Federal Court  Cour fédérale

Date: 20250924

Docket: T-98-25

Citation: 2025 FC 1564

Ottawa, Ontario, September 24, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

PATRICK CHESNAIS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Chairperson of the Immigration and Refugee Board of Canada [IRB] dated December 17, 2024 [Decision]. The Chairperson screened out and dismissed the Applicant's complaint against a member of the Immigration Division [ID] of the IRB [Member].

[2] The Applicant was counsel for the Minister of Public Safety and Emergency Preparedness [Minister] and appeared before the Member to oppose the release of a certain individual from detention. The individual had some 14 convictions and many failures to comply with criminal and immigration conditions of release, in addition to underlying mental health issues. The case arises out of the submissions of the Applicant as counsel before the Member and comments by the Member when deciding the individual should not be released.

[3] The Applicant filed a complaint under the IRB complaint *Procedures* concerning what the Member said about him. The IRB Ombudsperson prepared a report for the Chairperson concluding the Member's words complained of were part of the reasons presented in the Member's decision, were covered by adjudicative independence and, for this reason, his allegations fall outside the scope of the IRB's member complaints process.

[4] Notably the complaint *Procedures* do not refer to "adjudicative independence," but does preclude complaints in relation the "rulings" or "about a decision."

[5] The Chairperson, by letter dated December 17, 2024, dismissed the complaint saying the "… complaint is about what the Member stated while giving her reasons for decision. The reasons presented in a member's decision are covered by adjudicative independence. For this reason, the allegation falls outside the scope of the member complaints process. The Ombudsperson has recommended that I dismiss the complaint because the allegations are not within the scope of the member complaints *Procedures*," i.e., the IRB's *Procedures* for Making a Complaint Against a Member [*Procedures*].

[6] For the reasons that follow, this application will be allowed. The reasons are not responsively justified and fail to provide a rational chain of analysis.

II. Facts

[7] On October 30, 2024, the Member held a detention review hearing for a person held in immigration detention.

[8] The Applicant was counsel for and represented the Minister. He opposed release.

[9] In his submissions, the Applicant referred to the Chairperson's Guidelines [Guidelines] and the previous 48-hour detention review decision of the ID. At the 48-hour review, the ID held the individual was a low flight risk but nonetheless ordered continued detention. The Member took issue with his comments regarding both.

[10] The following are relevant extracts from the transcript:

> **MINISTER'S REPRESENTATIVE**: Thank you, Madam Member. So, I will begin with my updates for today. And this consists in M-2 on the note from the removals officer.
>
> …
>
> The Minister argues for continued detention for unlikely to appear for removal. And the flight risk for [DELETED] is high.
>
> It is high because, very recently, [DELETED] was arrested by the CBSA and released on reporting conditions. This was in June of 2024. Five (5) days later, [DELETED] failed to appear for reporting -- in-person reporting as required. A warrant was issued and [DELETED] was located when the police found him.

[DELETED] has, by my count, 14 convictions for various failed to comply matters. In the past year, he has been charged five (5) additional times for failure to comply or failure to attend. It is clear from [DELETED]'s history that, for whatever reason, he does not comply with any conditions imposed upon him, immigration or criminal.

…

But it seems that this is a pattern which has repeated itself over and over again, which is to say that [DELETED], once he is on his own, simply does not have the wherewithal to comply with criminal or immigration conditions.

And on this history of essentially complete non-compliance in criminal and immigration matters going back years, there is a high flight risk here.

I understand that the Division found otherwise — found a low flight risk at the 48-hour detention review, but there is no world in which this is the case.

Turning to the 248 factors. …And therefore, detention should be continued today. Thank you.

MEMBER: Thank you, Mr. Chesnais. Maybe just a few comments and questions. I mean, first, I appreciate that the Minister can see the delay with respect to the travel document application and the outstanding charges. I mean, that appears to be somewhat clear in deficiencies in the Minister's materials today.

Second, even though your submissions did not touch extensively on this, I assume you will be aware that, at the 48-hour review, the presiding Member found that [DELETED]’s non-compliance is tied inextricably to his mental health challenges, which we do have evidence of, and that factored into her finding that he represents a lower flight risk.

I just want to make sure that we are all aware of the context surrounding that finding, and also that the mental health challenges are what prompted Member Tempier to at -- near the end of her decision, request that the Minister reach out to the Toronto Bail Program by this detention review hearing to see whether they might be amenable to offering supervision.

Because she found that, for a vulnerable person, detention really is not the best place and we should be turning our minds to whether

we can fashion an alternative to detention that might be able to address his non-compliance.

So, I would like to know whether any work has been done on that front and whether the CBSA, or any representative, has reached out to the TBP.

MEMBER [sic – referring to Minister's Representative]: The answer, Madam Member, is no, and I will explain why -- in terms of reaching out to the Toronto Bail Program. And the answer is that it would be fruitless at this point given the short-term (inaudible).

It is the intention of the Minister to remove [DELETED] within a very short period of time, and therefore it would make -- it does not -- it is not logical to refer to the Toronto Bail Program. This is a reflection of the Toronto Bail Program policy. As well, they simply do not take referrals under this -- under these circumstances.

And more generally speaking, I mean, I understand that the finding was based on the -- [DELETED] being a vulnerable person, but that does not change the logic of the situation. The vulnerable status does not affect the suitability of referrals, it does not affect the removal timelines, it does not affect the flight risk.

I would go so far as to say that the guideline is flawed. 90 percent, approximately, of the persons who come before the Board are vulnerable persons. The legal principles are that persons are detained only if necessary, and alternatives to detention are -- a person is released to an alternative if the alternative is suitable. It is quite understandable that a vulnerable person would be entitled to procedural accommodations, but the substance of accommodations are simply in principle. They do not fit analytically with the framework of detention reviews that has been developed over decades.

And the guideline cited does not cite any jurisprudence. It is untethered to the law. It only cites itself. It is incestuous. It cites other Chairperson's Guidelines.

And to the contrary, we find in the case law very clear expressions that the analysis, again, is based on the 248 factors and the ground for detention. And that is what both the purpose of the IRPA and the Charter requires.

And with all due respect to the finding of the previous detention review, and I understand where it is coming from, it is not based on any lawful or substantial analysis.

MEMBER: All right. Mr. Chesnais, sorry, I am going to have to stop you there. I am not — we are not going to engage in an academic discussion of the guidelines and whether they are flawed. The guidelines are what they are, and each presiding Member applies them in the way that they see fit in each detention review.

…

MEMBER: Thank you, Ms. Aliyeva. Mr. Chesnais, anything to say by way of final reply?

MINISTER'S REPRESENTATIVE: Yes, thank you. It was argued that there was a delay against the Minister for failure to refer to the Toronto Bail Program. If the Minister had intended to refer and had not referred in time, which is to say I had waited an additional week despite the request of the Member, then there would be a delay.

Here, the Minister has declined to refer, and therefore there is no delay. And the waiting to not refer -- there is no waiting to not refer to the Toronto Bail Program.

I have already, I think, made plenty of submissions about the vulnerable person issue raised by my friend. I am not going to elaborate further on what I said in my reply to Madam Member's question. Except this, which is to point out that, looking at section 3 of the Chairperson's Guidelines on detention, which is to say release and alternatives to detention, it should be clear, in light of these guidelines under three (3) — section 3, that the guidelines for vulnerable persons are completely redundant.

Finally, as to whether detention should be continued today, Madam Member, the previous detention review did find that release [DELETED]'s own promise to appear was an unsuitable alternative. That remains true today.

There is a probability that [DELETED]'s removal is imminent. Given his history, to release him today would be to frustrate the possibility of his removal.

Thank you.

[Emphasis added]

[11] The Member reserved judgment and, later in the day, gave their decision. On holding the individual would not be released, the Member made the following remarks:

> **MEMBER**: This is the decision and reasons for the decision in the seven (7) day detention review hearing concerning [DELETED].
>
> …
>
> And for those reasons, you will be detained.
>
> And Madam Interpreter, for the next portion of the decision, I do not think you necessarily need to interpret line by line for the PC as it is really not for his benefit. But I will let you know when to pick up with interpretation again.
>
> …
>
> **MEMBER:** Thank you. All right. I just want to conclude this decision by saying that, in this Division's view, there are certain aspects of the Minister's Counsel submissions that I believe deserve some comment.
>
> Over the course of the Minister's Counsel submissions, there were some very pointed words and phrases that were used to describe findings made by this Division and the guidelines relied on by this Division in reaching those findings.
>
> Minister's Counsel, in submissions, referred to the Guidelines as being 'flawed, incestuous, and completely redundant.' These types of comments, in my view, set a dangerous precedent and could bring the administration of justice into disrepute.
>
> I feel obliged to remind the Minister's Counsel that these guidelines were crafted and refined over time with the assistance of several stakeholders, including the CBSA, and the Federal Court has also upheld the use and existence of these guidelines and has referred to them in many cases.
>
> Counsels who present before this Division can argue that the law should be distinguished or not applied, as the case may be, but to suggest that our guideline overall is incestuous is, in this Division, you showing contempt for this Tribunal and the decision-making process.
>
> And similarly, with respect to the findings of the previous detention review, the Minister's Counsel has submitted that it is not based on any lawful or substantial analysis. And when referring to

> the findings made by the previous presiding Member that the person concerned represented a low flight risk, the Minister's Counsel submitted that "there is no world in which this is the case."
>
> I am surprised that I have to remind the Minister's Counsel that his role is not that of a reviewing court. The Minister, of course, has to represent the Minister's position, but presumably in a way that respects the values enshrined in the code of conduct for public servants. It was open to the Minister to seek judicial review of the previous decision, and the Minister may also ask this Division to revisit its previous findings if there is reason to depart from those findings, but it should not be done in a way that expresses, essentially, disdain for the IDs decisions and decision-making process.
>
> So, going forward, I am going to remind the Minister that all parties before the *Immigration Division* are expected to please present their cases in a professional manner that upholds the rule of law and demonstrates respect for the process and for this Division.
>
> All right. Madam Interpreter, thank you. I am going to ask you to pick up with interpretation again.
>
> [Emphasis added]

[12] At the hearing before this Court, the Applicant (who represented himself) focused on four specific sets of comments by the Member in relation to his submissions at the hearing:

a) the Member was of the view the Applicant's comments "set a dangerous precedent and could bring the administration of justice into disrepute";

b) the Member suggested the Applicant was "showing contempt for this Tribunal and the decision-making process";

c) the Member suggested the Applicant might not have acted in a manner "that respects the values enshrined in the code of conduct for public servants"; and

d) the Member, in essence, found the Applicant had acted in a way that "expresses, essentially, disdain for the ID's decisions and decision-making process".

[13] I note no one disputes the propriety of the Member's concluding admonition that parties present their submissions in a "professional manner that upholds the rule of law and demonstrates respect for the process and for this Division."

[14] The Applicant takes the position his submissions were "entirely professional and within the bounds of normal and proper advocacy."

[15] The Applicant says the comments themselves damage his reputation. The Respondent does not agree, but as he must, the Respondent recognizes the professional reputation of a lawyer as counsel is "sacrosanct." The Applicant did not receive a sanction, penalty, or other punishment.

[16] While I am dealing with the facts, I note Respondent's counsel submits he personally would have, and the Applicant should have, immediately apologized and offered explanations to dissuade the Member from continuing with those conclusions.

[17] The Applicant disagrees, saying his understanding, generally and specifically, was that Members should not be interrupted in the course of their concluding remarks and that counsel should remain silent. On this issue, I am not persuaded the only course open to the Applicant was to interrupt the Member in this manner given the availability of the IRB's member complaint *Procedures* which the Applicant has followed.

[18] I do agree with both parties that, as Respondent's counsel put it, a lawyer's reputation is sacrosanct.

[19] On the same day as the hearing, the Applicant filled out a complaint on the IRB's Member Conduct Complaint Form [Complaint Form]. He submitted the Complaint Form to the Ombudsperson of the IRB as per the *Procedures*.

[20] In the Complaint Form, the Applicant alleges the Member breached the following sections of the *Code of Conduct for Members of the Immigration and Refugee Board of Canada* [Code]:

> 9. Members shall conduct hearings in a courteous and respectful manner.
>
> 10. Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants in a proceeding so that they may participate effectively. Members are expected to take into account social and cultural differences and to respect human rights.
>
> 11. Members are expected to act honestly and in good faith, in a professional and ethical manner
>
> 12. Members shall conduct themselves with integrity and avoid impropriety or the appearance of impropriety.

[21] The Applicant describes the Member's conduct in the Complaint Form:

> At the conclusion of the detention review of [DELETED] of October 30th, 2024, having rendered her decision, Member Chen scolded Minister's counsel (myself) for lack of professionalism. It was the Member's opinion, and this was explained at length, that the adjectives used in pleadings were overly pungent.
>
> A review of the transcript or audio recording will show that Minister's Counsel's submissions were entirely professional and

that the accusations made by Member Chen were false. Member Chen took exception to phrases: "in no possible world" (from logic) and "incestuous" (in a referential context, items which cite each other and no other items). These phrases were used respectfully and were well within the bounds of normal and proper advocacy.

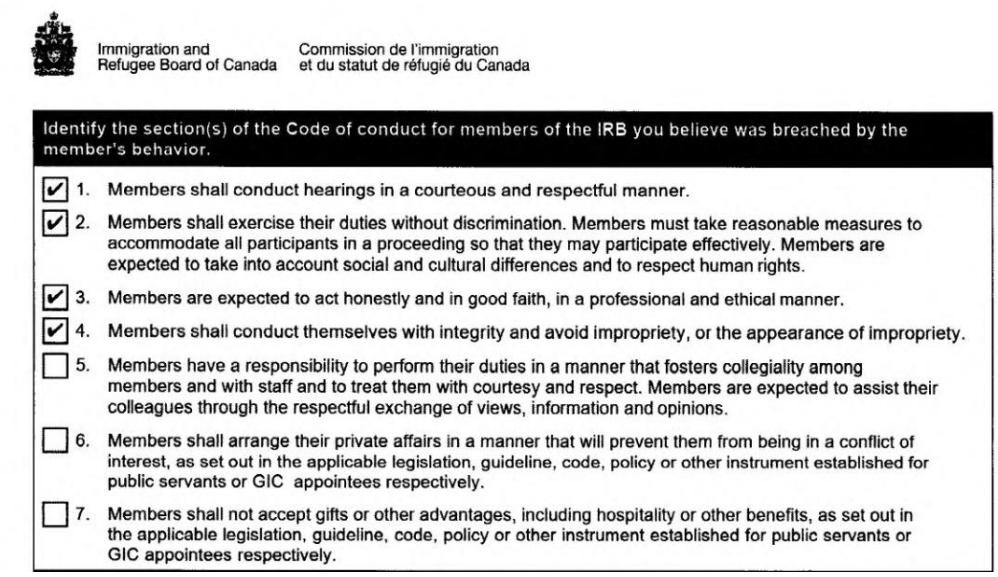
Member Chen breached the Code of Conduct for Members in the following ways:

> 1. Attacking Minister's counsel on record in a public hearing, making serious allegations of professional misconduct, in full knowledge that Minister's counsel would be unable to defend himself. This was an abuse of power. It served no purpose and touched on no live issues at the hearing. In leaving this attack to the end it was implied that the perceived lack of courtesy was of the greatest importance, above and beyond the issues at the hearing and the decision itself.
>
> 2. Making accusations of a personal nature, against Minister's counsel, which were untested, biased, and false.
>
> 3. Implying that the IRB Chairperson's Guidelines were beyond critique. The Member said that "owing to the lengthy consultation process involving multiple stakeholders" it was inappropriate to speak against the Guidelines. The Member chastised Minister's Counsel for doing so.
>
> 4. Telling Minister's Counsel that, if he takes issue on a point of law raised at the previous detention review, the appropriate solution is "to seek judicial review".
>
> 5. Warning Minister's counsel that the diction of his pleadings should not deviate from bounds predetermined by Member Chen.

Member Chen was discourteous and disrespectful. She made an inappropriate and personal attack against a representative of a party and did so in an unprofessional manner. There are issues of law which, as part of their duty, advocates must raise. Member Chen acted in a manner so as to discourage open and honest pleading. Parties cannot participate effectively in a proceeding

> under apprehension of punishment for doing their duty in arguing issues of law. Members cannot make effective decisions if they do not entertain and listen to such pleadings.
>
> There is a reasonable apprehension that Member Chen's expressed personal dislike for Minister's Counsel will impact future hearings.
>
> Member Chen should be aware that there exist a variety of manners of expression and should avoid arbitrarily penalizing manners of expression which differ from her own.
>
> [Emphasis added]

[22] The Complaint Form includes two checklists for the Applicant to identify which sections of the Code were allegedly breached by the Member. The checklists from the Applicant's Complaint Form are:



Immigration and Refugee Board of Canada / Commission de l'immigration et du statut de réfugié du Canada

Identify the section(s) of the Code of conduct for members of the IRB you believe was breached by the member's behavior.

- [x] 1. Members shall conduct hearings in a courteous and respectful manner.
- [x] 2. Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants in a proceeding so that they may participate effectively. Members are expected to take into account social and cultural differences and to respect human rights.
- [x] 3. Members are expected to act honestly and in good faith, in a professional and ethical manner.
- [x] 4. Members shall conduct themselves with integrity and avoid impropriety, or the appearance of impropriety.
- [ ] 5. Members have a responsibility to perform their duties in a manner that fosters collegiality among members and with staff and to treat them with courtesy and respect. Members are expected to assist their colleagues through the respectful exchange of views, information and opinions.
- [ ] 6. Members shall arrange their private affairs in a manner that will prevent them from being in a conflict of interest, as set out in the applicable legislation, guideline, code, policy or other instrument established for public servants or GIC appointees respectively.
- [ ] 7. Members shall not accept gifts or other advantages, including hospitality or other benefits, as set out in the applicable legislation, guideline, code, policy or other instrument established for public servants or GIC appointees respectively.

Member Conduct Complaint Form

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Identify the section(s) of the Code of conduct for members of the IRB you believe was breached by the member's behavior.
☑ 1 Members shall conduct hearings in a courteous and respectful manner.
☑ 2 Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants in a proceeding so that they may participate effectively. Members are expected to take into account social and cultural differences and to respect human rights.
☑ 3 Members are expected to act honestly and in good faith, in a professional and ethical manner.
☑ 4 Members shall conduct themselves with integrity and avoid impropriety, or the appearance of impropriety.
☐ 5. Members have a responsibility to perform their duties in a manner that fosters collegiality among members and with staff and to treat them with courtesy and respect. Members are expected to assist their colleagues through the respectful exchange of views, information and opinions.
☐ 6. Members shall arrange their private affairs in a manner that will prevent them from being in a conflict of interest, as set out in the applicable legislation, guideline, code, policy or other instrument established for public servants or GIC appointees respectively.
☐ 7. Members shall not accept gifts or other advantages, including hospitality or other benefits, as set out in the applicable legislation, guideline, code, policy or other instrument established for public servants or GIC appointees respectively.

[23] Notably, the *Procedures* prohibit the Applicant from making a complaint about the Member's ruling:

> Your complaint cannot be about
>
> - what a member decides in a case
> - questions such as lack of procedural fairness and natural justice
>
> [Emphasis added]

[24] The Complaint Form further emphasizes "[complaints] about a member's decision will not be accepted."

III. Decision under review

[25] The Ombudsperson (who received the complaint) sent a letter to the Chairperson of the IRB, dated December 9, 2024. The Ombudsperson recommended the complaint be dismissed because it was outside the scope of the complaints process as covered by judicial independence:

> The allegation is about statements made by the Member when communicating her decision and reasons to the parties. The reasons presented in a member's decision are covered by adjudicative independence. For this reason, this allegation falls outside the scope of the member complaints process.

[26] In their letter to the Applicant dated December 17, 2024, the Chairperson referred to the design of the complaint process, and the role of the Ombudsperson in providing recommendations to the Chairperson:

> Stephanie Shatilla, Ombudsperson, is responsible for the administration of the Procedures for Making a Complaint about a Member (the *Procedures*). In this role, she makes a recommendation to me about whether the complaint is within the scope of the Procedures (i.e. it relates to the conduct of a member). Only complaints that relate to conduct are referred for investigation.
>
> The complaint process is designed to investigate how members conduct themselves while exercising their duties. This approach respects the legal requirement that IRB members are independent decision-makers. Paragraph 3.3 of the Procedures explains this in more detail, saying that a complaint must be about how the conduct of a member goes against sections 9 to 15 of the Code of Conduct for Members.

[27] Sections 9 to 15 of the Code for Members referred to state:

> 9. Members shall conduct hearings in a courteous and respectful manner.

> 10. Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants in a proceeding so that they may participate effectively. Members are expected to take into account social and cultural differences and to respect human rights.
>
> 11. Members are expected to act honestly and in good faith, in a professional and ethical manner.
>
> 12. Members shall conduct themselves with integrity and avoid impropriety, or the appearance of impropriety.
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> 13. Members have a responsibility to perform their duties in a manner that fosters collegiality among members and with staff and to treat them with courtesy and respect. Members are expected to assist their colleagues through the respectful exchange of views, information and opinions.
>
> 14. Members shall arrange their private affairs in a manner that will prevent them from being in a conflict of interest, as set out in the applicable legislation, guideline, code, policy or other instrument established for public servants or GIC appointees respectively.
>
> 15. Members shall not accept gifts or other advantages, including hospitality or other benefits, as set out in the applicable legislation, guideline, code, policy or other instrument established for public servants or GIC appointees respectively.

[28] Based on the recommendation of the Ombudsperson, the Chairperson dismissed the complaint:

> The Ombudsperson has recommended that I dismiss the complaint because the allegations are not within the scope of the Procedures. After assessing that recommendation and reviewing your complaint, I have concluded that the allegations are not within the scope of the Procedures. This means that they will not be investigated.

IV. Issues

[29] The Applicant asks:

1. Does the Decision reveal a rational chain of analysis?
2. Is the Decision justified in light of the evidence that was before the decision maker?
3. Is the Decision justified in light of the submissions of the Applicant?
4. Is the Decision justified in light of the IRB's published codes and guidelines?
5. Was there a breach of procedural fairness? Did the Respondent fairly and honestly assess the Applicant's complaint?

[30] The Respondent submits:

1. The Attorney General of Canada is the proper Respondent;
2. The standard of review is reasonableness;
3. The Decision is reasonable; and
4. The Applicant was afforded procedural fairness in the circumstances.

[31] Respectfully, the issues to be decided are reasonableness and procedural fairness.

V. Standard of review

[32] The parties agree, and I concur, the standard of review for the Chairperson's Decision is reasonableness. The Applicant makes no submissions on the standard of review for procedural

fairness. For procedural fairness, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond.

A. *Reasonableness*

[33] With regard to reasonableness, the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [*Vavilov*] demands that tribunal reasons must be "responsive." *Vavilov* enunciates the principles of "reasons first" and "responsive reasons." *Vavilov* says "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" (at para 86). The Supreme Court's judgment requires reviewing Courts to focus primarily on the reasons – in this case, on the Chairperson's reasons:

> [83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.
>
> [84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means

> by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.
>
> …
>
> [86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.
>
> [Emphasis added]

[34] Critically for the case at bar, *Vavilov* at paragraph 102 instructs that reasons which simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will rarely assist a reviewing court in understanding the rationale underlying a decision and are not a substitute for statements of fact, analysis, inference and judgment. At paragraph 103 *Vavilov* sets of the requirement of responsive reasons:

[102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Ryan*, at para. 55; *Southam*, at para. 56. Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment": R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123, at p. 139; see also *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750, 27 Imm. L.R. (4th) 151, at paras. 57-59.

[103] While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: see *Wright v. Nova Scotia (Human Rights Commission)*,2017 NSSC 11, 23 Admin. L.R. (6th) 110; *Southam*, at para. 56. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see *Sangmo v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 17, at para. 21 (CanLII)) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see *Blas v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 629, 26 Imm. L.R. (4th) 92, at paras. 54-66; *Reid v. Criminal Injuries Compensation Board*, 2015 ONSC 6578; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115, 2016 D.T.C. 5051; *Taman v. Canada (Attorney General)*, 2017 FCA 1, [2017] 3 F.C.R. 520, at para. 47). With respect, this also relates to the adequacy of reasons, on which basis judicial review will be granted.

[Emphasis added]

[35] *Vavilov* describes its demand for "responsive reasons," that is, those that respond to the submissions of the parties:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.
>
> [Emphasis added]

[36] Notably, the Supreme Court of Canada subsequently focused on the reasons and granted judicial review in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21[*Mason*] where reasons were not responsive because they did not meaningfully grapple with the issues nor provide responsive justification per *Vavilov*:

> [97] I respectfully disagree with the Court of Appeal. I see no basis to conclude that the IAD considered these two important points of statutory context, even implicitly. Mr. Mason expressly raised both points as core planks supporting his position. The

> IAD's failure to address them, while addressing other points, casts into doubt whether it was alert and sensitive to these issues (*Vavilov*, at paras. 127-28). Reasons are the primary mechanism for the IAD to demonstrate that it actually listened to Mr. Mason (para. 127). In my view, the IAD's reasons did not address — far less meaningfully grapple with — two key arguments that Mr. Mason had raised. The IAD's reasons therefore failed to meet *Vavilov*'s standard of responsive justification (para. 127).
>
> [Emphasis added]

[37] *Vavilov* also makes clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances." The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

B. *Procedural fairness*

[38] The Federal Court of Appeal conclusively determines, and I agree, that on procedural fairness, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond": see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 55-56 [*Canadian Pacific Railway*] [per Rennie JA]:

> [55] Attempting to shoehorn the question of procedural fairness into a standard of review analysis is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, the former focuses on the nature of the rights involved and the consequences for affected parties, while the latter focuses on the relationship between the court and the administrative decision maker. Further, certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. As Suresh demonstrates, the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, in my view, there are no compelling reasons why it should be jettisoned.
>
> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an *a priori* decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.
>
> [Emphasis added]

VI. Relevant legislation

[39] Sections 9 to 12 of the Code outline the standards of conduct for Members of the IRB:

> 9. Members shall conduct hearings in a courteous and respectful manner.
>
> 10. Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants in a proceeding so that they may participate effectively. Members are expected to take into account social and cultural differences and to respect human rights.
>
> 11. Members are expected to act honestly and in good faith, in a professional and ethical manner.

> 12. Members shall conduct themselves with integrity and avoid impropriety, or the appearance of impropriety.

[40] It seems to be common ground, and I agree that the Code applies to Members during hearings including in the delivery of their decisions and concluding remarks. I raised this with Counsel for the Respondent in the following exchange:

> **[The audio recording of the Member's comments was played]**
>
> **RESPONDENT:** Thank you.
>
> So, again, I think it's important for us to have heard that because again of the language used "chastising", "attacking" and I think those submissions are plainly belied by listening to the audio which I would say are respectful and appropriate comments for any adjudicator making, including Justice Brown, if you were in a similar position.
>
> If somebody before you in a court were to make submissions that you deemed inappropriate, you would be wholly within your adjudicative independence and discretion to make comments, either at the hearing or in the reasons, and we'll come back to the reasons — the fact that it might be in the reasons in a moment.
>
> You'd be wholly within your judicial power, and I would say in your obligation as a Member of this Court, to make comments where you feel the integrity of the process is somehow impugned by comments of counsel, whether or not counsel or not agrees. People are free to disagree. Reasonable people can disagree on all sorts of things. But within this context, the court must maintain the ability, without threat of judicial review, to have dignity and order in its own courtroom and we'll come a little bit more to the law about that shortly.
>
> One note I would make before we move on is, in his submissions—
>
> **JUSTICE BROWN:** On that, you know, you sort of address and don't address and I'm going to say dance around a bit about whether a conduct allegation may arise out of words presented in a decision, but I think you come to ground, my assessment of what you say, is that words spoken in a decision could ground a conduct complaint, am I right?

> **RESPONDENT:** Yes, you are.
>
> **JUSTICE BROWN:** Okay.
>
> **RESPONDENT:** Well, no I'm sorry, let me be clear. The words themselves, yes. But I think the context is always going to be important to hear how the words were spoken because conduct, the word conduct, I would submit, implies both a, let's say on-paper perspective, but also conduct is a physical or say spoken thing. I would not say that they're— it is impossible to conceive of written words alone which violate conduct, but I don't think— we're definitely not in that situation.
>
> [Unofficial hearing transcript]

VII. Submissions of the parties

A. *Reasonableness*

(1) The Decision includes the Ombudsperson's recommendation

[41] The Respondent submits the Ombudsperson's recommendation should form part of the impugned reasons and therefore the reviewable Decision. This Court recently decided in *Hasham v Canada (Citizenship and Immigration)*, 2021 FC 880 per Southcott J. at paragraph 30:

> [30] To the extent the Applicant is arguing that the Officer's reasoning cannot be taken into account in the absence of an express adoption of that reasoning by the Decision-Maker, I reject that proposition. In *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817, SCJ No 39 [*Baker*], upon which the Applicant relies, the Supreme Court concluded that the notes of a subordinate officer should be taken, by inference, to be the reasons for making the decision under judicial review in that matter, emphasizing the flexibility that is necessary to recognize the day-to-day realities of administrative agencies (at para 44).

[42] The Chairperson's letter to the Applicant refers to the Ombudsperson as the individual responsible for the administration of the *Procedures* and their recommendation as the basis for the Decision. The Respondent likens this relationship to the decision-makers under the *Immigration and Refugee Protection Act*, SC 2001, c 27 who act on recommendations. Otherwise, the Applicant's review of the Decision removes explanation from the reasons.

[43] I respectfully agree and will include the Ombudsperson's submissions to the Chairpersons reasons, although I am not persuaded they make a material difference to the result.

(2) The Chairperson's reasons are not responsively justified and do not meaningfully grapple with issues per *Vavilov* and *Mason*

[44] Briefly stated, the reasons of the Chairperson are not responsive and do not meaningfully grapple with the issues in this case; they also lack a rational chain of analysis. It is for these reasons that that judicial review must be granted.

[45] Approaching them from a "reasons first" analysis, as the Court must per the jurisprudence cited above, these reasons simply set out the nature of the complaint, identify the complaint *Procedures* (but fail to state the exclusion actually contained in the *Procedures*, instead invoking a different one), and state a bare conclusion.

[46] The first issue before the tribunal was whether the comments were part of the Member's "ruling" or "decision" per the members complaint *Procedures* which preclude complaints relating to "rulings" and "about a decision." However this issue is not addressed except with the

bare conclusion noted which does not address the exclusion set out in the *Procedures*. While "rulings" and "decisions" are excluded from the complaint *Procedures*, "rulings" and "decisions" are not expressly or otherwise excluded from the Code. This leads me, to conclude the Code covers rulings and decisions as the Respondent confirmed and Applicant agreed.

[47] That said, the Decision does not address the exclusion in complaint *Procedures* addressed upon by the Applicant, because the Decision instead refers to "adjudicative independence," a concept not found in either the Code or the complaint *Procedures*. It seems to me this is a fatal flaw in the Decision which at the very least had to address- but did not - the framework under which the Applicant brought his complaint.

[48] In addition to not addressing the issue framed by the Applicant and the *Procedures* themselves, the Decision does not address any of the substantive issues raised by the Applicant. I appreciate that if adjudicative independence was reasonably addressed, the substantive issues re the words themselves need not have been addressed. But the failure to deal with the threshold step, that is, making a reasoned determination under the language of the *Procedures* themselves, could not in my view reasonably pre-empt the substantive issues without more.

[49] Here we have exactly what *Vavilov* warns against at paragraphs 102 and 103, namely reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion." With respect, the only difference here is that the Decision does not actually repeat the language of the complaint *Procedures* but rests on an entirely different bar for the Applicant and test for itself, namely "adjudicative independence."

[50] The Supreme Court of Canada says such reasons "will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment." With respect, that is my conclusion with respect to the Decision in this case.

[51] In this respect, the Decision does not demonstrate to the Applicant he was heard, per *Vavilov* at paragraphs 127-128 and *Mason* at paragraph 97. Nor does it grapple with the actual language of the *Procedures*, let alone any meaningful manner per *Vavilov* at paragraph 128 and *Mason* at paragraph 97. It seems to me in these respects the Decision fails to respect the purpose of decision making as set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 39, and *Vavilov* at paragraph 128.

[52] While I agreed the Ombudsperson's letter forms part of the Chairperson's reasons, in my respectful view this does not assist the Respondent because the Ombudsperson's material adds little if anything to the Chairperson's reasons in that it also if simply a bare conclusion.

[53] In my view the Decision is not responsive to the complaint *Procedures* or the Applicant's submissions. While I may connect the dots and ascertain the decision-maker's reasoning in the appropriate case, here and with the greatest respect, there are no sufficient dots to connect. See the reasoning of Justice Rennie (as he then was) in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraph 11:

> [11] *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where

> the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

[54] Justice Rennie's "connect the dots" analysis was cited with approval by the Supreme Court of Canada in *Vavilov* at paragraph 97:

> [97] Indeed, *Newfoundland Nurses* is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of Rennie J. in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267, at para. 11:
>
> > *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn.

(3) Rational chain of analysis

[55] The Applicant also submits the Decision lacks a rational chain of analysis and claims the Decision simply states conclusions. The Decision does not detail, for example, why the allegations do not fall within the scope of the *Procedures* or how "adjudicative independence" is interpreted. This submission is also based on *Vavilov* at paragraphs 102-103 where the Supreme Court of Canada comments on the reasonableness of a decision that lacks a rational chain of analysis.

[56] As just discussed, reasons which simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will rarely assist a reviewing court in understanding the rationale underlying a decision and are not a substitute for statements of fact, analysis, inference and judgment, per *Vavilov* at paragraph 102. The reasons in the Decision do not assist this Court.

[57] I am now considering the issue of rational chain of analysis per paragraph 103:

> [103] While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: see *Wright v. Nova Scotia (Human Rights Commission)*,2017 NSSC 11, 23 Admin. L.R. (6th) 110; *Southam*, at para. 56. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see *Sangmo v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 17, at para. 21 (CanLII)) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see *Blas v. Canada (Minister of Citizenship and*

> *Immigration)*, 2014 FC 629, 26 Imm. L.R. (4th) 92, at paras. 54-66; *Reid v. Criminal Injuries Compensation Board*, 2015 ONSC 6578; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115, 2016 D.T.C. 5051; *Taman v. Canada (Attorney General)*, 2017 FCA 1, [2017] 3 F.C.R. 520, at para. 47). With respect, this also relates to the adequacy of reasons, on which basis judicial review will be granted.
>
> [Emphasis added]

[58] All we have in effect is a bare conclusion. To confirm, this is the extent of the Chairperson's reasons:

> The allegation outlined in your complaint is about what the Member stated while giving her reasons for decision. The reasons presented in a member's decision are covered by adjudicative independence. For this reason, the allegation falls outside the scope of the member complaints process.
>
> The Ombudsperson has recommended that I dismiss the complaint because the allegations are not within the scope of the Procedures. After assessing that recommendation and reviewing your complaint, I have concluded that the allegations are not within the scope of the Procedures. This means that they will not be investigated.

[59] I am not persuaded the Decision read holistically is based on an internally coherent and rational chain of analysis as required by *Vavilov*. The Decision outlines the complaint *Procedures*, noting the complaint "must be about how the conduct of a member goes against sections 9 to 15 of the *Code of Conduct for Members*." Similarly, the reasons of the Ombudsperson refer to sections 9 to 12 which are the sections the Member allegedly failed to comply with. Both the Ombudsperson and Chairperson conclude the Member's decision is covered by "adjudicative independence" irrespective of these sections they identified.

[60] Neither the Ombudsperson nor the Chairperson engage with these sections of the Code and neither discuss how these sections operate alongside the Decision's newly-introduced concept of "adjudicative independence" (not previously disclosed to the Applicant). While I agree these reasons must be approached with respectful deference, I am not persuaded these are transparent, intelligible or justified per *Vavilov* at paragraph 32.

[61] Judicial review with therefore be granted on the basis the Decision is not justified as just discussed in this and the previous part.

(4) The Member's conduct and prejudice to the Applicant

[62] The Applicant's position is set out above in Part II and, in essence, he objects to four specific comments by the Member in relation to his submissions in oral argument during the detention review. The exact words used are from the transcript itself and are not in dispute:

a) the Member was of the view the Applicant's comments "set a dangerous precedent and could bring the administration of justice into disrepute";

b) the Member suggested the Applicant was "showing contempt for this Tribunal and the decision-making process";

c) the Member suggested the Applicant might not have acted in a manner "that respects the values enshrined in the code of conduct for public servants"; and

d) the Member in essence found the Applicant had acted in a way that "expresses, essentially, disdain for the IDs decisions and decision-making process".

[63] The Respondent submits the Member's "rejection of his arguments, and the Member only raising this point at the end of her decision, amounts to misconduct." The Member's comments

about the Applicant's conduct caused no prejudice to the Applicant. The Respondent says the Member's comments are "reflective of the decision-maker's obligation to ensure a respectful proceeding."

[64] As noted already, the parties agree the reputation of a lawyer is of critical importance to the lawyer. As the Respondent rightly conceded, a lawyer's reputation is "sacrosanct."

[65] While it is not necessary to do so because judicial review will be ordered, if I were asked (the Respondent expressly asked for guidance) and as obiter dictum, my non-binding view is that these comments taken together certainly could damage the Applicant's professional reputation. I do not wish to say more because that may be the subject of comment by the Ombudsperson, and possibly the Chairperson depending on what the Ombudsperson decides or if the Chairperson acts alone. My equally non-binding obiter preliminary assessment is that the Applicant's comments were within the range of permissible comments by counsel in context.

[66] Given the above, it seems to me the central issue is whether the Applicant's submissions justified the Member's comments and whether those were in accordance with the Code, and whether or not they were made in a "ruling" per the complaint *Procedures*, and why the Decision speaks to adjudicate independence instead. Again, these are matters left for the decision-maker on the reconsideration being ordered.

(5) Misapprehension of the evidence, addressing key evidence, consistency with the Code, Procedures, and Guidelines

[67] These are all matters I will refrain from discussing because judicial review will be ordered and these matters may be discussed and, if so, should be decided at that time.

B. *Procedural fairness*

(1) Level of procedural fairness owed

[68] As noted above, the Federal Court of Appeal holds, on procedural fairness, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond": see *Canadian Pacific Railway* at paragraph 56.

[69] I need make no decision in this respect, but observe as I did at the hearing that in the case of human rights tribunals, staffing issues, *Canada Labour Code* and other matters, complainants have been entitled to see and comment upon investigative reports (such as the Ombudsperson's report to the Chairperson in this case) before decision-makers makes screening decisions: *Canada (Attorney General) v Canada (Human Rights Commission)*, 2025 FC 1137 at paragraph 86; *Kohlenberg v Canada (Attorney General)*, 2017 FC 414 at paragraphs 53-55; *Kohlenberg v Canada (Attorney General)*, 2023 FC 1052 at paragraphs 35-36; *Brown v Canada (Attorney General)*, 2024 FC 823 at paragraphs 35-39 [*Brown*]; *Marentette v Canada (Attorney General)*, 2024 FC 676 at paragraphs 54-55.

[70] This was discussed at the hearing. Notably, this issue was not raised by the Applicant but was of concern to the Court in the context of his procedural fairness arguments.

(2) Applicant's submissions on bias and bad faith

[71] The Applicant took the position the Chairperson exercised bad faith and was biased. The Court cautioned him that allegations of bad faith and bias may result in cost consequences if they are not made out: see *Gomravi v Canada (Attorney General),* 2015 FC 431 at paragraph 65; *Brown* at paragraph51; *Stanoievici v LTS Solutions*, 2019 FC 1554 at paragraph 60 (where the Court ordered costs against the Applicant for several reasons, including their unsupported allegations of bias); *Rafizadeh v Toronto Dominion Bank*, 2013 FC 781 at paragraphs 31-32; *Conseil des Innus de Pessamit v Bellefleur*, 2017 FC 1016 at paragraph 54 (where Justice Locke as he then was held the Respondent could have requested a higher quantum of costs based on the unsubstantiated allegations of bias).

[72] The Applicant repeated his allegations of bad faith and bias before this Court. With respect, and as he in fact conceded, there is no evidence to support either. The fact he was self represented before me is not relevant. These allegations should have been, but were not, withdrawn and will be addressed as part of my cost order.

C. *The proper respondent is the Attorney General of Canada*

[73] The Respondent requests the style of cause be amended to substitute the Chairperson of the IRB with the Attorney General of Canada. The Applicant consents and I agree. Therefore, this relief will be granted with immediate effect.

VIII. Conclusion

[74] This application for judicial review will be allowed.

IX. Costs

[75] Both the Applicant and Respondent seek costs. The Applicant at the hearing requested $8,920.00 for costs on a full indemnity basis. The Respondent requested $6,300.00 for costs with a bill of costs in support. In my view this is not a case for full indemnity and in my view and discretion costs would not exceed $2,500.00 all inclusive. Normally I would award the successful Applicant his costs. However, in my discretion, I decline to award costs in his favour because of his persisting in baseless allegations of bias and bad faith.

JUDGMENT in T-98-25

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The Decision is set aside.
3. This matter is remanded for redetermination by the Chairperson.
4. The style of cause is amended with immediate effect to show the Respondent as the Attorney General of Canada.
5. There is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-98-25
STYLE OF CAUSE:	PATRICK CHESNAIS v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 10, 2025
JUDGMENT AND REASONS:	BROWN J.
DATED:	SEPTEMBER 24, 2025

APPEARANCES:

Patrick Chesnais	FOR THE APPLICANT (ON HIS OWN BEHALF)
David Knapp Jake Norris	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT