Open Reply To the Minister of Justice and Attorney General of Canada
Ministerial Correspondence Unit - Mailout <Ministerial.CorrespondenceUnit-Mailout@justice.gc.ca>
jody.wilson-raybould@parl.gc.ca
The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada

March 23, 2018

Dear Minister Jody Wilson-Raybould,

Thank you for your March 21 correspondence concerning my request to meet with you and present on the need for changes to the Judges Act.

While I appreciate the personal response as opposed to a response from one of your staff AND I also appreciate that based on these comments, you accept any criminal code offence is judicial misconduct that CJC can investigate for the purpose of removing the judge, therefore the mens rae motive for refusing "can investigate" ongoing crime is s21b s22.2 s23 Criminal Code party to offence;

*"In the event that a judge is alleged to have committed a criminal offence, **the CJC can investigate,** but only for the purposes of determining whether the judge should be removed from office. The CJC has no jurisdiction to determine whether charges ought to be laid against the judge, or whether the criminal law has in fact been breached. As the **Criminal Code applies to all Canadians, including judges**, law enforcement officials may investigate a judge for breach of the Criminal Code and lay charges where appropriate, just as they would in any other case."*

I must clearly express to you why the response is patronizing and disingenuous with mental intent to ensure that the problems with the Judges Act will never be solved. Please do not send me any **patronizing, disingenuous** comments that you lack jurisdiction to overturn court decisions, I have asked you to change the Judges Act, if you refuse, you must at a minimum substantively address the below mentioned 6 questions, anything less is s21b s22.2 s23 Criminal Code party to offence.

1) "*I Would Like To Assure You That I Am Firmly Committed To An Effective Process For Investigating Allegations Of Judicial Misconduct*" Is False, Patronizing, And Disingenuous; The issues that you are silent on, tells me which issues you are afraid off commenting on. **Firstly,** is refusing Judges Act ministerial power to direct a public inquiry an s21b s22.2 s23 Criminal Code ongoing crime? **Secondly,** you do not acknowledge that judicial independence (constitutional) is not synonymous with judicial immunity (common law). **Thirdly**, you do not acknowledge that if the Attorney General constitutional duty to enforce criminal law is in conflict with constitutional judicial independence (it is not), then per JTI-Macdonald Corp. v. AGBC, 2000 BCSC 312, the umpire that decides which constitutional principle prevails, is the objects of the Judges Act. **Fourthly**, is refusing mandatory police record of investigation, while retaining CJC record of investigation decision making powers contrary to Judges Act objects? **Fifthly** if the organization CJC benefits from judicial criminal misconduct, should this conflict of interest be an automatic ground for engagement of an RCMP record of investigation? **Sixthly**, in light of provincial judicial councils legislated duty to issue a decision for every complaint, is CJC mens rae motive for silence on 62 criminal misconduct complaints over 3 years an ongoing crime?

I did not advocate removal of Canadian Judicial Council "CJC" power to make a decision on whether to reprimand or remove a judge, I advocated a mandatory duty to create a "record of investigation" for criminal misconduct complaints, be referred to the RCMP.

While the RCMP and other provincial or municipal police forces are delegates of the Attorney General constitutional duty to enforce criminal law, police operates independently, their role should be to gather the facts, the removal decision making power will rest within the Canadian Judicial Council.

Further just like Canada has power to create courts of statute like the Federal Court, Supreme Court etc. the Government has power to create an RCMP Court, and appoint judges to that Court, their sole responsibility would be to create a criminal complaints "record of investigation". Even if they determine a crime occurred, the CJC would retain power to refuse to not act on the "record of investigation".

JTI-Macdonald Corp. v. AGBC, 2000 BCSC 312 (CanLII) THE RULE OF LAW [110] … Act breaches the equality rights and principles enshrined within the rule of law. They argue that the Act offends against both equality between subjects and **between subject and Crown**. …[118] That unwritten constitutional principles form part of the fabric of the Canadian Constitution is clear. As expressed by Chief Justice Lamer, the provisions of the preamble to the Constitution Act, 1867 provide "organizing principles" that may be used to "**fill out gaps in the express terms of the constitutional scheme**…[119] Section 52(2) of the Constitution Act, 1982 does not purport to provide an exhaustive list of instruments defining the ambit of the Canadian constitution. [120] Section 26 of the Charter of Rights and Freedoms expressly excludes the fact of express Charter rights "… denying the existence of any other rights or freedoms that exist in Canada".….[136] It is alleged the words of the Act have not conveyed with the "**irresistible clearness**" required the intention of the legislature to override the application of the principle of the rule of law.… The principle of the sovereignty of Parliament requires **judicial obedience to the strict terms of the statute**. In the process of applying a statute, however**,** uncertainties concerning its scope or effect in particular circumstances are bound to arise. **The rule of law requires that these uncertainties be resolved, so far as possible, in a manner which would most conform** to the reasonable understanding of the subject to whom the statute is primarily addressed. Implicit in this understanding is the expectation that **Parliament will conform to the generally accepted notions of fairness and justice** -- that punishment will not be authorized for acts which were not known to be unlawful when committed, **that vested rights will not be destroyed** without reasonable compensation, that the powers of officials are to be limited by proper respect for the liberty of the citizen. "If the words are not conclusive in themselves, the reasonableness or otherwise of the construction contended for has always been recognized as a **matter fairly** to be taken in account"..147] … **one law for all" concept based on the rule of law providing the law be supreme over** both the acts of government and **private persons**:...[228]…The process of interpreting a statutory provision that is susceptible of more than one meaning was traditionally governed by the basic precept that the Court's function is to **discover the intention of the legislature**. In a case in which the ordinary rules of construction yield two equally plausible meanings, policy considerations are a factor in resolving the conflict. In constitutional cases before the Charter this was reflected in the practice of interpreting statutes by applying a presumption that **a legislative body does not intend to exceed its powers under the Constitution**.

2) **Lack of Separate Judges Act Mandatory "Record of Investigation" Procedure For Criminal Misconduct Complaints;** This is the most important issue, Manitoba is the only Province to recognize that criminal misconduct complaints must be treated differently.

Manitoba Provincial Court Act; Complaints referred directly to board 31(2) Despite subsection (1), the Chief Judge shall refer a complaint to the board if (a) the complaint alleges that a judge has committed an **indictable offence**; or (b) in the opinion of the Chief Judge, the alleged misconduct by the judge may amount to conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

4) **Lack of Criminal Misconduct Judges Act Conflict Of Interest Procedure**; Where "*members of federal and provincial administrative tribunals"* act without jurisdiction to commit assault, illegal arrest, obstruction of justice, intimidation, extortion, fraudulent concealment in order to help Canadian Judicial Council commit ongoing crimes AND a member of the CJC acts without jurisdiction and in bad faith to remove access to Criminal Court OR lies about jurisdiction in order to protect CJC, then the motive for the initial assault, arrest, obstruction of justice, intimidation, extortion, fraudulent concealment to protect CJC, which is the same motive for the CJC member's crimes, is by extension CJC jurisdiction. See;

https://adeolumideonline.files.wordpress.com/2018/01/openletter_opp_onmpps.pdf

5) **Abuse Of Good Faith Discretionary Power**; Canadian Judicial Council bad faith abuse of Judges Act discretionary public power to contravene the objects of the Judges Act in order to **refuse to respond to 62 criminal misconduct complaints over a period of 3 years is unconstitutional**, therefore where there is a criminal misconduct complaint the word "may" discretionary power must become "shall". As you know the test is beyond all reasonable doubt, therefore the complainant has to prove to beyond all reasonable doubt to the RCMP that; falsehood that s22.2 criminal code organization cannot be prosecuted, falsehood that anyone has judicial immunity for assault in order to extort property, falsehoods about jurisdiction to defraud criminal code first instance and appeal rights etc. are not an errors in law, but a deliberate false statements with mens rae to obstruct justice in a criminal proceeding.

6) **Racially Discriminatory Treatment**; I asked for a face to face meeting, you have met with other victims seeking legislative changes, there is no reason to treat me differently. I experienced racial discrimination by Conservative Party brass, several judges who look and think like the people who committed racial discrimination against me, made several deliberately false statements in order to extend the initial racial discrimination. Therefore whether intentional or not, refusing to meet with me, makes me feel that you think I do not deserve equal treatment and the initial racism is justified.

https://adeolumideonline.files.wordpress.com/2018/01/openletter_supremecourtregistrar_auditorgeneralofcanada.pdf

7) **Lack of Face To Face Meeting Causes Substantial Misunderstandings**; This patronizing and condescending response implies that the black African immigrant with English language deficiencies is confused, "*The CJC's jurisdiction does not extend to judges appointed by a province or territory, or to the members of federal and provincial administrative tribunals (who should not be confused with judges)*". This allegation of English language deficiencies is a direct quote from Justice Hackland, this quote was reproduced by the Canadian Judicial Council executive director as justification for Justice

Hackland fraud, I perceive that you are treating me in the same condescending manner. For more information on the type of Justice Hackland criminal misconduct that the CJC is encouraging and as evidence that I know the difference between a judge and a justice of peace, please see;

https://adeolumideonline.files.wordpress.com/2017/06/canadian-judicial-council-chair-supreme-court-chief-justice-beverley-maclachlin-retires-amid-police-investigation-part-1.pdf

https://adeolumideonline.files.wordpress.com/2017/12/beverleymclachlinparttwo1.pdf

8) **Lack of Judges Duty To Respond To All Complaints With Reasons;** Your response does not deal with one of the root causes of my complaint. Most provinces have a statutory procedures act and judicial council legislation that influences how judicial council deals with a complaint. The Judges Act has no such procedure and this is an issue I would also like to expand on during out meeting.

For example I have always received a decision from the Justice of Peace Review Council, while it contains a falsehood that a Justice of Peace has immunity for assault, arrest, obstruction of justice, intimidation, extortion, fraudulent concealment. In contrast, **the Canadian Judicial Council is silent on 62 criminal misconduct complaints over 3 years**, because there is no legislative mandatory duty to acknowledge receipt of the complaint and issue a decision with reasons. For example;

The Judges Act is unconstitutional, the positive obligation to respond to misconduct complaints, is codified in; s51.4 (1) Ontario Courts Justice Act, Ontario Justice of Peace Act 11(1) (3), New Brunswick Provincial Court Act 6.6 (1), 6.6(3), 6.7(2), 6.7(3), Newfoundland and Labrador Provincial Court 19(1), 22, British Columbia Provincial Court Act 22.1(1)(2), Quebec Act Respecting Administrative Justice 183, 184.2, Quebec Courts Justice Act 267, Nova Scotia Provincial Court Act 17(b1), Territorial Court Act 39, 40, 42, 43, Alberta Judicature Act 34(2)(4) (5b), Manitoba Provincial Court Act 31(2)(3), Saskatchewan Provincial Court Act 55(1), Prince Edward Island Provincial Court Act 10(1).

s3(a), s4, s7 Alberta Administrative Procedures and Jurisdiction Act

Notice to parties 3 When (a) an application is made to an authority, or (b) an authority on its own initiative proposes to exercise a statutory power, the authority shall give to all parties adequate notice of the application that it has before it or of the power that it intends to exercise.

Evidence and representations 4 Before an authority, in the exercise of a statutory power, refuses the application of or makes a decision or order adversely affecting the rights of a party, the authority (a) shall give the party a reasonable opportunity of furnishing relevant evidence to the authority, (b) shall inform the party of the facts in its possession or the allegations made to it contrary to the interests of the party in sufficient detail (i) to permit the party to understand the facts or allegations, and (ii) to afford the party a reasonable opportunity to furnish relevant evidence to contradict or explain the facts or allegations, and (c) shall give the party an adequate opportunity of making representations by way of argument to the authority.

Written decision with reasons 7 When an authority exercises a statutory power so as to adversely affect the rights of a party, the authority shall furnish to each party a written statement of its decision setting out (a) the findings of fact on which it based its decision, (b) the reasons for the decision.

Quebec Chapter T-16 Courts Of Justice Act

Division III Examination Of Complaints **263.** The council receives and examines a complaint lodged by any person against a judge alleging that he has failed to comply with the code of ethics.
264. Any complaint is made in writing to the secretary of the council and states the facts with which the judge is charged and the other relevant circumstances.
265. The council shall examine the complaint; it may, for that purpose, require from any person such information as it may deem necessary and examine the relevant record, even if the record is confidential under the Youth Protection Act (chapter P-34.1)…
266. The council shall forward a copy of the complaint to the judge; it may require an explanation from him.
267. If the council, after examining a complaint, establishes that it is not justified or that its nature and importance do not justify an inquiry, it shall notify the plaintiff and the judge of it and state its reasons therefor.
268. The council may, after examining a complaint, decide to make an inquiry. It must make an inquiry, however, if the complaint is lodged by the Minister of Justice or if the latter requests it pursuant to the third paragraph of section 93.1 or the third paragraph of section 168.

January 8, 2018 Attorney General and Minister of Justice MP Jody Wilson-Raybould
Hill Office 613.992.1416 jody.wilson-raybould@parl.gc.ca
Centre Block, Suite 449S, House of Commons, Ottawa, Ontario, Canada, K1A 0A6

From: Ade Olumide ..Tel: 613 265 6360 Fax: 613 832 2051, ade6035@gmail.com

REQUEST FOR TELEPHONE APPOINTMENT TO DISCUSS HOW YOU CAN HELP ACHIEVE LEGISLATIVE CHANGES TO THE JUDGES ACT

Could I have a 30 minutes appointment? I would like to seek your assistance to make changes to the Judges Act procedure for handling complaints of criminal misconduct by judges. Can you please advise on when we can speak over the phone?

Thank you for your public service to our great nation of Canada. As you know, judicial independence is a constitutional doctrine, but the Parliament has exclusive constitutional jurisdiction over the criminal law and procedure in criminal matters. Judges cannot do indirectly (change the criminal code) what they lack jurisdiction to do directly.

I hereby recommend that Parliament legislate that Council must refer all allegations of criminal misconduct to the RCMP who would submit a "record of investigation" within 90 days back to Council, upon receipt of the "record of investigation", the Council would retain the power to decide whether to recommend a reprimand or removal of the judge.

Judges are claiming judicial immunity for criminal offences like assault, extortion, obstruction of justice, fraud etc. Although judicial immunity is not a constitutional principle, the police think they are unable to investigate due to the common law principle of judicial immunity, therefore Council that must be required to request an RCMP investigation of any criminal complaint.

The status quo has created a situation where judges who are subject of criminal misconduct complaints are the same judges deciding not to request a record of the investigation, the same judges return to the court to assault and extort mandatory criminal code procedures for presenting evidence to meet the test for each element of the charge for a criminal prosecution of the Canadian Judicial Council, the same judges return to courts of appeal to defraud mandatory criminal code appeal procedures, which triggers new criminal misconduct complaints to the Canadian Judicial Council, the same judges decide not to request a record of the investigation and the cycle repeats itself.

The courts have found that since the Canadian Judicial Council is implementing government policy on criminal misconduct complaints, and Council is not a court, judicial independence does not apply to judges to the Canadian Judicial Council.

Madadi v. B.C. (Ministry of Education), 2012 BCHRT 380 (CanLII) [71] …The difficulty with these decisions is that ... In the words of the Supreme Court in Ocean Port, the Tribunal has elevated a common law rule to constitutional status. .. [73] It could be argued that the constitutional guarantee of independence extends to certain tribunals and may be inconsistent with the application of the human rights legislation to certain Court-like functions carried out by those tribunals …Conclusion Respecting Judicial Immunity [74] While ..there are sound reasons for immunizing judicial and quasi-judicial decision makers from civil suit: promoting finality of decision-making and the public interest in the integrity of the justice system, a key element of which is impartial and independent decision makers, constitutional judicial immunity does not apply to the hearing process of the TRB. As expressed in Ocean Port, "While tribunals may sometimes attract Charter requirements of independence, as a general rule they do not". Certainly it is clear that the TRB was **created for the primary purpose of implementing government policy r**especting education. It therefore does not attract constitutional guarantees of independence in my view. I am driven to the conclusion that judicial immunity does not apply to the processes of the TRB whether they be those functions that may be performed interchangeably by Courts or tribunals, such as the discipline hearing in this case or responsibilities related to the sort of policy-driven adjudicative responsibilities that could not be performed by the Courts.

http://www.duhaime.org/LegalDictionary/J/JudicialMisconduct.aspx
Misconduct Definition: **Conduct on the part of a judge that is prohibited** and which could lead to a form of discipline. .. generally, a prohibition against conduct prejudicial to the administration of justice that could bring the judicial office into disrepute**.**… Examples of specific instances of judicial misconduct include: …**Criminal conduct,**

Protection of Persons Administering and Enforcing the Law 25.1 Principle (2) It is **in the public interest to ensure that public officers may effectively carry out their law enforcement duties in accordance with the rule of law** and, …. Requirements for certain acts (9) **No public officer is justified in committing an act or omission that would otherwise constitute an offence and that would be likely to result in loss of or serious damage to property**….
Limitation (11) Nothing in this section justifies…
(b) **the wilful attempt in any manner to obstruct, pervert or defeat the course of justice**; or

Bourbonnais v. Canada (Attorney General), [2006] 4 FCR 170, 2006 FCA 62 (CanLII) [26]…. Sexton J.A., after reviewing the Canadian authorities on this point and, in particular, the decision of the

Supreme Court of Canada in Morier et al. v. Rivard, 1985 CanLII 26 (SCC), [1985] 2 S.C.R. 716, and the decisions of the Quebec Court of Appeal in Royer v. Mignault (1998), 1988 CanLII 445 (QC CA), 50 D.L.R. (4th) 345 (Que. C.A.) leave to appeal to the Supreme Court refused, [1988] 1 S.C.R. xiii, and Proulx v. Quebec (Attorney General) (1997), 1997 CanLII 10286 (QC CA), 145 D.L.R. (4th) 394 (Que. C.A.), in which the Court of Appeal adopted the bad faith exception formulated by Lord Denning in Sirros, concluded as follows at paragraph 41: … judicial immunity does not apply where it is shown that a judge **knowingly acts beyond his jurisdiction**.…[28]In the case at bar, the **appellant does not contend that he is entitled to judicial immunity in regard to the criminal prosecution** that has been brought against him. In my opinion, **there would be no merit whatsoever to any such claim**. As Lord Denning stated in Sirros, at page 782: "Of course, if the judge has …**has perverted the course of justice, he can be punished in the criminal courts**." …[30] ….It is clear from some of the cases discussed above, however, that the **immunity of judges from criminal liability is not total**. In this respect the law of England is the same as that of the USA. Excepting the general principles of immunity discussed above, **any judicial officer who violates the criminal law would be as liable therefore as any other private person**. According to Woodhouse J. of the New Zealand Court of Appeal, "a judge can, of course, be made to answer, and in a proper case, pay dearly, for any criminal misconduct. Like any other citizen criminal proceedings may be brought against him." **This is because "criminal conduct is not part of the necessary functions performed by public official**"… **The defence of judicial immunity from indictment was rightly rejected** in both Braatelein v. United States and United States v. Hastings (above). The law on immunity from criminal liability was aptly summed up by White J. of the US Supreme Court in O'Shea v. Littleton, We have never held that the performance of the duties of judicial . . . officers requires or contemplates the immuni-zation of otherwise criminal deprivations of constitutional rights . . . on the contrary the judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct proscribed by an Act of Congress. A principle similar to this would probably apply (with appropriate modifications) in most common-law jurisdictions.

Taylor v. Canada (Attorney General), [2000] 3 FCR 298, 2000 CanLII 17120 (FCA) [60]Finally, in my view, the exception to absolute immunity established in Sirros v. Moore is an extremely narrow one. It will be the rare case indeed where a **plaintiff can show that a judge acted with the knowledge that he or she had no jurisdiction**. The example cited by Lord Bridge in McC v. Mullan demonstrates both the need for an exception to the judicial immunity principle, as well as the limited nature of the exception.. Taylor v. Canada (Attorney General), [2000] 3 FCR 298, 2000 CanLII 17120 (FCA) [62]…."72 He added that a claim for malicious prosecution required a plaintiff to demonstrate "improper motive or purpose,"73 and that "**errors in the exercise of discretion and judgment are not actionable**."74 In that sense, Nelles is consistent with the proposition that the "bad faith" exception to judicial immunity cannot be engaged merely **where a judge errs in the exercise of his or her discretion**, as happened in the present case. [63]In light of the constitutional importance of judicial immunity, I conclude that any "**bad faith" exception to judicial immunity that exists** is just as narrow, if not more so, than the exception to prosecutorial immunity addressed in Nelles .

J.W. Abernethy Management & Consulting Ltd. v. 705589 Alberta Ltd. and Trillium Homes Ltd., 2005 ABCA 103 (CanLII) [24]… The only **exception is when a judge "knowingly acts outside of official capacity; without a good faith belief of jurisdiction**": ***S.G.* v. *Larochelle*** (2004), 355 A.R. 46, 2004 ABQB 123 (CanLII) at para. 10; aff'd 2005 ABCA 111 (CanLII), citing ***Royer* v *Mignault*** (1988), 1988 CanLII 445 (QC CA), 50 D.L.R. (4th) 345 at 354 (Que. C.A.). Judicial immunity clearly

extends to Queen's Bench judicial settlement processes, including binding JDR's. See ***Condessa Z Holdings Ltd.* v. *Rusnak*** (1993), 1993 CanLII 5526 (SK CA), 109 Sask. R. 170 (C.A.).

Royer c. Mignault, 1988 CanLII 445 (QC CA) Immunity of Superior Court Judges …. What he does may be outside his jurisdiction - in fact or in law - but so long as he honestly believes it to be within his jurisdiction, he should not be liable. Once he honestly entertains this belief, nothing else will make him liable. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. Actions based on such allegations have been struck out and will continue to be struck out. Nothing will make him liable **except it be shown that he was not acting judicially, knowing that he had no jurisdiction to do it…**. In McC. c. Mullan, (1984) 3 All E.R. 908, 816, Lord Bridge of Harwich stated: ...It is, of course, clear that the holder of any judicial office who acts in bad faith, doing what he knows he has no power to do, is liable in damages. If the Lord Chief Justice himself, on the acquittal of a defendant charged before him with a criminal offence, were to say, "That is a perverse verdict," and thereupon proceed to pass a sentence of imprisonment, **he could be sued for trespass.** … I conclude, therefore, that a superior court judge is protected by absolute immunity from any civil liability for anything he does or says in the performance of his functions as a judge. He will not be liable in damages **unless he acts outside of his jurisdiction knowing that he has no power** to do what he does.

Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board), 1999 CanLII 2477 (NS CA) [113].. the Board and its members are protected from a civil action for damages arising out of any acts committed by them, provided the acts are committed in the course of judicial duties, and provided further that a member may lose his or her immunity if while acting in **bad faith** they did something which he or she knew he or she did not have the jurisdiction to do, or while not acting in the course of judicial duties **knew that he or she had no jurisdiction** to act.

Morier et al. v. Rivard et al (1985), 1985 CanLII 26 (SCC), 23 D.L.R. (4th) 1 (S.C.C.), the majority considered the extent and nature of the immunity conferred on superior court judges in Canada, and concluded that it is essentially absolute, allowing for potential liability only where a judge is shown to have **knowingly exceeded his jurisdiction in bad faith**.

Verge Insurance Brokers Limited et al. v Richard Sherk et al., 2015 ONSC 4044 (CanLII) **(b)***inherent jurisdiction is not to conflict with Rule* [61] "[T]he **inherent jurisdiction of the Court of Queen's Bench is not such as to empower a judge of that Court to make an order negating the unambiguous expression of the legislative will**": see *Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd. et al.*, 1975 CanLII 164 (SCC), [1976] 2 S.C.R. 475 at p. 480.[62] "**Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule**": see *Montreal Trust Company et al. v. Churchill Forest Industries (Manitoba) Limited*, [1971] 4 W.W.R. 542 at p. 547, cited with approval in *Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd…***(c)** *inherent jurisdiction limited to filling gaps* [63] "In spite of the expansive nature of this power, **inherent jurisdiction does not operate where Parliament or the legislature has acted**": see *Stelco Inc. (Re)*, *supra*, at para. 35.

Freeman v. Canada (Citizenship and Immigration), 2013-10-23, 2013 FC 1065, IMM-6304-12, Legal Principles Relating to the Concept of Bad Faith …[24] The Supreme Court also stated in Roncarelli that "good faith" means "… carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and

for an alien purpose…". According to the Court, "good faith" does not mean acting "for the purposes of **punishing a person for exercising an unchallengeable right**" and "it does not mean **arbitrarily and illegally** attempting to divest a citizen of an incident of his civil status": at para. 46…..[26] While bad faith certainly includes situations where there is intentional fault on the part of a decision-maker (as was the case in Roncarelli), evidence of actual malice or intent to harm is not required in order to rebut the presumption of good faith: Finney v. Barreau du Québec, 2004 SCC 36, [2004] 2 S.C.R. 17, at para. 40. [27] As the Supreme Court observed in Entreprises Sibeca, above at para. 26, in addition to deliberate acts, the concept of bad faith can include "acts that are so markedly inconsistent with the relevant legislative context that a court cannot reasonably conclude that they were performed in good faith". [28] Direct evidence of bad faith is not required. It can, in the appropriate case, be inferred from the surrounding circumstances: Finney, at paras. 37-39, Enterprises Sibeca, above at para. 26. [29] "Bad faith" can encompass serious carelessness or recklessness. Indeed "**recklessness implies a fundamental breakdown of the orderly exercise of authority, to the point that absence of good faith can be deduced and bad faith presumed**":

Roncarelli v. Duplessis 1959 CanLII 50 (SCC), [1959] S.C.R. 121, ….there is no such thing as absolute and untrammeled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "**Discretion" necessarily implies good faith** in discharging public duty; there is always a perspective within which a statute is intended to operate; and **any clear departure from its lines or objects is just as objectionable as fraud or corruption**.

Alberta Provincial Courts Act 2000 Chapter P-31 Action for damages 9.51(1) No action may be brought against a judge for any act done or omitted to be done in the execution of the judge's duty or for any act done in a matter in which the judge has exceeded the judge's jurisdiction unless it is proved that the judge acted **maliciously and without reasonable and probable cause**. … (5) The Minister of Justice and Solicitor General may make a payment for damages or costs, including lawyer's charges incurred by the judge in respect of an act, omission or matter described in subsection (1), (2) or (3).

Manitoba The Provincial Court Act C.C.S.M. C. C275 Exemption from liability 71 Except as provided in this Act, no action shall lie or be instituted against a judge or justice of the peace for any act done by him or her in the execution of a duty unless the act was **done maliciously and without reasonable and probable cause**.

Manitoba The Court of Queen's Bench Act; Exemption from liability 15 Where an officer of the court, in exercising the powers and performing the duties of the officer, acts in good faith, an action shall not be brought against the officer with respect to an act of the officer unless the act is **malicious and is done without reasonable grounds**

Prince Edward Island Provincial Court Act, RSPEI 1988, C P-25 11. Limitation of Action (1) Except as provided in this Act, no action lies or may be instituted against a judge, or justice of the peace for any act done by him or her in the execution of his or her duties unless the act was done **maliciously or without reasonable cause**.

Id. at 368-69 (Stewart, J., dissenting quoting Pierson v. Ray, 386 U.S. 547, 554 (1967) The "central feature" in *Sparkman*, he wrote, was Judge Stump's "preclusion of any possibility for the vindication of respondents' rights elsewhere in the judicial system. Powell noted that the *Bradley* Court accepted the injustices the doctrine of judicial immunity sometimes imposes because those injustices are usually mitigated by the availability of appeal. But **where a judicial officer acts in a manner that precludes all resort to appellate or other judicial remedies that otherwise would be available, the underlying assumption of the *Bradley* doctrine is inoperative...**

Piper v. Pearson, id., 2 Gray 120. … entitlement to immunity, the U.S. Supreme Court focused upon the nature of the act: is it an act ordinarily performed by a Judge? But an act done in **complete absence of all jurisdiction** cannot be a judicial act. It is no more than the **act of a private citizen, pretending to have judicial power** which does not exist at all. In such circumstances, to grant absolute judicial immunity is contrary to the **public policy expectation** that there shall be **a Rule of Law**.

State use of Little v. U.S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 697. When a judicial officer acts **entirely without jurisdiction** or without compliance with jurisdiction requisites he may be held **civilly liable for abuse of process** even though his act involved a decision made in good faith, that he had jurisdiction.

Ableman v. Booth, 21 Howard 506 (1859). "**No judicial process,** whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and **an attempt to enforce it beyond these boundaries is nothing less than lawless violence**."

Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872) "**Where there is no jurisdiction, there can be no discretion**, for discretion is incident to jurisdiction."

Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326. When a judge knows that he lacks jurisdiction, or acts in the face of **clearly valid statutes expressly depriving him of jurisdiction**, judicial immunity is lost.

Ashelman v. Pope, 793 F.2d 1072 (1986), the Ninth Circuit, en banc , criticized the "judicial nature" analysis it had published in Rankin as unnecessarily restrictive. But Rankin's ultimate result was Judge Howard had been independently divested of absolute judicial immunity by his **complete lack of jurisdiction.**

Stump v. Sparkman, id., 435 U.S. 349 Some urge that any act "of a judicial nature" entitles the Judge to absolute judicial immunity. But **in a jurisdictional vacuum**, (that is, absence of all jurisdiction) the second prong necessary to absolute **judicial immunity is missing**.

Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938) judge must be acting **within his jurisdiction** as to subject matter and person, to be entitled to immunity from civil action...

I look forward to your response. Ade Olumide