, court staff, and administrative decision makers, and there was no opportunity to cross-examine him. Consequently, the statements should not be admitted, or alternatively they should be given little weight. At the hearing, the respondent clarified that the objection relates to paragraphs 5, 16, 17 and 18 of Mr. McIntosh's amended affidavit. Apart from these paragraphs, the respondent concedes the amended affidavit and its exhibits are admissible under the "background information" exception to the general rule that judicial review is based on the record that was before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 19.

[20] Mr. McIntosh responds that paragraphs 5, 16, 17 and 18 contain facts that relate to his allegations of bias, and he contends the respondent has not identified specific parts of the

paragraphs that are objectionable. He states the facts include actions that he took and statements that were made in a judicial decision.

[21] The respondent, who waited until the hearing to specify which paragraphs were the subject of the objection, failed to explain how Mr. McIntosh's statements in paragraphs 5, 16, 17 and 18 of his affidavit differ from similar statements in paragraphs that the respondent concedes are admissible. In my view, to the extent that paragraphs in Mr. McIntosh's amended affidavit include unsupported inferences or statements of belief, they are essentially arguments—for example, he states that he believes the CJC's decisions were not reasonable or objective. Mr. McIntosh repeats the same points in his memorandum of argument. The admissibility and/or weight afforded to paragraphs 5, 16, 17 and 18 do not impact my findings, and it would serve no purpose to rule on the respondent's objection.

IV. **Main Issues**

A. *Was the CJC's review procedurally unfair?*

[22] Mr. McIntosh raises three grounds of procedural unfairness.

[23] First, Mr. McIntosh states that Ms. Corado did not consider the supplementary submissions he filed in the Morawetz Complaint and the McWatt Complaint, contrary to his right to be heard. The supplementary submissions referred to the *Ethical Principles*—including part III(B) that relates to performing judicial duties with punctuality and reasonable promptness, and part IV(B) that relates to disassociating from and disapproving of offensive or discriminatory comments. Despite his submissions on the *Ethical Principles* and despite the CJC's

acknowledgement that they are relevant in evaluating allegations of improper conduct by a judge, the decisions do not mention the *Ethical Principles*. Mr. McIntosh states his supplementary submissions also included arguments to address concerns with the August 9, 2022 decision that dismissed the Shore Complaint, which the CJC did not consider.

[24] Mr. McIntosh does not allege that Mr. Giroux failed to consider any documents in reconsidering the Shore Complaint.

[25] Second, Mr. McIntosh submits that the CJC demonstrated bias by treating his complaint differently from other complaints. He states the CJC has investigated inappropriate comments made by judges in the past: *Report of the Canadian Judicial Council to the Minister of Justice pursuant to s. 65 of the Judges Act in relation to the inquiry into the conduct of the Honourable Gérard Dugré* (Dugré Report); *Report of the Canadian Judicial Council to the Minister of Justice regarding the Honourable Robin Camp* (Camp Report). Selectively investigating inappropriate comments by judges raises an issue of bias. Mr. McIntosh also states that the CJC showed clear bias and an intentional unwillingness to decide the matter impartially by labelling his complaints as vexatious.

[26] Third, Mr. McIntosh submits that, in an overt denial of justice and clear failure of natural justice, the CJC now refuses to acknowledge or accept further complaints from him. These include complaints about Ms. Corado’s and Mr. Giroux’s conduct.

[27] I agree with the respondent that Mr. McIntosh's first ground relates to alleged deficiencies that should be assessed in the context of reasonableness review. Mr. McIntosh has not established that he was denied the right to be heard, in breach of procedural fairness.

[28] Mr. McIntosh alleges that Ms. Corado did not consider his supplementary submissions in any capacity, including the ethical principles he referenced, because his arguments are not explicitly referred to in the decisions. However, deficiencies in a decision are typically reviewed for reasonableness. Deficiencies do not necessarily amount to a breach of procedural fairness, as administrative decision makers are not required to address every argument or make an explicit finding on each constituent element leading to the conclusion: *Vavilov* at paras 127-128.

[29] From a procedural fairness perspective, Mr. McIntosh had a full opportunity to present his complaints. After filing the Morawetz Complaint and the McWatt Complaint on August 9, 2022, Mr. McIntosh was invited to "add any information" to his complaints by sending supporting documents to the CJC. He did so on September 15, 2022, providing supplementary submissions by email. Each of Ms. Corado's January 5, 2023 decision letters specifically states it is in response to Mr. McIntosh's emails, and his initial and supplementary emails (August 9, 2022 and September 15, 2022) are included in the CTRs.

[30] In summary, Ms. Corado's decision letters indicate that she read the submissions and the alleged deficiencies do not amount to a breach of Mr. McIntosh's right to be heard. In fact, as I explain in the next section, Ms. Corado's decisions were responsive to Mr. McIntosh's complaints.

[31] At the hearing of this matter, the respondent argued that the Court should not consider the second and third procedural fairness grounds because Mr. McIntosh did not raise them in the notice of application. In any event, the respondent submits the CJC followed the applicable procedures and acted in a procedurally fair manner. The respondent states that the circumstances leading to the Dugré Report and the Camp Report were not analogous, and the fact that other comments by judges warranted an investigation does not show a preference or bias. Use of the word "vexatious" also does not support an inference of bias, as the CJC is required to decide if a complaint is vexatious under section 5 of the *Review Procedures*. The respondent states the CJC did not have jurisdiction to review complaints against Ms. Corado and Mr. Giroux acting in their screening role, and restricting Mr. McIntosh's communications in the face of repeated complaints was justified to control the CJC's procedure.

[32] I have decided to address the second and third procedural fairness grounds. While the notice of application does not specifically allege bias or a denial of natural justice, Mr. McIntosh's arguments regarding the second and third grounds are somewhat connected to the pleaded grounds supporting the relief he seeks. Mr. McIntosh is self-represented, and the respondent first raised this point at the hearing and did not contest Mr. McIntosh's ability to advance these grounds in written argument. The respondent is not prejudiced.

[33] I find that Mr. McIntosh has not established a breach of procedural fairness based on the second or third grounds.

[34] The fact that the CJC has investigated comments by other judges does not mean that the CJC treated Mr. McIntosh's complaint differently and does not establish bias. As I discuss in the next section, not all allegedly inappropriate comments made by a judge fall within the CJC's mandate. Screening a complaint pursuant to section 5 of the *Review Procedures* as vexatious also does not establish bias. The respondent correctly points out that the Executive Director of the CJC has the authority to screen complaints that are vexatious, among other reasons: *Cosentino v Canada (Attorney General)*, 2020 FC 884 at para 2, (aff'd 2021 FCA 193), [*Cosentino*].

[35] Allegations of bias cannot rest on suspicion, conjecture, insinuations, or impressions of an applicant or his counsel, and must be supported by material evidence demonstrating conduct that derogates from the standard: *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8. There is no such evidence in the record before me.

[36] Turning to the third procedural fairness ground, the reconsideration decision in the Shore Complaint concludes as follows:

> Considering that our records show a repeated use without merit of the complaint process when you disagree with a decision, the vexatious and aggressive nature of your allegations in order to express your disagreement and the fact that you have been granted the opportunity for a reconsideration, Council will not respond to any future correspondence concerning this matter.

[37] While Mr. McIntosh filed complaints against other judges, the issues before me relate to the CJC's decisions in the Shore Complaint, the Morawetz Complaint, and the McWatt Complaint. The CJC's decision that it would not respond to further correspondence concerning

the matter did not deprive Mr. McIntosh of a right to have those complaints heard. Furthermore, the CJC was acting within its mandate to control its process.

[38] As a final point, Mr. McIntosh faults Ms. Corado for stating, in her January 5, 2023 decisions dismissing the McWatt Complaint and the Morawetz Complaint, that Mr. McIntosh's allegations against Justice Shore had been "considered and dismissed in file #22-0221". Since the Shore Complaint was under reconsideration, Mr. McIntosh contends Ms. Corado was not aware of all the facts, or she knew in advance how Mr. Giroux was going to decide the complaint. The first contention goes to the merits of Ms. Corado's decisions. The second appears to allege a breach of procedural fairness.

[39] I find there is no merit to either argument. Ms. Corado's statement was accurate. She had dismissed the Shore Complaint months earlier, on August 9, 2022, and the fact that the Shore Complaint was under reconsideration did not cancel the earlier decision. Ms. Corado was explaining that Mr. McIntosh's allegations against Justice Shore were addressed in a different file and her statement provides no basis for inferring any impropriety in the review process.

[40] To conclude, the duty of procedural fairness the CJC owes to complainants falls at the lower end of the spectrum: *National Council of Canadian Muslims v Canada (Attorney General)*, 2022 FC 1087 at paras 196-208. Mr. McIntosh had a full opportunity to be heard, and he has not established any procedural unfairness that would warrant setting aside the decisions at issue.

B. *Were the CJC's decisions unreasonable?*

[41] Mr. McIntosh submits that all three complaints raised questions of judicial conduct that contravened the *Ethical Principles* governing judges' conduct. He states Justice Shore, who was case managing his family law proceedings, wrote that he was a "dangerous individual" in a case note and emailed the case note to all judges of the Superior Court of Justice in Toronto. The comment was not disclosed to the parties for over a year and he had no opportunity to respond. Mr. McIntosh explained in oral submissions that being labelled as dangerous is a particularly concerning matter in the context of a family dispute involving children, and the email affected the perception of all judges who received it, as they believed he was a vexatious litigant. Despite receiving the email themselves, Mr. McIntosh states Chief Justice Morawetz failed to act and Associate Chief Justice McWatt did not act until he pressed the issue, by which time a number of judges who received the email had made decisions affecting his rights to parenting time with his children and decision-making responsibility.

[42] Mr. McIntosh alleges that the CJC's decisions to dismiss his complaints at the screening stage are unreasonable, including because the CJC misunderstood the bases for the complaints, erred in its findings, and departed from its previous decisions.

[43] The respondent submits the decisions are reasonable. The CJC's conclusions were transparent, intelligible, and justified in light of the relevant facts and law.

(1) Decision dismissing the Shore Complaint

[44] Mr. McIntosh submits the decision maker misunderstood the scope of the Shore Complaint. He complained about Justice Shore's attempt to influence the minds of other judges as well as her own lack of impartiality, but the CJC's decision did not acknowledge the email that Justice Shore sent to other judges. Also, Mr. McIntosh states he referred to two of Justice Shore's decisions in his complaint and he did this to provide background information. Even though the decisions were not the core of his complaint, the CJC used them as a basis for dismissing the complaint, finding that they related to judicial conduct outside of the CJC's mandate and for which the proper recourse was an appeal.

[45] In addition, Mr. McIntosh submits the decision maker failed to consider the *Ethical Principles* and wrongly concluded that Justice Shore's actions did not amount to conduct within the CJC's mandate. He states Justice Shore's actions did amount to conduct within the CJC's mandate because she acted contrary to the *Ethical Principles* and the case comment could not be addressed through the appeal process, since it was not an order and only became known to the parties a year after it was made. Furthermore, the Dugré Report and the Camp Report demonstrate that the CJC has investigated inappropriate comments by judges in the past, and the fact that Justice McWatt issued a directive that removed the comment from the case note and prevented 90 judges who received the email from adjudicating Mr. McIntosh's matters proves that the comment was inappropriate. Lastly, Mr. McIntosh states the CJC made an absurd statement that the issue was resolved by removing the comment. Misconduct that has stopped is still misconduct.

[46] The respondent submits none of Mr. McIntosh's allegations leads to a conclusion that the decision was unreasonable. Relying on *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 [*Moreau-Bérubé*], the respondent submits that CJC intervention is only warranted where the conduct in question will harm the integrity of the judiciary as a whole and cannot be cured by the appeal process. The CJC had information about Mr. McIntosh's procedural history leading to the case note, which the record shows was a case management comment made following several frivolous motions, non-compliance with court orders, and non-compliance with the rules of procedure. Based on the record, the CJC determined the substance of the Shore Complaint to be about a judge's management of the judicial process.

[47] The respondent states that Mr. McIntosh's concerns with the case note were cured by the appeal process. Mr. McIntosh raised issues of bias and Justice Shore's case comment in an appeal of a trial decision that determined his rights to decision-making responsibility and parenting time with his children. The Ontario Court of Appeal addressed these issues: *Kim v McIntosh*, 2023 ONCA 356 [*Kim (ONCA)*]. The court found there was a firm basis upon which Justice Shore could conclude that Mr. McIntosh was not conducting the litigation in a manner that was consistent with a timely and fair resolution of the issues, particularly the issues relating to the interests of the children, and "[t]he history of this matter fully justified Shore J.'s placing of a firm judicial hand on the tiller of this litigation": *Ibid* at para 50. With respect to the case note comment specifically, the court held at paragraph 59:

> [59] …It may have been better had Shore J. expressly tied her reference to the appellant as a "dangerous individual" to the manner in which he was conducting the litigation and the potential danger that litigation conduct posed to the emotional well-being of the respondent and the children. Used in that sense, the reference

> to the appellant as a "dangerous individual" was justified on the record and relevant to future case management decisions.

[48] According to the respondent, the Ontario Court of Appeal's decision, issued after the CJC's decisions, provides independent confirmation of the CJC's conclusions.

[49] The respondent submits the CJC's finding that the Shore Complaint did not raise an issue of conduct capable of sustaining a complaint is entitled to considerable deference. The Supreme Court of Canada has held that the CJC has expertise in distinguishing between judicial actions that can be dealt with through the appeal process and those that may threaten the integrity of the judiciary as a whole: *Moreau-Bérubé* at paras 58-60.

[50] The respondent submits the decision maker reasonably concluded that the complaint was resolved because Mr. McIntosh received a remedy.

[51] As part of his reply to the respondent's submissions, Mr. McIntosh asked the Court to exercise caution in relying on his family law proceedings. Mr. McIntosh states that the respondent provided an inaccurate procedural history of the family law proceedings, and the respondent has relied on various judicial decisions that he is seeking to have set aside. In reply to the respondent's arguments that concerns with the case note were cured by the appeal process, and that *Kim (ONCA)* provides independent confirmation of the CJC's conclusions, Mr. McIntosh states that one member of the panel in *Kim (ONCA)* was formerly a Toronto judge of the Ontario Superior Court of Justice who would have received Justice Shore's email when she sent it.

[52] My findings on this application do not turn on the details of the procedural history in Mr. McIntosh's family law proceedings, or any specific findings or conclusions in the various judicial decisions of those proceedings. I would add that I disagree with the respondent's argument that *Kim (ONCA)* provides independent confirmation of the CJC's conclusions. The Ontario Court of Appeal and the CJC were not addressing the same issues, and the Ontario Court of Appeal's findings on the issues of bias and the case note do not confirm the CJC's decisions not to investigate Mr. McIntosh's complaints. *Kim (ONCA)* supports the CJC's decisions only in the sense that Mr. McIntosh was able to make allegations of bias and raise issues related to Justice Shore's case comment by way of a judicial process.

[53] Having considered the CJC's reasons in light of the record and with regard to the institutional context, I find Mr. McIntosh has not established that the CJC's decision to dismiss the Shore Complaint at the screening stage was unreasonable.

[54] The CJC understood the scope of the Shore Complaint. Contrary to Mr. McIntosh's assertion that the CJC did not acknowledge the email sent to Toronto judges, Ms. Corado's August 9, 2022 decision squarely acknowledged this aspect of the complaint:

> You allege that a comment by Justice Shore was completely inappropriate in itself, which led to Associate Chief Justice McWatt intervening. However, the "distribution of the comments to influence other judges is the most disturbing aspect." You add that:
>
> - Justice Shore undermined the integrity of all the Toronto judges. These are significant consequences undermining both parties ability to access justice."
> - "Due to the actions of Justice Shore, it is now extremely difficult to access justice in

> any timely manner in the Superior Court as there are very few judges left with an impartial mind who have not been exposed to Justice Shore's prejudicial comments.
>
> - "The comments were made publicly to all judges of the Toronto Superior Court, who take the word of a judge on good authority. This is ingrained in the jurisprudence".
>
> [Punctuation as written.]

[55] The CJC explained that judges have an obligation to intervene when appropriate to ensure that justice is done in substance and appearance. The CJC stated it is not a court and it does not review how case files are assigned or the determinations that are made by a case management judge.

[56] Mr. Giroux's reconsideration decision did not expressly mention the distribution of the case note, but that was because the decision focussed on responding to Mr. McIntosh's August 15, 2022 email, which made specific arguments about why Ms. Corado's August 9, 2022 decision was wrong and why her statement that allegations of bias fall outside the CJC's mandate was a lie. Mr. Giroux relied on the CJC's August 9, 2022 letter to supplement points about the Shore Complaint generally. He reiterated the CJC's position that it was not its role to review determinations made by a case management judge and that the Shore Complaint did not raise an issue of judicial conduct, referring to reasons that were explained in the August 9, 2022 letter. On reconsideration, the CJC maintained its August 9, 2022 determination that Mr. McIntosh's complaint did not warrant further consideration for the reasons that were previously explained.

[57] With respect to Justice Shore's decisions that were mentioned in the Shore Complaint, Mr. McIntosh has not established that the CJC dismissed the complaint based on peripheral considerations that were not core to the complaint. The CJC properly treated the decisions as one aspect of the Shore Complaint and reasonably addressed them, explaining that functions of judicial decision-making fall within judicial discretion and outside the CJC's mandate.

[58] The CJC's review of complaints against judges must balance judicial independence and judicial integrity. A disciplinary process must only be launched when the conduct of an individual judge "has threatened the integrity of the judiciary as a whole" and when "[t]he harm alleged is not curable by the appeal process": *Cosentino* at para 80, citing *Moreau-Bérubé* at para 58. As the respondent points out, part of the CJC's expertise "lies in its appreciation of the distinction between impugned judicial actions that can be dealt with in the traditional sense, through a normal appeal process, and those that may threaten the integrity of the judiciary as a whole": *Moreau-Bérubé* at para 60. Most complaints are properly dealt with through the appeal process: *Ibid* at para 55. This distinction lies at the heart of this matter.

[59] The CJC considered the allegations in the Shore Complaint and concluded that none of them constituted matters of conduct that fall within the CJC's role and mandate. Mr. McIntosh alleges that the CJC was wrong. He states that Justice Shore acted contrary to the *Ethical Principles*, the case comment was not appealable, the CJC has investigated inappropriate comments in the past, and Justice McWatt's actions prove that the comment was inappropriate. However, none of these considerations is determinative of the central question of whether the

Shore Complaint raised issues of judicial conduct that may threaten the integrity of the judiciary as a whole.

[60] The *Ethical Principles* do not set standards defining judicial misconduct: *Cosentino* at para 92. Mr. McIntosh points out that the Supreme Court of Canada itself relied on the *Ethical Principles* as authority, relying on *Wewaykum Indian Band v Canada*, 2003 SCC 45 [*Wewaykum*]. In my view, *Wewaykum* does not assist Mr. McIntosh. The Supreme Court of Canada did consider the CJC's *Ethical Principles* in *Wewaykum*; however, that case involved a motion to vacate a judgment allegedly tainted by bias due to a judge's involvement in the matter prior to his appointment. *Wewaykum* is therefore an example of a case where judicial conduct alleged to contravene the *Ethical Principles* was dealt with through a judicial process, not through a CJC complaint.

[61] In *Moreau-Bérubé*, the Supreme Court of Canada noted that there have been "very few occasions where the comments of a judge, made while acting in a judicial capacity, could not be adequately dealt with through the appeal process and have necessitated the intervention of a judicial council": *Moreau-Bérubé* at para 55. Case management matters typically ought to be dealt with through judicial processes, and it is implicit in the CJC's findings that it saw nothing in Justice Shore's case note or its circulation that would threaten the integrity of the judiciary. The CJC reasonably concluded that the conduct in question related to matters of court process, and it was not the CJC's role to review determinations made by a case management judge.

[62] Whether Justice Shore's comment in the case note was itself appealable is not determinative of whether the Shore Complaint warranted further consideration by the CJC. The CJC is not a court and its role is not to fill gaps in the remedies available through judicial processes. Rather, the CJC exercises its mandate in the public interest, and it may decide that intervention is necessary even when a complainant has a right of appeal. In this case, Mr. McIntosh did have recourse through the judicial process, including by bringing a recusal motion and raising the issues of bias and Justice Shore's case note on appeal. The availability of such recourse was relevant to deciding whether Mr. McIntosh's complaint raised issues of conduct that would necessitate the CJC's intervention. The CJC reasonably concluded that, in his case, the proper recourse for addressing the conduct he complained of was through the judicial process.

[63] Mr. McIntosh has not established that the CJC departed from past practice or acted contrary to prior decisions to investigate inappropriate comments. Justice McWatt made no determination about Justice Shore's case note or email, and her directive does not prove that the case note comment was inappropriate. In any event, even assuming that the comment was inappropriate, not all inappropriate comments call for the intervention of the CJC: *Moreau-Bérubé* at para 55. The fact that the CJC has investigated comments by judges in the past does not call into question the reasonableness of the CJC's decision.

[64] The CJC did not make an absurd finding that effectively decided the Shore Complaint did not warrant further consideration because the misconduct had stopped. The CJC's point that the issue was resolved through Justice McWatt's directive relates to whether the conduct

Mr. McIntosh complained of was conduct that ought to be addressed through normal judicial processes. As noted above, the fact that Mr. McIntosh had judicial avenues of recourse available is relevant to the determination.

[65] As the party challenging the CJC's decisions, Mr. McIntosh bears the onus of demonstrating that the decisions are unreasonable: *Vavilov* at para 100. In my view, he has not met his onus. The CJC reasonably concluded that Justice Shore's actions did not amount to conduct within the CJC's mandate. The CJC understood Mr. McIntosh's complaint, addressed his allegations, and explained why the complaint was outside the CJC's role. The CJC's determination was justified based on the record, and it is entitled to deference. Mr. McIntosh has not established a reviewable error that would warrant setting aside the CJC's dismissal of the Shore Complaint.

(2) Decisions dismissing the McWatt Complaint and the Morawetz Complaint

[66] With respect to the McWatt Complaint, Mr. McIntosh submits the CJC ignored his supplementary submissions, which explained the *Ethical Principles* that are relevant to evaluate improper conduct by a judge. He states the CJC failed to consider the *Ethical Principles* and wrongly concluded that a failure to act in a timely manner was not conduct within the CJC's mandate—the conduct in question contravened the *Ethical Principles*, it could not be addressed through the mechanism of an appeal, and the Dugré Report demonstrates that the CJC has investigated a judge's delay in decision-making in the past. Mr. McIntosh also submits the CJC relied on irrelevant considerations by stating that its role was not to supervise how cases are assigned. He contends this was never the basis of the McWatt Complaint. The heart of the

complaint was the delay between receiving Justice Shore's email and taking action to remove the comments and prevent judges from adjudicating his family law disputes. Mr. McIntosh states the CJC reached a manifestly unreasonable conclusion that his allegations were unsupported and vexatious.

[67] Mr. McIntosh raises similar allegations with respect to the Morawetz Complaint "but where Justice McWatt delayed in acting, Justice Morawetz failed to act".

[68] The respondent submits the CJC reasonably dismissed the McWatt Complaint and the Morawetz Complaint. The *Ethical Principles* fall within the CJC's mandate and it is presumed that the CJC considered them. Furthermore, the *Ethical Principles* are advisory guidelines and they do not set standards defining judicial misconduct: *Cosentino* at paras 91-92. The respondent argues that Mr. McIntosh's complaints wrongly assume that the Chief Justice and Associate Chief Justice were required to address his concerns by responding to him personally, according to his timeline, and independently of the judicial processes available to him.

[69] For the reasons below, Mr. McIntosh has not established that the CJC's decisions dismissing the McWatt Complaint and the Morawetz Complaint were unreasonable.

[70] The CJC did not miss the heart of the complaints by referring to the limits of its role for judicial decisions and the manner in which a judge exercises their authority when assigning cases. The alleged inaction or delay of Justices Morawetz and McWatt related to how Mr. McIntosh believed they should have managed the sittings of the court and the assignment of

cases in light of Justice Shore's case comment and email. While all three judicial complaints arose from the same events, the Morawetz Complaint and the McWatt Complaint were filed months after the Shore Complaint, on the day it was dismissed. The essence of Mr. McIntosh's allegations were that, as the Chief Justice, Justice Morawetz had the power to direct and supervise the sittings of the court and the assignment of judicial duties, and he had an ethical obligation to ensure conduct that maintains and enhances confidence in the impartiality of the judiciary. The Morawetz Complaint alleged that Justice Morawetz failed to act and allowed judges who had received the email to adjudicate Mr. McIntosh's family law matters, which was tantamount to child abuse. The McWatt Complaint alleged that Justice McWatt had similar obligations and delayed acting. It alleged that she allowed judges who received the email to adjudicate Mr. McIntosh's family law matters in a deliberate attempt to interfere with the administration of justice and deny a fair proceeding, which is also tantamount to child abuse.

[71] In dismissing the complaints, the CJC explained that it has no supervisory role regarding judicial decisions or the manner in which a chief justice or associate chief justice exercises their authority when assigning cases to judges of the court. The CJC found the rest of the allegations to be unsupported opinions and beliefs. It determined that the complaint did not warrant consideration and was manifestly without substance and vexatious. Mr. McIntosh has not established a reviewable error in the CJC's determination.

[72] Mr. McIntosh states the CJC did not address his supplementary submissions, but he has not shown that the CJC failed to consider a central argument or material point on the question that the CJC was required to decide. As the respondent correctly points out, administrative

decision makers are not held to a standard of perfection; they are not expected to respond to every argument or line of possible analysis, or to make an explicit finding on each constituent element leading to the final conclusion: *Vavilov* at paras 91, 128. Decision makers are presumed to have considered and weighed all the evidence unless the contrary is shown: *Patel* at para 93. In my view, Mr. McIntosh's supplemental submissions largely repeat the arguments in the initial complaint, except that they refer to specific passages in the *Ethical Principles*. As I have already explained, the *Ethical Principles* do not set standards defining judicial misconduct: *Cosentino* at para 92. The CJC was not required to explicitly refer to them, or make an explicit finding regarding whether the conduct in question contravened the *Ethical Principles*.

[73] As noted in the section on procedural fairness, Mr. McIntosh also faults Ms. Corado for stating that his allegations against Justice Shore had been "considered and dismissed in file #22-0221". The statement provides no basis for finding a reviewable error in the decisions dismissing the McWatt Complaint or the Morawetz Complaint, for the reasons previously given.

[74] In summary, the CJC addressed the central aspects of the McWatt Complaint and the Morawetz Complaint and its decisions to screen these complaints pursuant to section 5 of the *Review Procedures* were transparent, intelligible, and justified. The CJC's determinations accord with the principles in *Moreau-Bérubé*, and Mr. McIntosh has not established a reviewable error that would warrant setting aside the CJC's dismissal of the McWatt Complaint or the Morawetz Complaint.

V. **Conclusion**

[75] Mr. McIntosh has not established that CJC's review was procedurally unfair, or that its decisions that dismissed the Shore Complaint, the McWatt Complaint or the Morawetz Complaint were unreasonable. As there is no basis to set aside the CJC's decisions, this application for judicial review is dismissed.

[76] At the hearing, the parties asked for an opportunity to address costs in writing. If the parties are unable to agree on costs, the respondent shall file written submissions within 20 days of this decision and Mr. McIntosh shall file written submissions within 15 days thereafter. Each party's submissions shall not exceed 3 pages, excluding any bill of costs.

JUDGMENT IN T-234-23

THIS COURT'S JUDGMENT is that:

1. The applicant is granted leave, *nunc pro tunc*, to challenge three screening decisions of the Canadian Judicial Council, dated January 5, 2023, by way of a single application for judicial review.

2. This application for judicial review is dismissed.

3. In the event the parties are unable to reach an agreement on costs, costs remain to be determined following written submissions delivered in accordance with this Court's reasons.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-234-23
STYLE OF CAUSE:	ADAN MCINTOSH v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 14, 2024
JUDGMENT AND REASONS:	PALLOTTA J.
DATED:	SEPTEMBER 11, 2024

APPEARANCES:

Adan McIntosh	FOR THE APPLICANT (ON HIS OWN BEHALF)
Ryan Deshpande	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT