

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division
Claim No. 2025/PUB/JRV/00028**

IN THE MATTER OF an Application for Leave to Apply for Judicial Review by M pursuant to
the *Supreme Court Civil Procedure Rules, 2022*, Part 54.3

AND IN THE MATTER OF J and P (Minors)

BETWEEN:

M

(In her personal capacity and in her capacity as Guardian/mother of the minors)
Applicant

AND

DEIDRE COOPER

(In her capacity as Principal of Xavier's Lower School)
First Respondent

AND

LAMBERT LONGLEY

Second Respondent

AND

THE CATHOLIC BOARD OF EDUCATION

Third Respondent

Before:	The Honourable Mr. Justice Leif Farquharson
Appearances:	Romona Farquharson-Seymour and Samuel Taylor for the Applicant R. Dawson Malone and Ebonesse Bain for the Respondents
Hearing Dates:	30 January 2026 (with further written submissions laid over by the Applicant)

RULING

1. This is an application for permission to apply for judicial review of the decision of the Respondents dated 10 November 2025 to effectively exclude two students, whom I shall refer to as “J” and “P”, respectively (collectively, “***the children***”), from Xavier’s Lower School (“***Xavier’s***” or “***the school***”), a well-known primary school operated under the auspices of the Roman Catholic Church. The stated reason for the decision was that relations between the school and the Applicant, who is the children’s mother (referred to interchangeably as “***M***”), had deteriorated to the point where they could no longer be repaired, and that the level of trust and collaboration necessary for the children’s success and well-being at Xavier’s had been irretrievably compromised.
2. The Applicant contends that the decision was unlawful because it was unreasonable, irrational and/or in breach of natural justice, including by reason of the Respondents’ failure to afford her an opportunity to appeal the decision. By way of relief, she seeks a quashing order, mandamus compelling the Respondents to allow the children to continue attending the school upon payment of fees, declaratory relief, damages for breach of contract and aggravated damages.
3. Permission to move for judicial review was originally sought *ex parte*. Due to concerns as to the soundness of the challenge, and in light of the fact that interim relief in the form of a stay or injunction was also being sought, the Court determined to hear the application on an *inter partes* basis. Directions were accordingly issued to facilitate this. The application for leave and interim relief was subsequently argued before me on 30 January 2026, with the Applicant being afforded an opportunity to lay over further submissions thereafter. Very sadly, shortly after the hearing, lead counsel for the Applicant passed away. As a result, the filing of the Applicant’s further submissions was delayed, which, in turn, postponed the Court’s determination of the application.
4. Given that the school year was then underway with examinations potentially looming, the Third Respondent gave an undertaking to suspend implementation of the decision of 10 November 2025. This was done on the express footing that the undertaking was without prejudice to any substantive and/or procedural objection the Respondents proposed to raise in these proceedings. As a result, the children remained at Xavier’s throughout the 2025-2026 school year.

Factual Background

5. Both sides laid over substantial affidavit evidence. The Applicant swore two affidavits in the matter and also relied on an affidavit sworn to by Joletha Ramsey, another parent of a student attending Xavier’s. The Respondents relied on two affidavits sworn to by Deidre Cooper, the Principal at Xavier’s (the “***Principal***” or “***Ms. Cooper***”).

The Applicant’s first affidavit

6. The Applicant’s first affidavit discloses that J and P at the material time were, respectively, in the fourth and third grade at Xavier’s. On 6 October 2025, J, who is

female, was in an incident with a male student. The Applicant reports her as having been “*violently pushed*” or assaulted, the Respondents describe it as a “*shoving incident*”. The details of the incident are not critical for immediate purposes. I would, however, observe that there is no suggestion of any physical injury being suffered by either student. This resulted in the Applicant immediately sending an email to the Principal seeking an audience with the school’s administration to discuss the matter. She also requested that the other student’s parents and the student himself be in attendance at the meeting. She further insisted that the school not speak to J about the incident until the requested meeting had been convened.

7. By email the following day (i.e. 7 October 2025), the Principal informed the Applicant that she had reviewed the school’s internal incident reports submitted by both students’ teachers and discussed the incident with the other student. As a result, the school determined the incident to have been accidental and was not prepared to convene a meeting between the Applicant, the other student and his parents. The Principal confirmed that pursuant to the Applicant’s request, she would not discuss the incident with J. The matter seemed to have rested there, at least for the time being.
8. It appears that the Applicant and the Principal subsequently had a discussion or exchange during an assembly on 20 October 2025. According to the Applicant, she sat next to the Principal before the event commenced and enquired as to when a meeting could be held to address the incident involving her daughter. She indicates that the Principal refused to engage with her and proceeded to the rear of the auditorium, describing the Principal’s actions as evasive, abrupt and disrespectful. She indicates that when she approached the Principal outside the auditorium where the assembly was taking place, the Principal told another staff member to call security, which she deemed to be a disproportionate response. Upon her further insistence, she says the Principal agreed to address her after the assembly. She, however, declined to meet with the Principal that day.
9. The Applicant indicates that she is advised and believes that the Principal called an emergency staff meeting on 20 October 2025, at which she allegedly made a number of disparaging and defamatory statements about her. Most significantly, these included a reference to the Applicant having a gun on her person when she approached her in the auditorium earlier that day. The source of her information and belief is not provided. At this stage, I should mention that the Applicant is a counsel and attorney. At the material time, she was also seemingly attached to the police force.
10. It appears that following her interaction with the Principal on 20 October 2025, the Applicant contacted the Director of Catholic Education for the Archdiocese of Nassau, Ms. Alexandria Roberts-Bowe, Ed.D (“**Dr. Bowe**”). She indicates that Dr. Bowe agreed to facilitate a meeting between the Applicant and Xavier’s administrators on 21 October 2025. This was to be held at the Catholic Education Centre. According to the Applicant, the appointment date was misunderstood by her and it was accordingly rescheduled to 31 October 2025.
11. The Applicant subsequently sent Dr. Bowe an email on 22 October 2025, which she says was written in response to the “*defamatory remarks and reckless conduct*” of the Principal and to set forth her grievances. She also says this was done to protect her reputation, to advise the Second and Third Respondents of the severity and impact of the Principal’s statements and actions, and to “*formally have the [Principal] held accountable for unprofessional conduct.*” Although the email is referred to by the

Applicant, it is not actually exhibited in evidence. It is, however, exhibited by the Respondents. I will come back to this later.

12. The Applicant's and the Respondents' accounts of the meeting on 31 October 2025 do not entirely align. According to the Applicant, she attended the meeting on 31 October 2025 along with the children's father. Dr. Bowe and Mr. Joseph Curry, who is described as Chairman of Risk Management, were present. Dr. Bowe allegedly invited the Applicant to discuss her encounter with the Principal at the auditorium on 20 October 2025, which she did. She indicates that the meeting lasted approximately two hours and that several of her grievances were discussed, the most pertinent of which were the alleged statements and actions of the Principal at the emergency staff meeting on 20 October 2025 and the school's handling of the incident involving her daughter. According to the Applicant, Mr. Curry informed her that her request to have a meeting ought to have been honoured and that she ought to have been informed of the incident between J and the male student. She says that at the end of the meeting Mr. Curry told Dr. Bowe that the incident involving the Applicant's daughter should not have been escalated to their level and ought to have been resolved at the classroom level. She says he concluded the meeting by indicating that she would be contacted for another meeting after he spoke with the Principal and other staff members regarding events surrounding the staff meeting of 20 October 2025.
13. Instead of a further meeting, the Applicant says that she was sent an email on 12 November 2025 by Dr. Bowe informing her that a letter awaited her collection at the Catholic Education Centre. The letter was dated 10 November 2025 and signed by Mr. Lambert Longley, Chairman of the Catholic Board of Education, the Second Respondent herein. Given its import, I have reproduced the letter below:

"Dear [M]

Re: [M] and Xavier's Lower School

It has become evident that the relationship between the school and your family has deteriorated in recent months to a point where it can no longer be effectively repaired. Despite our best efforts to engage and constructively maintain a positive partnership, the level of trust and collaboration necessary for your children's success and wellbeing at our school has been irretrievably compromised.

Given these circumstances, the Board believes it would be in the best interest of all parties for you to make alternative educational arrangements commencing Term II, December 1, 2025. Our administrative office will be available to assist you with the required documentation to ensure a smooth transition to a new school environment.

We appreciate the time your family has been a part of our school community and wish your family every success in the future.

Yours sincerely,

...." (Bold and underlining in the original)

14. The Applicant indicates that she was taken aback by the decision of the Respondents to exclude J and P from Xavier's. She says that the issue of severing ties with the school was never discussed during the meeting on 31 October 2025 and maintains that she was denied a fair and reasonable opportunity to face her accusers and to answer any allegations of wrongdoing, if any.

15. Exhibited to the Applicant's first affidavit are copies of what she describes as contracts entered into with the Third Respondent concerning J and P, respectively. These are forms on Xavier's letterhead and consist of a series of obligations that M agreed to comply with or adhere to as a parent or guardian, including in relation to (among others) the children's participation in Mass, school attendance, payment of school fees and submission of homework. Both forms also contain an obligation on the part of the parent or guardian *"To support the staff and administration in implementing school rules and regulations."* The Applicant contends that the exclusion of J and P from Xavier's *"constitutes a breach of the binding contractual agreement she maintains with the institution, which requires the provision of fundamental primary education"*. She also describes the exclusion of her children from Xavier's as profoundly disheartening given the family's Catholic faith and her fervent desire for them to receive an education consistent with their religious beliefs.
16. Relying on her purported adherence to the contracts, the Applicant further asserts that she had a *"legitimate and reasonable expectation that her children's enrolment at Xavier's would continue uninterrupted."* She also states that the Second and Third Respondents' actions appear to have been taken with the goal of absolving them of their duty of care to protect J and to appropriately address her complaint of assault.

The Principal's first affidavit

17. In her first affidavit, Ms. Cooper confirms that Xavier's is a private educational institution. She indicates that the decision complained of was taken in the context of the contractual relationship it shared with the Applicant. In this regard, she confirmed that enrolment at Xavier's is governed by contractual terms and policies, including the *'Handbook of the Archdiocese of Nassau Catholic School System'* (the **"Handbook"**). She also specifically refers to page 5 of the Handbook, which under the heading *'Parent/Guardian Conduct'*, provides:

"The education of a student is a partnership between the parents/guardians and the school. Just as the parent/guardian has the right to withdraw a child if desired, the school reserves the right to require the withdrawal of a student if it determines that the parent/guardian partnership with the school is irretrievably broken".

'Irretrievably broken' includes (but is not limited to) offenses including an assault, a threat whether written, spoken or by way of the Internet or inflammatory statements that harm the reputation of another. Disrespectful actions or words towards administrators, teachers, staff, parents, students or other school employees or visitors will not be tolerated.

Any parent/guardian who verbally/physically assaults or bullies any member of staff, scholar or security personnel in person or via social media, will be asked to withdraw his/her child immediately."

18. Ms. Cooper indicates that between January and November 2025, M engaged in a pattern of conduct which led the school and the Catholic Board of Education to conclude that the parent-guardian partnership had become irretrievably broken. In this connection, she refers to the following chronology of events:

- January - February 2025 - M attended the Catholic Education Centre without an appointment, refused to leave and alleged impropriety in her daughter J's grade

placement. An investigation by the Director of Catholic Education confirmed that J was appropriately placed;

- 24 February 2025 - M was informed that no grade acceleration would occur. She thereafter withdrew both children from Xavier's prior to the start of Term III;
- April - June 2025 - M made multiple attempts to secure grade-skipping placements at various Catholic schools, often without full disclosure of the children's prior enrolment or examination history;
- Late-June 2025 – M attempted to enrol the children in Xavier's summer school notwithstanding capacity limits, submitted outdated forms, tendered funds contrary to procedure and left the campus abruptly, leaving her children behind;
- July 2025 - Following intervention at the Board level, the children were re-admitted to Xavier's Lower School at M's insistence, notwithstanding professional advice that grade-skipping was not in their best interests;
- October - November 2025 - M repeatedly disregarded school protocols, intimidated staff and security and engaged in confrontational behaviour on campus, culminating in the decision of the Third Respondent to require withdrawal of J and P effective 1 December 2025.

19. Ms. Cooper also suggests that the Applicant greatly exaggerated and mischaracterised the incident of 6 October 2025, providing her own account based on information provided by one of the school's fourth grade teachers and the school's incident report. This described the incident in three short sentences:

"The children were lining up to come upstairs for Social Studies class at 11:25 a.m. J was accidentally pushed by [the other student]. [The other student] apologised and the matter was not pushed any further."

Ms. Cooper also points out that the Applicant's request in her email of 6 October 2025 that no one speak with her daughter about the incident until a meeting had been convened was actually contrary to school policy. She says it was nonetheless complied with in the circumstances.

20. Needless to say, Ms. Cooper vigorously disputes the Applicant's characterisation of her behaviour on 20 October 2025, or at any other time, as improper. She also provides her own description of her interaction with the Applicant on 20 October 2025. This is worth setting out because it serves to provide more context to the decision, at least from the Respondents' standpoint:

"26.1. On the morning of 20 October 2025, [M], during the school assembly, entered the auditorium via a side door. I was standing at the microphone, preparing to commence assembly, and the class assigned to conduct assembly was waiting for my cue to begin.

26.2. [M] approached me without invitation and sat on my keys and cellphone, which were placed in the chair beside me. A kindergarten student was seated to [M's] left.

26.3 M began speaking to me in an aggressive manner about the incident that took place on 6 October 2025.

26.4. Due to [M's] proximity, tone and conduct, I felt threatened. I advised [M] that this was not the appropriate time or place for the discussion and that we could speak at another time.

- 26.5. *When I attempted to remove myself from the situation, [M] began following me and at this time I requested assistance from the Vice Principal and security to manage the situation safely.*
- 26.6. *[M] blocked access to the doorways and challenged security involvement, which then required intervention from a teacher to allow me to exit safely.*
- 26.7. *This interaction also took place in front of the student body, teaching staff and invited guests.*
- 26.8. *I contacted the [Director of Catholic Education] immediately after the incident to inform her of the incident.*
- 26.9. *[M's] account of comments allegedly made by me is disputed.*
- 26.10 *All actions taken by the School's staff were consistent with established practice, policy and protocols to ensure the safety and orderly conduct of students, staff and visitors.*
- 26.10 *Nevertheless, on 22 October 2025, [M] sent an email to numerous faculty and members of the Catholic Education Centre, many of whom were not involved in the incidents, disparaging me. A copy of [M's] email dated 22 October is on pages 30 to 33."*

21. The Applicant's email of 22 October 2025 appears to have been copied to approximately thirty persons, most of whom appear to be staff or officials within the Catholic Education Centre, inclusive of faculty at Xavier's. Within the email, the Applicant (among other things) expressed deep disappointment at the "*unprofessional conduct*" of the Principal during their encounter on 20 October 2025 and at her handling of the incident involving her daughter. She also referred to the failure to act in addressing the incident as potentially exposing the school and its leadership to legal liability. She further questioned whether the matter was handled in the way that it was due to the other student's parent having a role within the school's PTA. She summed up her position in the penultimate paragraph of the email, stating:

"This incident further illustrates Ms. Cooper's lack of professionalism and the absence of the composure expected of a principal. Her actions reflect a troubling inability to address matters involving my children with fairness and rationality. The role of a principal demands impartiality, empathy, and an unwavering commitment to student welfare. When personal bias interferes with these duties, it is not merely a lapse in leadership, it is a betrayal of the trust placed in educators to safeguard and nurture every child."

The email also contained a postscript directed specifically to faculty at Xavier's. Here, the Applicant (among other things): explained her motives in copying them on the email; lamented that "*certain individuals*" had maligned, impugned and defamed her character; stated that there was a campaign against her because she dared to stand against injustice; restated her resolve not to be silenced and to protect her children; and appealed to staff members to "*do what is right*" and speak for truth.

22. Ms. Cooper also disputed M's account of the meeting on 31 October 2025. Of note, she indicates that the Applicant was afforded a full and fair opportunity to speak, to raise issues and make representations. She also observes that no decision was taken at the meeting itself, such decision being reserved for subsequent review. She further indicates that the meeting was recorded with the knowledge of the Applicant and that a copy of the recording can be made available should the matter proceed to trial.

23. Ms. Cooper also includes a section in her affidavit under the heading "*Post-Decision Conduct*." This catalogues various issues or incidents occurring after the Respondents' letter of 10 November 2025. I would only mention a few of these at this stage. Ms. Cooper refers to police officers serving court papers on the Chairman of the Catholic Board of Education at his residence, the Director and herself on 1 December 2025; in her case, she states that four officers attended to effect service. She also refers to a scuffle involving the Applicant's son, P, and another student in December 2025. In the aftermath, she alleges that M got into a verbal altercation with the parent of the other student. She refers to an occasion in December 2025 when J and P arrived late at school and M initially refused to follow the school's standard protocols regarding submission of a late-slip. She says that on 11 December 2025 police officers arrived on Xavier's campus to investigate a complaint filed by the Applicant in relation to the scuffle involving her son, which the school had determined to address through suspension of both students. She indicates in January of 2026, the Applicant allegedly refused to accept the school's letter suspending her son by reason of his involvement in the scuffle the previous month and threatened to take further legal action. In breach of school policy, she also allegedly brought her son to school on days on which he was scheduled to be serving his suspension.

The Applicant's affidavit evidence in reply

24. In her second affidavit, M confirms that she neither admits or denies large sections of Ms. Cooper's first affidavit. She also refers to various factors which she contends render the decision to exclude J and P from Xavier's amenable to judicial review. These include, among others: the provision of education being "*a fundamental aspect of the public interest and an essential service whether provided by a public or private school*"; a child's right to education under the *Child Protection Act*; general oversight of Catholic Board of Education schools by the Minister of Education; and receipt of public funding.
25. She further denies being issued a copy of the Handbook or any other rules or handbook by Xavier's, save for what is provided for in the contract she exhibited to her first affidavit. She mentions that she raised the issue of not having been provided with a handbook or a copy of the school's rules with Dr. Bowe in February of 2024 and that Dr. Bowe indicated that this would be addressed. On this basis, she contends that it is unreasonable to expect her or her children to comply with or be subject to terms in the Handbook.
26. M also exhibits a large amount of correspondence between her and school officials or others between the period February – July 2025. It appears that in late-February 2025, M withdrew the children from Xavier's. M thereafter sought to secure seating for them at other primary schools within the Catholic education system. She also sought to have them readmitted at Xavier's for the then-upcoming 2025 – 2026 school year. It is clear that a major source of contention between M and Xavier's related to her daughter, J's, grade placement. According to her, following her entrance assessment in 2022, the school improperly placed J in kindergarten rather grade one. M felt that this misplacement had severely disadvantaged J academically and otherwise during her time at Xavier's.
27. This correspondence culminated with an eleven-page complaint by M to the Archbishop and the Chairman of the Catholic Board of Education dated 15 July 2025.

In the complaint, M purported to document (among other things) grievances with various school officials and Catholic Board of Education officials over the years and discussed challenges experienced in securing seating for J and P for the upcoming school year. She also extensively addressed the issue of J's misplacement. Throughout the complaint, she expressed distrust and dissatisfaction with Xavier's administrators, especially Ms. Cooper and the school's vice principal. On numerous occasions she described them as unprofessional and described their actions as negligent, dismissive and lacking in transparency. She also accused Ms. Cooper of knowingly conveying false information and suggested that her experiences with the school had severely damaged the trust her family once had in Xavier's administration. Despite this, she nonetheless sought the assistance of the Archbishop and the Chairman in securing the children's enrolment at Xavier's for the school year commencing in September 2025.

28. M also disputed a number of the factual assertions contained in Ms. Cooper's first affidavit. She further suggested that Ms. Cooper's "*unprofessional and unfair treatment*" of her and her children was borne out of her previous role in the prosecution of one of her family members, during which he was convicted and sentenced to 30 months imprisonment.
29. In her affidavit, Joletha Ramsey indicates that she is a nurse and a police officer by profession and is also a parent of a Xavier's student. She further states that she is a Superintendent on the police force and M is an Inspector, and that she has known M professionally for the past 14 years. In essence, Ms. Ramsay deposes that she was at the Xavier's assembly on 20 October 2025 and observed M's interaction with the Principal when she sat next to her in the auditorium. She indicates that nothing about their conversation appeared unusual to her. She further states that she did not observe M behave in a violent, aggressive or threatening manner towards the Principal that day and did not observe any incident which appeared to require the intervention of security.

The Principal's second affidavit

30. In her second affidavit Ms. Cooper exhibited a full copy of the Handbook, which counsel for the Respondents undertook to provide at the hearing. She also confirmed that a copy of the Handbook is provided to each student in Grades 2 through 6 at the beginning of each school year. As such, she indicated that J and P would have received the Handbook at the beginning of the then-current school year.

Discussion and Analysis

31. The legal test to be applied in an application for permission to apply for judicial review is not in dispute. At this stage, the Court is required to be satisfied that there is an arguable ground for judicial review having a realistic prospect of success, which is not subject to a discretionary bar such as delay or alternative remedy (see e.g. *Sharma v. Brown-Antoine* [2007] 1 WLR 780, para.14). The purpose of the requirement of permission is, of course, to essentially to filter out weak and vexatious claims.
32. The Respondents ask the Court to refuse permission for judicial review, refuse interim relief and award them costs. Their core position is that the application is defective at the threshold stage because it does not identify a public law decision and concerns a private contractual school-enrolment dispute rather than a matter susceptible to judicial

review. They also assert that the application is technically defective because the Applicant failed to comply with the requirements of CPR Part 23 as it relates to obtaining leave to bring proceedings on behalf of a minor and the proceedings have been brought against improper parties. They assert that each of their preliminary objections is independently sufficient to dispose of the application at the permission stage.

33. Beyond this, they assert that the decision to exclude the children from Xavier's on the basis that relations between the school and M had irretrievably broken down was fully justified on the facts and cannot be characterised as irrational. They further maintain that, contrary to the Applicant's assertions, the requirements of natural justice were fulfilled.

Amenability to judicial review

34. The starting point is that judicial review lies against bodies exercising public law functions. It does not ordinarily lie against private bodies whose powers arise from contract, even where their decisions are important to the individuals affected (see e.g. *De Smith's Judicial Review* (7th ed.) 2013, paras.1-001 and 3-056). In addition, the court's role in such proceedings is confined to reviewing the lawfulness of the decision-making process on established judicial review grounds. In exercising its supervisory jurisdiction, the court is not therefore sitting as an appellate tribunal to assess the merits of the decision under challenge.
35. In determining whether the decisions of a particular body or official are subject to judicial review, the courts place considerable importance on the legal source of the power exercised. If the source of the power is statute or subordinate legislation, the decision will almost invariably be subject to judicial review. Where the source of the power approach does not yield a clear or satisfactory outcome, the court may consider the nature of the body's powers and duties in determining susceptibility to judicial review. Accordingly, if the duty imposed on a body, whether expressly or by implication, is a public duty and the body is exercising public law functions, its decisions may be amenable to judicial review (*R v. Panel on Take-overs and Mergers, ex parte Datafin* [1987] 1 All ER 564). Dyson LJ summarised the analysis to be undertaken as follows in *R (Beer) v. Hampshire Farmers' Markets Ltd.* [2004] 1 WLR 233, at para.16:

"16. It seems to me that the law has now been developed to the point where, unless the source of power clearly provides the answer, the question whether the decision of a body is amenable to judicial review requires a careful consideration of the nature of the power and function that has been exercised to see whether the decision has a sufficient public element, flavour or character to bring it within the purview of public law." [Emphasis supplied]

36. In *Datafin*, the respondent panel was a self-regulating, unincorporated association with no statutory, prerogative or common law powers. Nevertheless, it exercised *de facto* regulatory power over take-overs and mergers involving listed public companies, with public consequences for non-compliance with its code. For these and other reasons, notwithstanding the non-statutory source of its powers, the English Court of Appeal held that its decision rejecting the applicant's complaint against a rival bidder and a third party for improperly acting in concert contrary to the code was amenable to judicial review.

37. By contrast, in *R v. Disciplinary Committee of the Jockey Club, ex parte Aga Khan* [1993] 2 All ER 853, the Court of Appeal held that the Jockey Club's disciplinary decision was not amenable to judicial review, notwithstanding the Club's power and importance within the racing sector. Critically, the decision was held to have arisen from a private law relationship governed by rules accepted by participants, for which private law remedies were available if the rules were breached or applied unfairly. Bingham MR expressed his conclusion as follows (at p.867):

"But the Jockey Club is not in its origin, its history, its constitution or (least of all) its membership a public body. While the grant of a royal charter was no doubt a mark of official approval, this did not in any way alter its essential nature, functions or standing. Statute provides for its representation on the Horseracing Betting Levy Board, no doubt as a body with an obvious interest in racing, but it has otherwise escaped mention in the statute book. It has not been woven into any system of governmental control of horse racing, perhaps because it has itself controlled horse racing so successfully that there has been no need for any such governmental system and such does not therefore exist. This has the result that while the Jockey Club's powers may be described as, in many ways, public they are in no sense governmental.

I would accept that those who agree to be bound by the Rules of Racing have no effective alternative to doing so if they want to take part in racing in this country. It also seems likely to me that if, instead of Rules of Racing administered by the Jockey Club, there were a statutory code administered by a public body, the rights and obligations conferred and imposed by the code would probably approximate to those conferred and imposed by the Rules of Racing. But this does not, as it seems to me, alter the fact, however anomalous it may be, that the powers which the Jockey Club exercises over those who (like the applicant) agree to be bound by the Rules of Racing derive from the agreement of the parties and give rise to private rights on which effective action for a declaration, an injunction and damages can be based without resort to judicial review. It would in my opinion be contrary to sound and long-standing principle to extend the remedy of judicial review to such a case." [Emphasis supplied]

38. The authorities concerning schools point in the same direction. In *R v. Muntham House School, ex parte 'R'* [2000] LGR 255, the applicant was a pupil at a non-maintained special school for boys with emotional, behavioural or learning difficulties. The school by its governing body took a decision to permanently exclude him. There were three main reasons the school took this course. First, the school asserted that it was unable to put in place the educational programme for the applicant as ordered by a special educational needs tribunal previously and which the applicant's father was seeking. Second, the applicant's behaviour, which was characterised by numerous instances of misconduct and breaches of the rules. The third area of concern was the behaviour of the applicant's father. The applicant sued by his father and litigation friend seeking judicial review to challenge the decision of the school's governors to permanently exclude him. Like the present case, he contended that he had not been given a fair opportunity to make representations to the school prior to the decision and that it was irrational. The school's evidence primarily came from its principal, a Mr. Boyle, who indicated (among other things) that it proved impossible to establish any working relationship with the applicant's father, and that the applicant's father was confrontational and took up so much of his time as to seriously disrupt his work.

Another witness also gave accounts of rude, aggressive and disruptive behaviour on the part of the applicant's father. In each instance, these allegations were denied by the applicant's father.

39. Richards J reviewed the authorities on independent and non-maintained schools and held that the exclusion decision was not amenable to judicial review. The school was not a creature of statute; its relevant power to exclude R did not derive from statute; and the placement arrangements did not impose a statutory duty or confer a statutory power on the school. He further found that the fact that a comparable decision by a maintained school might have been amenable to judicial review did not justify extending judicial review to the school's decision.
40. In reaching his conclusion, Richards J placed considerable reliance on the decision of Brooke J (as he then was) in *R v. Fernhill Manor School, ex parte A* [1993] 1 FLR 620. The passage from Richards J's judgment summarising the reasoning in *Fernhill*, which he ultimately relied on, is worth setting out directly for its instructional value. He stated as follows (at pages 259-60):

"In R v Fernhill Manor School ex parte A [1994] ELR 67, Brooke J held that an expulsion decision by an independent school, although reached in breach of natural justice, was not susceptible to judicial review. The control exercised by the Secretary of State over independent schools, including the requirements as to registration and the machinery for making complaints to the Secretary of State, did not provide a sufficient degree of statutory underpinning for the relationships between the school and its pupils (at p 79D-F):

'It is true that private schools operate within a statutory framework of control, but the relationships between the private schools and those who attend them are founded on the contract which is made between the school and those who are paying for the teaching and education of pupils at the school. That contract is a completely private contract and it is not underpinned by statute.

The position is quite different in the case of a maintained school. There, as occurred in the London Oratory School case, the articles of government in the school are underpinned by statute. They are made under powers provided under the Education Act and, accordingly, a pupil at a State-maintained school does have a right in an appropriate case to apply to this court to enforce the principles of fair play in action if he or she is expelled from school without fair procedures having preceded his or her expulsion ...In my judgment, the law as it stands now makes a clear distinction between public law cases and private law cases. This case falls fairly and squarely into the private law sector in which this court, which exists to provide public law remedies, can provide no relief." [Emphasis supplied]

41. It is also to be noted that, although fees were in practice paid by the local education authority, the school in *Muntham House* was nonetheless recognised as a private institution. Moreover, the fact that it was subject to general regulatory oversight pursuant to the *Education Act, 1996* was held to be insufficient, of itself, in providing a

sufficient degree of statutory underpinning to render its decision to exclude R amenable to judicial review.

42. More recently, in *R (Professor Paul Taggart) v. The Royal College of Surgeons of England* [2022] ICR 1235, the Administrative Court of England Wales reaffirmed that the relevant inquiry is whether the decision has a sufficient public law element, flavour or character. The potential for professional and reputational consequences for the claimant, and the respondent's involvement in a regulated sector, were thus held to be insufficient to render the respondent's report subject to judicial review where the impugned process remained essentially private, contractual or advisory.
43. Locally, in *Smith v. Kingsway Academy* [2001] BHS J No.10, Longley J (as he then was) set aside an earlier decision granting the respondents leave to pursue judicial review proceedings to challenge the decision of Kingsway to exclude two students for breach of the school's dress code requirements as it related to hairstyles. I offer no opinion on the legality of the exclusion. I do, however, find the following observations of Longley J to be very instructive:

"5. To my mind it is beyond peradventure that Kingsway Academy is a private autonomous school, which is classified as independent till (sic) the purposes of the Education Act chapter 36. It is not a public school and notwithstanding the fact that it is financially aided or assisted by the government by virtue of a resolution guaranteeing a loan in the name of Kingsway at local bank that does not thereby change its classification as independent of (sic) private.

*...
10. I am satisfied that Kingsway Academy is an autonomous private school exercising no public law function. In my judgment the rules and policies on which they rely to exercise discipline as in this case were privately promulgated and were not made in the field of public law and do not derive any authority from it. And generally speaking, when the rules are invoked in respect of a child it is done by virtue of a relationship spawned from contract or private treaty. While it may be of general public concern what decisions are made they do not thereby become amenable to judicial review which is concerned with public law.* [Emphasis supplied]

44. Applying the principles discussed to the present case, in my judgment the decision to exclude J and P from Xavier's is not amenable to judicial review. It is not in dispute that Xavier's is an independent, private school. Attendance is conditional upon payment of school fees. Enrolment is governed by contractual terms, inclusive of the Handbook (see First Affidavit of Deidre Cooper, para.21). The source of the power to require J and P's removal is derived from the Handbook (see First Affidavit of Deidre Cooper, para.22).¹ The school is not exercising a statutory power in deciding whether the parent-school relationship has broken down. It is not performing a governmental function, nor is the decision complained of shown to be part of a statutory regime. The decision is entirely private in character and M's recourse, if any, lies in private law.
45. I would also refer very briefly to the former *Education Act (Ch.46)*, which was still in force at the time of the exclusion decision. This drew a clear distinction between schools "*maintained*" by the Minister and "*independent schools*". With respect to the

¹ See also First Affidavit of M, paras.28 and 29, where she refers to the contractual basis of the relationship between her and the school.

latter, even though the Minister was at liberty to provide financial assistance to such schools, both secular and religious instruction was generally left in the hands of the proprietors of the school (see Sections 15(2) and 19).² Section 45 of the former Act also importantly provided:

“45. Save as heretofore provided in regard to the registration of schools and the serving of notices of complaint, every independent school on the Register of Independent Schools shall have complete control over —

.....

(d) the enrolment, promotion, and all other matters concerning the pupils of the school;

(e) all matters pertaining to the internal organisation and discipline of the school.”³

46. Of note, all Roman Catholic Diocesan Schools (which presumably included Xavier's) were designated as “*exempt schools*” under the former Act (see Section 2(1) and 2nd Schedule). This designation seemingly exempted them from a number of regulatory requirements to which other independent schools were subject, further supporting the position that Xavier's was not exercising any public law power in directing the exclusion of a student where relations between the school and a parent had become unviable. The provisions of Section 45 of the former Act have largely been replicated in the new *Education Act, 2026*,⁴ which only came into force in March of this year. This confirmed, among other things, that subject to the provisions of the Act “*private schools shall have complete control over*” enrolment, promotion and all other matters concerning “*learners*” of the school, and all matters pertaining to discipline and internal organisation.
47. It is not sufficient that education is a matter of public importance, or that independent schools are subject to regulatory requirements, to render the decision to exclude J and P susceptible to judicial review. This does not serve to transform the contractual relationship between the school and parents into a public law relationship. Nor does the seriousness of the consequences for the children supply the missing public law element. As an aside, I would note that any number of businesses, professions and fields of activity in The Bahamas are subject to regulatory requirements. It would be surprising if this factor alone rendered them liable to judicial review procedures for actions of a quintessentially private character.
48. The receipt of government funding, such as the assistance provided to private schools (including those within the Catholic school system)⁵ through the *Education (Grant-In-Aid) Regulations*, similarly does not in my view render the decision to exclude J and P subject to judicial review procedures. As *De Smith* points out, many organisations are subsidised from public funds in some form or the other, but this does not in and of itself make them susceptible to judicial review. (*De Smith* (7th ed.), para.3-048)

² Cf. Section 15(1) and 17 of the former Act relating to maintained schools.

³ Cf. Section 55(2)(b) and (c) of the former Act relating to maintained schools.

⁴ See Section 51 of the new Act

⁵ Note: while the *Education (Grant-In-Aid) Regulations, Schedule A*, refer to “Catholic Schools” receiving an aggregate sum by way of grant-in-aid, there is no indication of the amount of funding provided to Xavier's.

49. The Applicant placed considerable reliance on the first instance Canadian decision in *Burke v. Yeshiva Beit Yitzchak* (1996) 90 OAC 81 (DC) to support her arguments. This involved an application for judicial review challenging the expulsion of a student from a private Jewish school. The Ontario Divisional Court allowed the application and quashed the decision. In doing so, it held that it had jurisdiction to hear the application and that the expulsion was invalid as the parents were not given sufficient detailed notice of the grounds for expulsion and were not given an opportunity to be heard on the merits. The Court also held that, notwithstanding the fact that the school was supported by private funds, it was required to comply with the Education Act in providing for the secular education of its students and that the drastic punishment of expulsion was sufficient to merit the court's review of the process.
50. With all due respect, I have great difficulty relying on this decision. The judgment was seemingly rendered on an extempore basis and is exceedingly brief. The proper scope of the judicial review procedure in Ontario is not discussed; the contractual arrangements, if any, concerning student enrolment, discipline and exclusion are not discussed; and the provisions of the Education Act in Ontario are not discussed (save for a reference to the school being required to comply with the Act in the provision of secular education for its students). I also note that the decision has not escaped criticism and has not been followed in at least one subsequent case.⁶
51. The Applicant also relied on the *Roman Catholic Archbishop of Nassau, Bahamas Incorporation Act, 2001*, suggesting that this rendered the Respondents an "adjudicating authority prescribed law" for the purposes of Article 20(8) of the Constitution and rendered the Respondents amenable to judicial review. I must confess to having some difficulty following this argument. As far as I can tell, the Act essentially incorporates the office of the Roman Catholic Archbishop of Nassau (and his successors in office) as a body corporate, vests church property in the corporate body, and regulates how such property is held and the Archbishop's powers concerning the same. I struggle to see how this makes the decision to exclude J and P from Xavier's, in the facts and circumstances outlined, subject to judicial review. *De Smith* also confirms⁷ that an institution established by private Act of Parliament will not, for that reason alone, be subject to judicial review.
52. The Applicant further invoked the provisions of the former *Education Act* and the *Child Protection Act* imposing a duty on a parent, or those with custody and care of a child, to secure their education as providing the necessary statutory underpinning. She also placed reliance on Article 28 of the *UN Convention on the Rights of the Child 1989*, which recognised the right of a child to education and imposed an obligation on 'State Parties' to make primary education compulsory and available free for all. Once again, I struggle to see how this renders the decision to exclude J and P from Xavier's (an independent, private school) amenable to judicial review. I also agree with the following submissions of the Respondents on this point:

"17. The Applicant's attempt....to recast the dispute as one engaging the public rights of the children does not alter the true nature of the decision under challenge. The enforcement of contractual enrolment terms by a private school does not, without more, constitute the exercise of a public function amenable to judicial review."

⁶ See *W.W. et al. v. Lakefield College School et al.* 2012 ONSC 577, at paras.38-39

⁷ *De Smith* (7th ed.), at para.3-029

18. Absent any statutory delegation of governmental authority, or assumption of public power, the mere invocation of children's rights cannot convert a private contractual decision into a public law matter."

53. My conclusion that the decision to exclude J and P from Xavier's is not amenable to judicial review should be sufficient to dispose of this matter. I nonetheless briefly consider the proposed grounds for review.

Irrationality

54. The Applicant contends that the decision to exclude J and P was unreasonable or irrational. Lord Diplock famously described this as embracing "*a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*" (see *Council of Service Unions v. Minister for the Civil Service* [1985] AC 374, at p.410). More contemporary formulations of the test ask whether the decision was within the range of responses which a reasonable decision-maker might have made in the circumstances (see e.g. *Gokool v. Permanent Secretary for the Ministry of Health and Quality of Life* [2008] UKPC 54 at [18]).
55. By this yardstick, I am unable to accept that the decision to exclude J and P from Xavier's was irrational. First, the school had a very broad, express power under the Handbook to require removal where it determined that relations between the school and parents/guardians had broken down ("*...the school reserves the right to require the withdrawal of a student if it determines that the parent/guardian partnership with the school is irretrievably broken*"). It is not unreasonable for a school to take the view that the education of a pupil depends on a workable relationship between the school and those with parental responsibility. Moreover, the Court should in my view be very slow to second-guess the educational and pastoral judgment of the school as to whether that relationship remains viable.
56. Secondly, the threshold for establishing irrationality is high. On the material before the Court, the Applicant engaged in a series of exchanges and communications with the Principal and other school and Catholic Board of Education officials from which it could reasonably be concluded that the school's relationship with her was no longer workable. To take but a few examples, the Applicant and the Principal had a discussion or exchange during the assembly on 20 October 2025. This led to the Principal calling security for assistance. Regardless of whether this was a disproportionate response as suggested by the Applicant, it goes towards supporting the general conclusion of irretrievable breakdown in relations.
57. Additionally, in an email written by the Applicant to Dr. Bowe two days later on 22 October 2025 under the caption "*Urgent Concern Regarding Student Safety and Administrative Conduct*", she referred to the Principal's handling of the complaint concerning the incident involving her daughter and the male student as demonstrating a "*lack of professionalism and the absence of the composure expected of a principal*", and as reflecting "*a troubling inability to address matters involving [her] children with fairness and rationality*", personal bias and lapse in leadership (see Affidavit of Deidre Cooper, pp.30-32). She also described the Principal's conduct during their encounter on 20 October 2025 as unprofessional. As indicated, this email was copied to

approximately thirty persons, most of whom appear to be staff or officials within the Catholic Education Centre, inclusive of faculty at Xavier's.

58. This also comes against the backdrop of the eleven-page complaint by M to the Archbishop and the Chairman of the Catholic Board of Education in July 2025. As indicated, in that complaint, M purported to document various grievances with school officials and Catholic Board of Education officials over the years. She also expressed distrust and dissatisfaction with Xavier's administrators, especially Ms. Cooper and the school's vice principal, describing them as (among other things) unprofessional and their actions as negligent, dismissive and lacking in transparency. She also accused Ms. Cooper of knowingly conveying false information and suggested that her experiences with the school had severely damaged the trust her family once had in Xavier's administration.
59. In the final analysis, whether M considers that the Respondents were wrong in excluding J and P from Xavier's, this does not make the decision irrational in the public law sense. The decision to exclude would appear to have been within the range of responses of a reasonable decision-maker in the circumstances. I do not find the point to be realistically arguable.

Procedural unfairness

60. As it relates to unfairness in procedure, the Applicant asserts that the focus of discussion at the meeting at the Catholic Education Centre on 31 October 2025 (which preceded the impugned decision) was, firstly, the incident involving her daughter and the male student and, secondly, the Principal's conduct in the auditorium on 21 October 2025. She says that at no point was the issue of the severing of ties with Xavier's or J and P's removal discussed or even raised (see First Affidavit of M, para. 19 and 23). She alleges that the meeting concluded with her being informed that she would be contacted for another meeting. This was not done and instead the Applicant received the letter requiring J and P's removal.
61. Ms. Cooper in her evidence confirms that she did not attend the meeting on 31 October 2025. She does attest to listening to a recording of the meeting, which she says was made with M's consent. On this basis, she states that M was afforded a full opportunity to speak, raise issues and make representations without interruptions or restrictions. Nevertheless, she does not indicate the topic(s) discussed during the meeting and whether the specific issue of irretrievable breakdown in relations and the possibility of J and P's removal from Xavier's was canvassed.
62. The Respondents' basic position is that the current dispute is not amenable to judicial review. The issue of the proper scope of any rights of procedural fairness to which the Applicant may have been entitled had the decision been reviewable was not extensively addressed. Based on the facts presently before the Court, if the decision had been reviewable, I would have been prepared to grant permission on the procedural unfairness ground. Of course, however, I do not regard the judicial review procedure as properly invoked.
63. The Applicant's contention that she was not afforded an opportunity to appeal the decision is not well-founded in my view. The short answer to this point is that the Handbook and other materials before the Court, as far as I can tell, do not confer a

right of appeal to challenge the decision complained of. No such express right has been brought to my attention.

Alternative remedies and other matters

64. The existence of possible private law remedies reinforces the conclusion that judicial review is not the appropriate route. If M contends that the school acted in breach of contract, failed to follow the Handbook or acted contrary to an implied term of rationality or fairness,⁸ those matters may be pursued, if properly arguable, by ordinary civil proceedings. The availability of relief will of course depend on the terms of the contract and the facts. Although nothing in this ruling should be read as determining any private law rights the Applicant may have, I could envision a court being extremely reluctant to grant mandatory relief which would have the effect of forcing the school to continue to educate J and P where it has already determined that the parent-school relationship has been irretrievably compromised. The possibility of a private law claim is nonetheless a strong indication that the present claim for relief by way of judicial review is misconceived.
65. For completeness, I would only add that had I taken the view that the Applicant's challenge was legally sustainable, I would not have been minded to refuse permission on the basis of the Respondents' technical objections concerning the Applicant's non-compliance with CPR Part 23 and the improper joinder of parties. These points were not pressed very strongly by the Respondents. The Court also has ample powers to address any such defects.

Conclusion

66. I am not entirely unsympathetic at the plight of the Applicant, and more so J and P. For the reasons stated, the proposed claim is not a suitable case for the grant of permission. I therefore dismiss the application. I will hear from the parties further on the issue of costs.


FARQUHARSON, J.
17 July 2026



⁸ See e.g. *Barganza v. BP Shipping* [2015] UKSC 639